LEGISLATIVE COUNCIL

Wednesday 15 August 1990

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

PETITION: SELF-DEFENCE

A petition signed by 1 879 residents of South Australia concerning the right of citizens to defend themselves on their own property and praying that the Council will support legislation allowing that action taken by a person at home in self-defence or in the apprehension of an intruder is exempt from prosecution for assault was presented by the Hon. Diana Laidlaw.

Petition received.

PERSONAL EXPLANATION: BENEFICIAL FINANCE CORPORATION

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a personal explanation.

Leave granted.

The Hon. C.J. SUMNER: Yesterday, the Hon. Mr Gilfillan asked me a supplementary question about whether in the regular briefings of the State Bank to the Premier the Government was made aware of the pending disastrous results of Beneficial Finance as a wholly-owned subsidiary of the State Bank. *Hansard*, as shown in today's pulls, has reported my answer to that question as 'No'. My recollection is that my answer was 'I wouldn't know, Mr President', and I have asked *Hansard* to correct the answer for the weekly print.

QUESTIONS

HEALTH DEVELOPMENT AUSTRALIA

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Tourism, representing the Minister of Recreation and Sport, a question about Health Development Australia.

Leave granted.

The Hon. R.I. LUCAS: I refer to recent articles in the *Advertiser* regarding concern by South Australian health centre operators about the activities of the Government funded organisation, Health Development Australia (HDA). Health Development Australia is a joint venture organisation set up within the last year by the State Government Insurance Commission and the Government funded Health Development Foundation (HDF).

In the 1988-89 fiscal year HDF received more than $350 000 in recurrent funding from the Department of Recreation and Sport and the South Australian Health Commission, approximately 78 per cent of which came from the latter body.

I should make it clear, first of all, that private health centre operators have no quarrel necessarily about the entry of another competitor into the health and fitness industry. Their concerns centre on the apparently massive undercutting of charges embarked upon by HDA which, it is claimed, will send private health studios broke and the shift by HDA from marketing preventative health and rehabilitation services towards mainstream health centre services. I have, for example, copies of press advertisements which show HDA was offering one month's unlimited aerobics classes at its Rundle Mall centre for 99c earlier this year.

The Hon. Diana Laidlaw: I wish I'd known about that!

The Hon. R.I. LUCAS: It is certainly an attractive price.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: We could perhaps get bulk discount! At the same time, subsequent offers have included free trial workouts at the health centre and even a bonus free holiday at a Goolwa Health Resort for people taking out a 12-month membership with HDA. Private health centre operators who have been in the business for many years rightly question how HDA can offer such incentives if, as is claimed, HDA is not subsidised and has to pay its way.

The private health centre operators are also concerned that HDA is promoting its health centres as Government-backed, as some kind of guarantee of its credibility. There also seems to be some confusion about HDA's role as a profit generator. For example, in the *Advertiser* of 14 August, HDA's chief executive, Dr Wayne Coonan, is reported as saying its activities were all above board, and that it was a 'non-profit organisation'. Yet, last January the Chief General Manager of SGIC, Mr Denis Gerschwitz, in a letter replying to a member of the South Australian Fitness Industry Association stated that HDA's goal was:

> ... to improve the health status of South Australians ... and to return profits to the joint venture partners—we do not think profit is a dirty word. HDA is not to be subsidised. It must provide a commercial return on capital invested.

However, with incentives such as those which I have already outlined, there must be serious questions about HDA's ability to return profits or even a 'commercial return' on health programs at 99c a month, whether or not it is subsidised.

One private health centre operator points out that he now charges $140 a year for health club membership, compared with $260 a year 10 years ago. This is despite operating expenses having risen 200 per cent over that period of time and Workcover premiums, for example, rising from $1 000 four years ago to the present rate of $9 000 per annum.

Another health centre operator used to have a large clientele made up of Public Service Association members and officers from the Department of Correctional Services. Recently, many of these have cancelled their membership with his health studio. The recurring comment has been, 'We like the services your studio is offering; however, HDA is offering such massive discounts for our members we'll just have to switch.'

There are also concerns that HDA was initially set up at Noarlunga, supposedly because of the social justice implications of establishing preventative health programs in a part of Adelaide that was statistically high in ill health. Yet, subsequent HDA studios, which have opened at Campbelltown, Prospect and Rundle Mall, hardly suggest social justice in health programs is a high priority.

There is grave concern in the health and fitness industry that a continuation of the current expansion of the Government funded HDA will see a possible decimation of private operators in the industry. My questions are:

1. Will the Minister detail the capital and recurrent budgets for HDA for the current and past fiscal year, and what was the source of those funds?

2. How much of HDA's budget for the current and past fiscal year was allocated to advertising and marketing?

3. How much has been allocated this fiscal year to fund the 'large network of centres' referred to by Dr Coonan in today's paper?

4. Are the current objectives of HDA consistent with the original charter?

5. Will the Minister urgently investigate the effects that the rapid expansion of HDA is having on private health and fitness centres, and will he investigate whether HDA enjoys an unfair market advantage over other health fitness centres?

The Hon. BARBARA WIESE: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

COURT DELAYS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about court process delays.

Leave granted.

The Hon. K.T. GRIFFIN: Last week I raised the issue of significant delays in the Local Courts in dealing with requests by plaintiffs' solicitors for the issue of summonses, unsatisfied judgment summonses and warrants of commitment or execution. The complaint then was that solicitors were experiencing delays, in some instances over 20 weeks, in getting local courts to act on requests. At that time, I referred to the fact that some 30 legal firms had made approaches to the Law Society, all with similar complaints about delays in administration in the local courts.

I made the point last week that such delay would allow a defendant to rearrange his or her affairs or dispose of assets, thus frustrating the creditor and avoiding his or her debts. That has happened in a number of cases which have been drawn to my attention. In a number of cases, when inquiries have been made at the courts as to the reason for delay, the reply has focused on problems associated with the introduction of computers.

I have been told by various lawyers that Para Districts Court has the best response time of all courts, and it is not yet on computer. I have been informed also that at the Local Court of Adelaide only the court trial section has not been computerised, but there is real concern that, when it is, there will be greater delays in that section in processing documents for trial. The view in some sections of the courts' offices is that computerisation has created delays and caused inefficiencies when the opposite was promised and, in addition, no staff savings have been made as originally envisaged. Some even suggest, quite dramatically, that computerisation has created a gigantic mess. My questions to the Attorney-General are:

1. Is the reason for substantial delays in dealing with court processes the failures in the courts' computerisation program?

2. What steps are being taken to improve the service to litigants and solicitors?

3. What staff savings, if any, have been achieved from computerisation of the courts' offices?

The Hon. C.J. SUMNER: Following the honourable member's question last week and, indeed, the receipt of a letter from the President of the Law Society to me, I referred the matter to the Director of the Courts Services Department for urgent discussions with the Law Society to try to identify the extent of the problems and means whereby they could be resolved. Obviously, one introduces computerisation to increase efficiencies and not to detract from them. I will also ask the Director of the Courts Services Department to examine the questions that the honourable member has raised today and bring back a reply.

INSTITUTE BUILDING

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Hon. Ms Levy, in her capacity as both Minister of Local Government and Minister for the Arts, a question about redevelopment of the institute building.

Leave granted.

The Hon. DIANA LAIDLAW: I have received a copy of a minute from the State Librarian, Mr Ewan Miller, to the Libraries Board dated 22 May; it was forwarded to me anonymously.

Members interjecting:

The Hon. DIANA LAIDLAW: Yes, I am very busy with this anonymous mail at the moment.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The same source—it may be the same source. It is all anonymous, so I have no idea. The minute outlines a proposal for the establishment of an Adelaide Library and Information Centre in the institute building at the corner of North Terrace and Kintore Avenue, a 1907 heritage building. The State Librarian, as Chairman of the Building Redevelopment Committee of the Libraries Board, proposes a public use centre incorporating and integrating six main functions, namely, a central business district lending library, an information centre, the performing arts collection, the Royal South Australian Society of Arts, the University of the Third Age, and an Adelaide museum, which is a new concept to display the City Council's civic collection.

Subsequently, I have ascertained that, beyond the board, the proposal has failed to win universal approval. For instance, the proposed accommodation arrangements assume that the History Trust, the Women's Information Switchboard and CISSSA (the Community Information Support Services of South Australia) will be relocated elsewhere, yet all these organisations are essentially happy with their present accommodation. They do not want to move—in fact, CISSSA only recently moved in. They all resent the underhand way in which the State Librarian has developed the plans in secrecy and the fact that the State Libraries Board has endorsed the plans in principle without prior consultation and without consideration of the costs involved in any relocation exercise—a cost that would amount to several hundreds of thousands of dollars, presuming, of course, that appropriate alternative accommodation can be found.

I should also note that the Royal South Australian Society of Arts is less than impressed with the manner in which it has been treated. The royal society is the building's foundation tenant yet, without reference to the royal society, the Libraries Board has had the audacity to reach the following conclusion:

> That this tenant should continue to occupy its gallery but allow the space to be used for other exhibitions and as a meeting space as well.

The minute condescendingly notes that the society's adjacent office space is yet to be decided—space vital to the society if it is to continue to pursue its important program of exhibitions. The minute also notes that the board has insufficient funds to cover interior renovations, including air-conditioning, wall openings and furnishings. Therefore, according to this minute, an architect's brief for Sacon and a subsequent submission to Cabinet are required.

Finally, I understand that the Chairman of the Libraries Board (Mr Des Ross), together with the Director of the Department of Local Government (Ms Anne Dunn), and the State Librarian have addressed staff of the library's

lending service about their potential relocation to the institute building. My questions to the Minister are:

1. Has she been briefed on the proposal by the Libraries Board to take over the institute building to establish the Adelaide Library and Information Centre, to oust the History Trust, the Women's Information Switchboard, and CISSSA, and to assume a revised use for the gallery currently being occupied by the Royal South Australian Society of the Arts?

2. What is the estimated cost of the plans, including the costs involved in relocating the History Trust, the Women's Information Switchboard and CISSSA?

3. Does she endorse the plans, and has she yet taken a submission to Cabinet on the subject?

4. If she does not approve the plans in principle, or due to cost considerations, has the Minister informed the Libraries Board that it must put a stop to further development of the concept?

The Hon. ANNE LEVY: It is really rather amazing for the honourable member to speak as if she had received a great leaking of information. There has been no secrecy whatsoever regarding a proposal for redevelopment of the institute building, which proposal has been released to the press and to the public. Many of the proposals which she is now quoting as being secret have not been secret at all.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: Look, you have asked your question. Now it is my turn.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. Davis: You're not at it again?

The Hon. ANNE LEVY: No, she is.

The PRESIDENT: Order! The Minister has the floor. The question was asked in silence, and the answer should be heard in silence.

The Hon. ANNE LEVY: A Green Paper, which has been released for public comment, gives many different options for consideration for redevelopment of the institute building. Of course, no accurate costings have been prepared, because one cannot propose costings until one knows what one is costing.

The future use of the institute building, and any costs associated with this, will depend on what occurs within the building. Discussions have occurred with a large range of people as to the possible uses of various sections of the institute building.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: Mr President, could you keep her quiet while I am trying to answer the question that she has asked me?

The PRESIDENT: Yes. Order! The Minister has the floor.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Minister has the floor.

The Hon. L.H. Davis: You had better introduce legislation on self-defence.

The PRESIDENT: Order! I will have to introduce legislation for a bit of self-control. The Council will come to order.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. ANNE LEVY: Thank you, Mr President. A great deal of consultation has occurred already, and a lot more consultation will occur. As I understand it, the Women's Information Switchboard cannot wait to get out of its current quarters. Those people have been complaining about those quarters for a long time and are looking forward to relocating to far more suitable accommodation. I discussed that matter with them over 12 months ago. I understand that CISSSA is also very happy to have alternative quarters and has certainly not expressed any opposition whatsoever to me.

The Hon. Diana Laidlaw: It's a *fait accompli.*

The PRESIDENT: Order! The honourable Minister.

The Hon. Barbara Wiese: They've all known about these things.

The PRESIDENT: Order! The honourable Minister has the floor.

The Hon. ANNE LEVY: They have not expressed to me, to any of my officers, to the librarian or to the Libraries Board any dissatisfaction whatsoever with relocation.

The Hon. L.H. Davis: The switchboard is really lighting up today.

The Hon. ANNE LEVY: I was talking about CISSSA.

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: As far as the History Trust is concerned, there have been discussions and I have had correspondence with it. Members of the trust have spoken with my officers, with the librarian and with people from the Libraries Board. They have also had discussions with officers from the Department of the Arts regarding this matter. In fact, I have had correspondence on this matter from the most recent member of the History Trust, Mr Murray Hill.

The Hon. Diana Laidlaw: Are they all happy?

The Hon. ANNE LEVY: I would not say that the History Trust is happy with the idea of relocating but it has accepted the principle that the fact that it is a history trust does not mean that its administrative arm needs to be located in an historic building, that is, that while the trust occupies and runs numerous very important historic buildings in Adelaide, its purely administrative arm does not need to be located in an historic building.

We certainly respect and have agreed to the trust's position that it should be located on or very near to North Terrace and not far removed from at least some of the museums for which it is responsible. I have stated as much to the Chair and other members of the History Trust and there is no secret to this matter at all. The discussion paper puts forward proposals for other occupants of the institute building. Far from being a secret, correspondence regarding this matter has appeared in the *Advertiser*, with a whole lot of bodies being suggested as possible occupants of the institute building.

Nothing has been finalised at this stage. It is a matter for discussion, and future arrangements will be determined in the light of those discussions, which will involve not only the people to whom the honourable member referred but other people, as well, including the Adelaide City Council. The idea that we tried to keep such matters secret is absolutely ludicrous. The outside of the institute building is due to be restored in the not too distant future, and that work will be carried out by the heritage unit of Sacon. When the uses of the building are changed, work will need to be done inside but there have been no costings or preparations carried out in that regard.

It would be pointless until we know exactly what will be in the building. The honourable member talks about the Libraries Board being heavy-handed in this matter: I should point out to her that the institutes building, along with all other institute buildings in this State, passed into the care and control of the Libraries Board when the Institutes Association of South Australia was wound up, and legislation to

that effect went through this Parliament in the not too distant past.

As a result of that, the Libraries Board, which has the responsibility for that building, is looking to make good use of it—better use than is currently made—for the benefit of all members of the South Australian public. It is one of our oldest and most valuable heritage buildings, in a prime location on the corner of North Terrace and Kintore Avenue, and it is envisaged that it could have a very important role in providing services which would be very attractive to everyone in South Australia, with a particular emphasis on the cultural tourism potential of North Terrace.

It can act as an information centre, particularly a cultural information centre relating to the activities along North Terrace, but it should serve as a focus for a great deal of activity rather than some of the more limited activities which occur there at the moment. When I say 'limited', I mean limited in terms of the number of people who are actually making use of that building and who, as members of the public, are attracted to it.

I should point out that there is no suggestion and never has been any suggestion that the Royal South Australian Society of Arts would be moved from its gallery. It is one of the very few centrally located display galleries in Adelaide, and it is very important for the visual arts in this community that it should remain as an exhibition space. No-one has ever suggested that it should have any other function. I repeat: there is nothing secret at all about this matter. We welcome discussion from all interested bodies and all points of view will be taken into account. I am sure that an amicable consensus can be reached that will enable that very important, historic building to play its rightful part in the life of South Australia.

The Hon. DIANA LAIDLAW: As a supplementary question: the Minister has suggested that nothing is secret about this matter.

The Hon. Anne Levy: You can't make an explanation in a supplementary question.

The Hon. DIANA LAIDLAW: I am not. I assume from her answer—

The Hon. Anne Levy: That's a statement, not a question.

The Hon. L.H. Davis: You're not President now; you're a Minister.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —that the relocation is a *fait accompli*, notwithstanding the fact that no costs have yet been determined. Is that assumption correct?

The Hon. ANNE LEVY: I am not quite sure what the honourable member is referring to when she talks about relocation. Relocation of what?

The Hon. Diana Laidlaw: Of the History Trust and the Women's Information Switchboard.

The Hon. ANNE LEVY: As I understand it, the Women's Information Switchboard and CISSSA cannot wait to be relocated. To that extent that is a *fait accompli*, or the matter has been decided, provided suitable arrangements can be made. However, in terms of whether a relocation is desirable, the answer is 'Yes' for those bodies. They wish it, and I am sure will welcome it as soon as it can possibly be arranged. I stressed earlier that there is no timetable to this, Mr President. There are no costings. There is no detailed examination, because at this stage the future uses of the building have not been determined. The discussions are continuing to determine the best possible use of that building. But it seems to be agreed on all sides that the Women's Information Switchboard and CISSSA wish to relocate. I am sure that the sooner it can be arranged, the happier they will be.

SOIL CONTAMINATION

The Hon. M.J. ELLIOTT: I seek leave to make an explanation before asking the Minister of Local Government, representing the Minister for Environment and Planning, a question about soil contamination.

Leave granted.

The Hon. M.J. ELLIOTT: Last night I attended a residents' meeting at Bowden where residents are concerned about high levels of soil contamination from a number of substances, involving areas where houses are already located and places where it is proposed to build houses. They only found out about the contamination two weeks ago. On 31 July the Hindmarsh Development Committee called a meeting to inform Bowden residents about planning developments. Apparently, as an off-the-cuff remark someone made some mention of some contamination. Once that had been admitted, discussions went along further and it was said that the contamination was low level.

The residents became rather interested and made further inquiries and, in fact, these low levels turned out to be quite high levels of metal, the heavy metals in particular. The meeting last night discussed two sites. One of these, which is about to be built on, used to be a former scrap metal yard and it is contaminated with lead, copper and zinc and some cadmium and chromium. In fact, at one test site they found 10 per cent lead. While it may have been an anomalous result, nevertheless, levels of lead that high were found and a level of cadmium of 1 900 parts per million. It is worth comparing that with cadmium found at Mount Isa of 60 parts per million, which was causing some concern there. There is contamination of that sort. Apparently they also found polycyclic aromatic hydrocarbons, including benzoalphapyrene, which is a known carcinogen. There has been only limited testing for other substances, so it is anyone's guess what else might be there.

The residents were particularly concerned that, in fact, testing had been done by the Housing Trust via the Health Commission perhaps as long ago as 18 months, while they only found out, by accident, two weeks ago that this contamination had occurred. Further to that, since the demolition of the previous industrial buildings there quite some years ago now, it has been a favourite playground of the neighbourhood kids. They have been playing on that area and no warning whatsoever had been given to residents that there might be any danger. The line at this stage is that there may not be a danger, but it is worth noting that the results found indicated high levels, and no warning whatsoever has been given to local residents.

There is now some argument developing about the appropriate means of disposal of the contamination. The Government's favoured position at this stage is to dig a hole at one end of the site and push the contaminated soil into it and then cover it over again and make it into a playground or into a park, and then register it as a site for perpetuity known to be contaminated. I believe that that is the Government's preferred position at this stage.

There is also concern on the part of the residents in relation to a second site immediately across the road, where the Housing Trust had found contamination before building and stipulated a requirement that the site be covered to a depth of 30 centimetres of new fill and that any excavated soil for the footings be removed off site. The residents are concerned about whether or not that was adequate. One question asked last night was, 'Where did the removed soil go?' The Housing Trust representative said, 'I don't know.' That caused some consternation amongst the people at the meeting last night.

The Housing Trust also said last night that in its testing it had found contamination at at least three other sites that it proposes to build on, and the expectation is that it will find many more as the process, particularly in the western suburbs, of removing industry and bringing back housing proceeds. In fact, the Housing Trust's current policy is to test the site before purchase so that it does not get caught up any more, and if it is contaminated they will not buy it. They have an attachment made in the Lands Titles Office so that anyone else who might be buying it finds out it is contaminated.

There are many potential sources of contamination of soils in the metropolitan area: metal finishers; tanneries, which leave things such as arsenic which people at Albert Park found out about last year; scrap yards; old gold mines and processing works, located in the eastern suburbs in the early days; organochlorins from former drycleaners; and polychlorinated biphenyls (PCBs), from old electronic equipment. There is a range of things that could be contaminating soils. The Government apparently is now doing some random testing. The question that is being raised is how much more testing needs to be done.

The Government is facing a rather major bill for the clean-up of the sites that it already knows about, the land that it owns. At this stage it is accepting that, but being very careful that it does not get caught with any more. My questions are:

1. Why were the residents not told of the contamination, regardless of the level, although it certainly was a level to be concerned about?

2. Whose responsibility was it to inform residents? Why were they not informed?

3. Will the Government consider legislating for the testing of private developments on former industrial land? While the Housing Trust is doing the right thing, there is no requirement for private developers, and it is anyone's guess how many houses have been built by private developers on contaminated land.

4. Will the Government consider setting up a super fund, as has been set up in the United States? It is a fund which taxes polluting industry and which is used to clean up old polluted sites, and it is working very well.

5. Will the Government release full details, via Parliament, of what current testing is being done, what is found, and what future proposals the Government has in this matter?

The Hon. ANNE LEVY: I am sure the honourable member will not be surprised if, after his very lengthy question, I give a very short reply: I will refer the matter to my colleague in another place and bring back a response.

APPRENTICES

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Employment and Further Education, a question about apprentice courses in South Australia.

Leave granted.

The Hon. CAROLYN PICKLES: A recent article in the *Advertiser* outlined the dilemma of about 50 young South Australian apprentices who may be stood down or turned away because of a last minute review of training courses by the Federal Department of Education, Employment and Training. I understand that the apprentices were to have begun six months of pre-employment training on 16 July, but courses at two institutions were postponed twice and have now been placed in limbo for up to six weeks while the department determines whether they meet funding criteria.

I also understand that the apprentices are part of the department's national group training schemes project. South Australia has 16 regional or industry-based schemes that employ apprentices and hire them out to smaller employers, who cannot afford full-time apprentices, for periods ranging from three months to a year. About 60 apprentices, many in country areas, may be affected by the delay in course funding approval. Scheme managers believe about 50 will have to be stood down without pay, despite the fact that many have already given up other jobs or left the education system to start their apprenticeships. Can the Minister advise what the situation will be regarding these apprentices and whether there is any assistance that the State Government can offer?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

WATER AND SEWERAGE RATES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in the Council, a question about water and sewerage rates.

Leave granted.

The Hon. L.H. DAVIS: The Waterworks and Sewerage Acts make certain properties, such as churches and charitable institutions, exempt from normal rating for water and sewerage. In a circular called 'Tap Topics' distributed by the Engineering and Water Supply Department, the water and sewerage rates for 1990-91 are outlined. The circular includes properties exempt from rating on capital value—that is, churches and charitable institutions—and, in fact, reveals an increase of 17 per cent for each water closet, toilet, connected to the sewers from $36 to $42. This is an increase of about 2½ times the rate of inflation in South Australia. One would be entitled to expect that at these prices some, at least, of the water pipes might occasionally pour forth wine. Properties other than churches and charitable institutions have also been savaged by a 17 per cent increase on each water closet from $49 to $57.

My questions to the Minister are: first, how can the Government justify such a large increase on the charge for each toilet, given that many churches in metropolitan Adelaide have long rows of toilets and recognising that this is in breach of the Premier's promise? Secondly, does this indicate that the Premier is not flush with funds? Finally, will the Government review this harsh decision which, as I have said, breaches its claim that no taxes and charges will increase in 1991 in excess of the rate of inflation?

The Hon. C.J. SUMNER: That commitment relates generally to the overall take which—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: That is quite clear from the experience of past years but, because the rate of taxation may change within a particular area, it may be that in some individual cases increases go beyond the consumer price index. I am not aware of the specific issue to which the honourable member refers, but I will refer it to the appropriate Minister and bring back a reply.

WATERBED HEATERS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about waterbed heaters.

Leave granted.

The Hon. M.S. FELEPPA: Recently, there was a report in the *News* of four occasions when faulty waterbed heaters had caused problems, ranging from electric shock to the melting of the mattress, and even house fire. One such fire caused approximately $14 000 worth of damage to the house. In that case, the heater had been installed according to the manufacturer's instructions, for only six weeks. My questions to the Minister are:

1. As there is a potential danger in the use of waterbed heaters, can a warning be issued by the appropriate authority to potential buyers?

2. Can water heaters on the market be tested and, if necessary, withdrawn from sale until faults in design and installation instructions are rectified?

The Hon. BARBARA WIESE: I also saw the article to which the honourable member refers and, as a result, sought some information on it. The situation with waterbed heaters is that they are included in a list of proclaimed appliances under legislation administered by the various electrical authorities around Australia. In the case of South Australia, this legislation is administered by the Electricity Trust of South Australia. This means that waterbed heaters must be tested by an electrical authority before being offered for sale. They must also carry an approval number, be marked with voltage rating, frequency and current drain and must comply with the relevant Australian standard.

Under the provisions of the relevant Australian standard, bed warmers must carry information including an appropriate warning to users. If a fault is detected in one of these appliances, the State electrical authority may investigate and, if appropriate, attempt to supervise a recall of the product. If necessary, the electrical authority will report the matter to the Federal Bureau of Consumer Affairs for appropriate national action.

In the past, two products have been the subject of alleged hazardous product notification and recall. The Electricity Trust has advised me that no waterbed heaters have been given approval in South Australia because no manufacturers or importers of such appliances are domiciled in this State. A few problems have been reported to ETSA, but in most of those cases it was found that the problems were due to incorrect installation. Only one complaint about waterbed heaters has been received by the South Australian Office of Fair Trading and, in that case also, investigation revealed that the product had not been installed appropriately.

Following the inquiries that were made on my behalf of the Electricity Trust of South Australia, I have taken steps to ensure that the Electricity Trust is made aware of the article that appeared recently in the *News* so that appropriate investigations can be undertaken on the case mentioned in that article, and I have no doubt that ETSA will deal with it in the appropriate manner.

ELLISTON HOSPITAL

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about budget allocations to the Elliston Hospital.

Leave granted.

The Hon. PETER DUNN: The Elliston Hospital received a letter from the Health Commission outlining its budget allocation for the year 1990-91. As this Council knows, there has been some argument between the Health Commission and the Elliston Hospital as to what that budget ought to be. I would like to read from the letter sent to the hospital to demonstrate how confusing the situation appears to the Elliston staff. The letter reads:

> I am now able to advise that your unit's global allocation for gross payments in 1990-91 will be $711 100. The global allocation provides your health unit with the flexibility to manage your activities within this budget limit.

That is a fairly clear statement. The letter goes on to talk about budget limits, as follows:

> I would like to stress that the budget allocation together with the arrangements for salaries and wages detailed below, are the maximum level—

that is still clear—

> within which you are expected to operate. You should therefore ensure that your levels of activity are matched to the funds provided as no additional funding has been held back for this purpose.
>
> During the 1990-91 financial year, the Country Health Services Division will complete broad health service development plans for each of the country planning regions which will identify the division's views on specific opportunities for redistribution of resources on an individual unit by unit basis. There will of course be appropriate consultation on these plans but we do expect that a number of these plans will be progressed to the point where recommendations are made to the Minister and the Government within the 1990-91 financial year. Where this occurs there may be a financial impact on individual health units—

even though the previous paragraph explained that the budget would be for a maximum amount of $711 100. It continues:

> I am therefore advising you now—

It says, 'I am therefore advising 'your' now; I do not know what a 'now' is—

> that following negotiations with you and your board there may be financial adjustments applied to the budget allocation later in the financial year.

That statement made it very confusing for those people administering the Elliston Hospital. My questions are:

1. Can the Minister explain how the Elliston Hospital or, for that matter, any other hospital (and I understand this letter has gone to other hospitals) can plan for the future under such ambiguous terms?

2. Will the Minister inform the Elliston Hospital whether or not it has a budget of $711 100 for 1991?

3. Can the Minister explain the meaning of the gobbledegook statement as follows:

> However, hospitals are to continue providing services in accordance with the budget allocations.

They are to do that, even though it has been said that they could be cut in the middle of the year. It then puts a cap on it and states:

> The division will set in place arrangements to ensure that the actual funding provided in your health unit for the financial year will not exceed the budget allocation.

They are told that they cannot exceed it and then they are told they will not have the budget. Can the Minister explain the meaning of that gobbledegook and whether the budget is likely to be cut, as implied in the letter.

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

NEW ZEALAND TOURISM DEPUTATION

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Tourism a question about a tourism deputation to New Zealand.

Leave granted.

The Hon. R.R. ROBERTS: This morning at 8 o'clock, I listened to KA-FM and I heard some comments by the Opposition spokesperson on tourism. As with most other subjects lately, she criticised the Minister, and therefore the

Government, for extravagance, and also described the trip as being a 'jaunt'. I understand that she believes that up to 20 people could go on this proposed 'jaunt'. In view of the serious allegations, will the Minister please comment and give more detail on the purpose and the significance of this visit to New Zealand?

The Hon. BARBARA WIESE: I am very pleased to have the opportunity to comment on the remarks made by the honourable member, because these comments made by the Hon. Miss Laidlaw on radio this morning were also drawn to my attention. I certainly feel that it is my responsibility to set the record straight about this matter, and to inform the Council and the public of the circumstances of this visit that I am making to New Zealand tomorrow.

The purpose of the visit is to promote the flight between Auckland and Adelaide, and it is occurring at the instigation and invitation of Air New Zealand. Air New Zealand approached me some time ago, inviting me to lead a delegation to New Zealand to promote South Australia as a destination and to ensure that the direct flight between Auckland and Adelaide continues to be as successful as it has been since its introduction last December. In fact, it has been so successful that there will be a second weekly flight beginning on 29 October, so, in the interests of South Australian tourism, it is extremely important that we should make sure that that flight, too, is a great success.

At Air New Zealand's request, I will lead a group of nine tourism industry people, representing various important sectors and, during the course of the next three days, we will take part in numerous functions and media events and undertake various media interviews, et cetera. During that period we will have the opportunity to present South Australia, and the alternative tourism destinations that South Australia has to offer, to the New Zealand public.

Anyone who has followed the development of the New Zealand market will be aware that New Zealand has been the source of the greatest proportion of overseas visitors to Australia but, in recent times, the proportion has changed and, in fact, the number of visitors from New Zealand to Australia has declined slightly. It is the view of people within the industry in South Australia and, indeed, those who are interested in selling Australia in New Zealand, that one of the reasons for that is that New Zealanders who traditionally have visited the East Coast of Australia are now looking for new opportunities and new destinations within Australia. By providing destinations that are not available to people who visit the East Coast, South Australia provides the very real opportunity to expand the market again. So, during the course of the next few days, we will certainly bring that news to as many people as we can contact and, indeed, there will be many hundreds of those.

The visit has been designed to coincide with a major travel and tourism trade fair, which is directed at New Zealand consumers, so South Australia will also be represented at that trade show, and the wares of South Australia will be presented to the many New Zealand consumers who will pass through that promotion. That brings me now to the cost—

The Hon. I. Gilfillan: The conclusion?

The Hon. BARBARA WIESE: Yes, and the conclusion—of this visit to Tourism South Australia. Here, I suppose, the honourable member demonstrates her lack of information about the way in which the industry works and the fact that she did not bother to check her facts before she started shooting off to the media on the matter. In fact, the story is that this is an excellent example of the cooperative effort that takes place on a regular basis between the South Australian tourism industry—in fact, the Australian tourism industry—and the Government. This visit is being made possible by the very extensive sponsorship of numerous private sector organisations, and I would certainly like to acknowledge the support that they are giving.

The sort of organisations that are supporting this visit are, of course, Air New Zealand itself, Australian Airlines, the Auckland Parkroyal Hotel, and the Yalumba wine company and Coopers brewery, which will provide beverages for one of the functions that we will host in New Zealand and also for beverage tasting at the travel show itself. If all the support that is being provided was fully costed, this visit would cost something like $73 000, but, because of the support that is being given by those organisations to this visit, the cost to South Australian taxpayers through Tourism South Australia will be $7 900, which is not a bad return in anybody's language.

LEGIONNAIRE'S DISEASE

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about legionnaire's disease.

Leave granted.

The Hon. I. GILFILLAN: I received the following letter this morning:

> My husband passed away on 18.5.89 after being admitted to the QEH with pneumonia after four doctors were called to my house on Easter weekend. After a few days they found that he had legionnaire's disease, which is a killer. I have been trying to get the Government to bring in legislation. After writing 10 letters to Mr Bannon and Mr Hopgood, the last two have been ignored. I just cannot understand why they can't bring in legislation. It will save many lives. It would force the shopping centres and others to clean them—

I presume that is the air-conditioners—

> out. I realise I can't bring my husband back. Until this is brought in, I will never give up. When this first happened, the Health Commission told me they don't print these things in the news because it makes people panic. If that's the case, why don't they bring in legislation? Mr Gilfillan, I am enclosing my husband's death certificate just to show how it can kill. Thanking you kindly. Hoping you can help.

That death certificate states that the cause of death was septicaemia, gangrene gall bladder, and multi-system organ failure, secondary to legionnaire's disease. My questions to the Minister are:

1. What steps have been taken to inspect and modify, where appropriate, the water towers, which are part of air-conditioning systems in public places, for example, shopping centres, to make sure that the organisms that cause the disease are not cultured and dispersed?

2. What steps are being taken to find methods to treat the disease?

3. Is an education process planned to enable property owners and the public to identify localities which may be sources of infection?

4. Is an education process planned to enable doctors and members of the public to recognise the symptoms rapidly in order for the requisite treatments to be speedily instituted for the patient and the source of the infection identified and removed?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

PARLIAMENTARY PRIVILEGE

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

1. That a joint select committee be appointed to consider and report on the extent of parliamentary privilege and the means by which such privilege may be enunciated and protected in the interests of the community and the institution of Parliament.
2. In the event of the joint select committee being appointed, the Legislative Council be represented thereon by three members of whom two shall form a quorum of Council members necessary to be present at all sittings of the committee.
3. That the joint select committee be authorised to disclose or publish, as it thinks fit, any evidence or documents presented to the joint select committee prior to such evidence and documents being reported to the Parliament.
4. That Standing Order 396 be suspended to enable strangers to be admitted when the joint select committee is examining witnesses unless the joint select committee otherwise resolves, but they shall be excluded when the joint select committee is deliberating.
5. That a message be sent to the House of Assembly transmitting parts 1, 2 and 3 and requesting its concurrence thereto and advising the House of Assembly of part 4 of this resolution.

I want to speak at length on this resolution, but because of other pressures I am still preparing it. I will be ready to report on it later today. Accordingly, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

VIDEO MACHINES

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

That the regulations under the Casino Act 1983, relating to video machines, made on 29 March 1990 and laid on the table of this Council on 3 April 1990, be disallowed.

Earlier this week I had the opportunity of seeing and actually trying out the video gaming machines that are proposed at the Adelaide casino. At that stage it had a couple of sample machines, although no money was going through them. It was an interesting exercise, but it confirmed to me that the impetus behind their introduction is purely and simply greed.

Since Governments moved into gambling in the late nineteenth century and early twentieth century, it has been a guaranteed source of revenue. A wide variety of gambling opportunities have been created and promoted. Government-controlled gambling has been supported because of its potential to remove corruption from the activity—and, certainly, that is something that the Democrats support. Legalised gambling has served the dual purpose of controlling an activity which would otherwise be illegal, and a second and sometimes major purpose of revenue raising. Prior to the 1960s, legalised gambling essentially catered for an existing market, such as on-course bookmakers or, in the case of Port Pirie, there were bookmakers in the town itself. Since the 1960s legalised gambling has been substantially expanded to include TABs, lotto, pools and casinos, all of which have been vigorously promoted by Government and contributed handsomely to Government coffers.

The growth in gambling opportunities has facilitated a corresponding growth in real per capita gambling expenditure in Australia. The Tasmanian Gaming Commission figures show that in 1972-73 the Australia-wide real per capita expenditure in gambling was $52.07, of which $25.24 went to racing and $26.83 to other gaming activities. In 1988-89, the per capita expenditure was $71.84, with $24.57 going to racing and $47.27 to other gaming opportunities.

Betting on racing has remained static over those 17 years, while so-called investment in other gambling activities has almost doubled. The legal gambling industry contributed $98 million to the South Australian Treasury in the 1988-89 financial year, and receipts for 1989-90 are expected to be $111 million.

It has been a familiar pattern with South Australia's Lotteries Commission and the TAB that, when profits are dropping off, new games and betting opportunities are offered and promoted. We saw it with the TAB when it first started with simple win and place betting and doubles. It eventually went to trebles, quadrellas and quinellas. The TAB now offers opportunities to bet on the Grand Prix, cricket and football. Similarly, the Lotteries Commission has expanded. It began with a simple lottery and went to different forms of lottery, such as X-lotto and mid-week X-lotto. It continued to come up with new games in response to what appeared to be a drop in revenue.

The public's demand for gambling has been more than satisfied in South Australia. In fact, I think it could be argued that, rather than satisfying demand, the Government is setting about encouraging it.

Supply appears to be leading demand. No lobbying or campaigning has occurred, of which I am aware, except, of course, from the Adelaide Casino operators for the introduction of video gaming machines. The clubs have been pushing for them, and I guess they see them as easy dollars. However, they have recently been bought off by being given the right to have keno at the clubs. Once again, it is really more money for the Government which appears to be the main interest.

It may be relevant here to briefly look at the machines themselves. Physically, they are identical to the poker machines that are seen in the Eastern State clubs, and they certainly have the capacity to swallow money at the same rate. I was told that they operate with a determined percentage loss. The Premier was very misleading in suggesting that these machines are a game of skill and, as such, are very different from other poker machines. The reality is that with a little skill one's money is not lost quite as fast.

They have been constructed in such a way that, even if one makes the optimum decision according to probability, money will be lost at a rate of about 4 per cent. Of course, if one is a real dill, one will lose the money much faster than that. However, the machines still work on the same essential basis as all poker machines: the money goes through and a certain percentage gets raked out. I think in reality the experienced blackjack and poker players will not touch the machines; they will go and play the real game somewhere, anyway

One of the benefits of the machines outlined to me by the people at the casino was that they require little support in the way of staff. Of course, that would make them much more attractive than the relatively labour-intensive, and more traditional, casino operations. They emphasised several times the drain that increasing wages were having on casino revenue. Obviously, Kumagai Gumi and the South Australian Superannuation Fund Investment Trust, as the major shareholders, are becoming concerned that their profit margin is shrinking. The solution is to follow the TAB example and expand the revenue raising opportunities. The Government is only too happy to oblige, as its cut of the gambling cake also increases significantly.

The severe downturn in the economy and the pressure of high interests rates has meant that for most households the disposable income for entertainment is very limited. The very real fear of hotel and club owners is that the introduction of gaming machines into the casino will further decrease the entertainment dollar going their way, putting their businesses and, importantly, employees at risk. They have already made it known that they will also push for gaming machines if they are allowed into the casino.

It took a while, but similar pressure in New South Wales, where poker machines have been in licensed clubs for years, eventually led to the machines being introduced into hotels. Of course, a place such as Las Vegas has gone the whole way. One arrives at the airport terminal, and the first thing that one hears is the gaming machines. Also, if one goes out at 11 o'clock at night to buy babies nappies from the local supermarket one will find them there as well.

The question of employment growth and opportunities, or lack of them, concerns me greatly. The gaming machines have the capacity to gobble up the dollars with very little employment.

The entertainment industry generally is a high employment industry, and the dollars predominantly go into wages. Anyone who is serious about employment opportunities, in the entertainment industry should look very seriously at this proposal because it will, I believe, cause severe problems. Even if the clubs and pubs eventually manage to get these machines in order to try to maintain their patronage, the entertainment dollar will be dragged from elsewhere.

Video gaming machines will not increase employment in the casino and will indirectly jeopardise jobs in other sectors of the entertainment industry. Every dollar spent on the gaming machine, and not on another form of entertainment, means that less goes back into the pockets of South Australian workers, and more finds its way into the Government coffers, Kumagai Gumi and SASFIT. I understand that the State Government is feeling frustrated with its poor handout from the Federal Government, but finding another way such as this to milk money from South Australians is not an acceptable solution.

The issue of compulsive gambling is also worth considering. It is generally accepted that there is a positive relationship between participation rates and the number of gambling outlets. A report by Alex Blaszczynski for the 1987 conference of the National Association for Gambling Studies argued that it was logical to assume that, as opportunities to gamble were expanded and became more accessible, the more likely it was that people would indulge.

He further argued that a logical extension of this is that, the higher the proportion of the community that gambles, the more likely it is that problems will develop. Australian Governments, unlike Governments in the United States which have initiated funded treatment centres for pathological gamblers, have failed in their social responsibilities. Only limited services are available in South Australia for compulsive gamblers and, to my knowledge (I have asked questions about this previously), no funding from the profits made through the TAB, the Lotteries Commission and the casino find their way to those organisations.

The State Government has constantly hailed the TAB's success in increasing profits and returns to the Government through innovative and imaginative marketing, but that success has been at a price which the Government has chosen to ignore. Anyone who has visited women's shelters and spoken to the staff there will know that gambling has a destructive effect on many families. It is irresponsible to offer another gambling opportunity, with the implied desire of increasing profits from gambling activities, when so many families are already struggling in what are tough economic times.

In opposing the introduction of video gaming machines, I am not questioning or aiming to limit the civil liberty of South Australians to choose to gamble if they so want. The State is not lacking gambling opportunities and, to my knowledge, there has not been any significant call from the public for gaming machines. However, I am violently opposed to the deliberate moves by the State Government in actively promoting gambling well above what is appropriate or necessary to provide a service. It has failed to distinguish between providing such a service and acting for a money motive alone.

Given the considerations of the economic climate, the increasing financial pressures on families because of rising prices, high interest rates and continuing unemployment, the Government's moves to yet again widen the scope for gambling in South Australia for the sole purpose of raising more money displays its complete lack of concern for South Australians beyond their potential as a source of revenue. I hope that members of this Chamber will see fit to support this motion and that they will distinguish between catering for the real need of the public for gambling and what the Government has done consistently, that is, support the active promotion and encouragement of further gambling. There is a clear distinction between the two, and I hope that members of this place will make that distinction.

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

SELF-DEFENCE

The Hon. DIANA LAIDLAW: I move:

That this Council notes the petitions presented by 39 242 residents of South Australia concerning the right of citizens to defend themselves on their own property and praying that the Council will support legislation allowing that action taken by a person at home in self-defence, or in the apprehension of an intruder, be exempt from prosecution for assault.

Last Thursday in the other place the Minister of Education gave notice that this Thursday (tomorrow) he will move for a select committee to review the laws of self-defence when one's home or person is violated by an intruder. Reflecting on this move, the editorial opinion in the *Advertiser* yesterday noted:

We expect no less from a Parliament responsive to community concerns.

For my part, I expect more—and so do the 39 242 residents of South Australia who have signed petitions in recent months calling for legislation allowing for action taken by a person at home in self-defence or in the apprehension of an intruder to be exempt from prosecution for assault. Those 39 242 signatures were presented to this place by Thursday of last week. I presented a further 1 842 today and I understand from the prime mover of this petition initiative, Mrs Pope, that, in total, there will be about 54 000 signatures. That is a substantial number, even in the views of the most cynical of politicians.

I first took an active interest in this issue in late 1986 at a meeting or 'speak out' organised by the Older Women's Advisory Committee, chaired by Mrs Helen Storer. At that meeting, a number of older women expressed concern that the law appeared to punish those who use force to protect their person or their property. The Older Women's Advisory Committee agreed to investigate the issue further, and it did so with diligence. It also lobbied me constantly to ensure I was aware of the need to address the issue. In turn, I lobbied my colleagues, in particular the shadow Attorney-General (Hon. Trevor Griffin). The outcome of all this work was the inclusion of the following commitment in the Liberal Party's law, order and personal safety policy, released prior to the last State election:

To review the law of self-defence as it relates to the protection of oneself and one's property from assault in the streets and from intruders in the home.

Our policy also stated that a Liberal Government would:

. . . develop an education package to assist persons in understanding the law and the limits to which they can go in protecting themselves and their property.

These commitments by the Liberal Party were the key feature of our press statements issued at the time of the release of our law, order and personal safety policy. However, this popular initiative was greeted with disdain by Attorney-General Sumner. He sought to belittle and deflect attention from the central issue by accusing the Liberal Party of refusing to name cases where house breakers had laid charges for assault after being hurt when a home owner sought to defend themselves. There are such cases, and I have no doubt that all members are aware of them. However, most people are too afraid to speak out for fear of further reprisals.

Such a ploy by the Attorney-General conveniently overlooked the fact that 99.9 per cent of people are even loath to act to protect themselves in such circumstances because of confusion over the current status of the law or advice provided from time to time by police that passive resistance, not active resistance, is the best course of action in the circumstances. As an aside I should note that, in my discussions with women's groups on the issue of self-defence, I have discovered a body of research studies which identify that active, not passive, resistance enhances a person's chances of avoiding personal injury. This is so because an attacker often just goes away—because such resistance is unexpected. If women's groups are increasingly urging women to practice self-defence techniques, we in this place must be confident that our law on self-defence is just and clear to all.

In April this year, Mrs Carolyn Pope decided to organise a petition addressed to members of this Council seeking our cooperation to change the current law of self-defence. She was prompted to act after listening to a late night talkback radio program during which concerned South Australians aired their anxieties about their rights as law abiding citizens to protect themselves and/or their property. With the help of her neighbour, Mrs Betty Ewens, Mrs Pope envisaged that her petition might attract a few thousand signatures. She was wrong. As at last Thursday, petitions with some 39 242 signatures have been presented in this place, with a further 1 800 presented today and more to come. Along with my Liberal colleagues, I commend the initiative and energy exercised by Mrs Pope and her neighbour, Mrs Ewens. They have unearthed an enormous groundswell of anxiety in our community, much of it stemming from the fact that in the last year alone police in South Australia received 21 394 reports of break-ins of houses, flats and units. In correspondence to me, Mrs Pope stated:

I would like to stress that I am not in favour of firearms, nor am I in favour of extreme violence. But I am strongly in favour of a citizen having the basic right to defend his or her home against intruders without the fear of prosecution. To me, that is making a victim become a victim twice over.

Publicly, Mrs Pope's views have been reported, as follows:

She believed the law meant people had to be careful they did not use a weapon more dangerous than the intruder might be carrying or they could be prosecuted for assault because they had used more than reasonable force or equal force.

Mrs Pope said:

But burglars don't normally ring up and make an appointment saying they're going to break into your house next Thursday and they'll be bringing a knife and a lump of wood with them.

In a further article in the *News* of 29 June, Mrs Pope says:

It is ridiculous for the law to say a person can use 'equal force' in defending themselves. You simply don't know what the person might be armed with and how they might react. And even if you do retaliate and happen to hurt the intruder, they can turn around and charge you with an offence—it's ridiculous.

In my view Mrs Pope's arguments are logical, and the concerns expressed by the 40 000-odd petitioners are well founded. Until recent days, however, the Attorney-General on behalf of the Bannon Government has stated he did not believe that a change in the law was necessary. Now he is silent on the subject. In fact, I suspect that Government members have decided to take the matter out of his hands. Certainly, the Government's decision to move for the establishment of a select committee in the other place suggests that this is so. If a select committee is necessary, it would be logical to move for such an initiative in this place—

The Hon. Anne Levy: We already have more select committees than we can cope with.

The Hon. DIANA LAIDLAW: If we did not have so many reasons to investigate the actions of your Government, we would not need them. If a select committee is necessary, it would be logical to move for such an initiative in this place, due to the presence of the Attorney, the shadow Attorney and the Leader of the Democrats, the Hon. Mr Gilfillan, who has taken a keen interest in the subject. But, of course, the Attorney has already stated that '. . . a change in the law is unnecessary'. I do not accept this view, nor do I accept the need for a select committee to investigate the current law. I consider such a step to be merely an action by a Government which wants to delay making any decision on the issue, a Government which is far too scared to act in the community's interest. In my view, there is no excuse for the Government to seek to delay such action. Precedents are available. In 1973 the Tasmanian Parliament saw fit to amend its criminal code to address the issue.

I suggest the Tasmanian criminal code could be used as a model for legislation in South Australia. I note also that in 1988 in the Western Australian Parliament the Liberal Opposition moved amendments to the criminal code to clarify the law relating to self-defence, a move rejected by the Labor Government. Also, at the last New South Wales State election the Liberal Party, now Liberal Government, promised it would review the law.

In conclusion, therefore, I endorse the need for this Parliament to amend the law relating to self-defence as it relates to protection of oneself from assault or threats of assault in the street or other public places, and as it relates to protection of oneself and one's property from intruders in the home. Also, I see no reason at all for the Government to delay such a change in the criminal code in South Australia by seeking the establishment of a select committee in the other place. Finally, in noting the petitions, I again commend Mrs Pope and Mrs Ewens on their initiative and energy in harnessing such widespread support to demand such a change in the laws in relation to self-defence. In the South Australian community's interest, I trust that members will support the motion.

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

PENAL SYSTEM

The Hon. I. GILFILLAN: I move:

1. That a select committee of the Legislative Council be established—
   (a) to review the current penal system in South Australia;
   (b) to investigate and assess proposals for change and reform applicable to the penal system in South Australia;
   (c) to commend any changes considered beneficial to the penal system in South Australia; and
   (d) to consider any other matters relevant to the penal system in South Australia.

2. That Standing Order 389 be so far suspended as to enable the Chairperson of the committeee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the Council.

As indicated previously in this place, I have believed for some time that it would be to the advantage of the penal system generally in South Australia to be the subject of a select committee review. The committee should be available for input from the public, people working in the Department of Correctional Services and people who have been inmates in our prison system. It may be appropriate to take evidence from some people who are currently serving in prison, while not neglecting the Remand Centre as being an institution requiring some attention.

I intend to seek leave to conclude; I am not making an exhaustive argument for the committee in this speech. I should like to indicate that, because the Government (through the Department of Correctional Services) has asked for a world-renowned penologist, Erik Andersen, from Denmark, to work in South Australia, as he will be doing from 16 September until the end of October, it is imperative that this committee be up and running in time to receive evidence from him.

It would, therefore, be in the best interests of this Parliament and of the Department of Correctional Services if this select committee could be established rapidly. I have deliberately worded the motion so as to be constructive. I believe that nothing is to be gained from witch-hunting or kicking heads for mistakes that have been made in the past. We should look at what in my opinion is irrefutably an area for significant reform, improving both costs and the conditions of those working in the prison system, as well as the conditions of the inmates themselves, so that they will come out of our prison system rehabilitated as much as possible and ready to play a constructive rather than destructive role in the society against which they offended and by which they were imprisoned. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ASH WEDNESDAY BUSHFIRES

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

1. That a select committee of the Legislative Council be established to consider and report on the nature and content of claims and the circumstances leading to the settlement of those claims against the Stirling council arising from the Ash Wednesday 1980 bushfires including, but not limited to, the nature and extent of the involvement of the State Government in the events leading to such settlement, the procedures leading to the settlement, the quantum and basis for the settlement of the claims, and the circumstances leading to the appointment by the Government of an administrator.

2. That Standing Order 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.

3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council.

4. That Standing Order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

There has been so much controversy about the claims made against the Stirling District Council from the Ash Wednesday bushfires, and in relation to the settlement of claims and the circumstances surrounding the settlement, that, as with Marineland, the Liberal Party believes that a select committee is the only way all relevant information, documents and papers can be brought into the public arena and all claims and counter-claims, allegations and counter-allegations examined properly. Rumours are rife in the Stirling council area. Anger is the predominant emotion at the suspension of the council and the potential hike in rates over the next few years.

Puzzlement is prevalent at the extent of damages, claims and settlements. Suspicion lurks in relation to the Government's involvement in recent years in the settlement procedures. The pressure for a select committee has been building up since early this year. It is my hope that a select committee will investigate:

1. The role of the State Government and the Minister of Local Government in the so-called fast-track process of settling claims.

2. The events leading to the suspension of the council and the appointment of an administrator.

3. The nature of the claims made against the council, the basis of those claims and whether or not there was any substance in the allegations that some claims were grossly inflated.

In my speech on this motion, I intend to do no more than set the parameters. My colleague, the Hon. Julian Stefani, will deal with the issue in much more detail. Suffice to say that, in moving for a select committee, it is important to recognise that what the community in Stirling wants and what the Liberal Party seeks to achieve is an opportunity for those who have concerns, who have views, who have evidence, and who have claims or counterclaims to be able to put them on the table publicly and to have them judged in the context in which they have been made.

As I said earlier, in the local area of Stirling emotions are running high for a number of reasons. Some people are concerned that some claimants are getting more than they are entitled to, that rates in succeeding years will be higher than they otherwise would have been and thus will create hardship for individual ratepayers, that the public assets may have to be sold to the detriment of the local community, and that large sums of public money have been expended on fighting the bushfire claims.

The saga of the 1980 Ash Wednesday bushfire claims began with the fire on 20 February 1980, which the Supreme Court has found started in a rubbish dump owned by the Stirling council and operated by F.S. Evans and Son. The fire burnt out a large area of land and caused significant loss and damage. At the outset, one should address an issue which has only recently surfaced—promoted largely by the Australian Democrats—that, at the time of the fire, the then Liberal Government should have declared the bushfire a natural disaster. Those persons now seek to argue that, somehow, this would have avoided the extensive litigation that has occurred in the 10 years since then, and I know that in the Stirling area some currency is being given to that claim.

However, if one looks carefully at the argument that in 1980 there should have been a state of disaster declared, one can see that such a declaration would have made no difference, either to the extent of the claims, the number of claims or the hardship suffered, and the argument upon which that proposal is based is fatally flawed. One should say that at the time of the Ash Wednesday 1980 bushfire there was no State Disaster Act in South Australia.

Subsequently, there was a State Disaster Act, which the then Liberal Government did introduce and it was passed by Parliament. However, even if it had been in existence at that time, it would not have helped, because all the State Disaster Act does is to provide a framework in which

extraordinary powers can be exercised by police and other public officials in dealing with the emergency. It does not provide for funding. It provides for access to land and the seizure of plant and equipment. It deals with orders which may be given to citizens in respect of the particular disaster, and it also provides a monitoring mechanism by which the declaration of the state of disaster can ultimately be considered by an emergency session of Parliament.

There is a Federal disaster scheme in place. If, in conjunction with the Commonwealth, a State declares that there is a natural disaster, after the State has spent something like $3 million in dealing with the immediate aftermath of the disaster the Commonwealth will then pick up costs for things like fodder and other immediate and emergency needs. However, I should say that even if, at the time of the Ash Wednesday 1980 bushfire, a state of disaster under the Commonwealth-State arrangement had been declared, it would not have avoided the claims which were subsequently made, claims which were based in negligence of F.S. Evans and Co. and the public liability of the Stirling council. It would not have reduced those claims because it would only have dealt with emergency type funding.

It is all very well to be arguing 10 years after the event that a Government should have made a declaration of a state of disaster and that that would somehow magically have solved the problem; the fact is that careful and objective analysis of both State and Federal schemes would show that it would not in any way have altered the course of the Stirling council disaster or the claims which were subsequently made. I would hope that that issue can be put to rest very quickly. I do not do this in a defensive context, as to whether or not the Tonkin Administration should have declared as a state of emergency, but more in the context of an objective assessment of what the consequences would have been right up to the present time.

Some claims were made as a result of the 1980 bushfire, and in 1985 a test case of Delaney and Evans was decided in the Supreme Court and the council was held to be liable. That did extensively review the question of liability. It was only some five years after the fire. For an issue of such complexity, and when so many other claims depended on it, a five year period from the cause of action arising until the trial and subsequent decision is not an inordinately long period for judgment to be given.

The High Court subsequently in another case, that of Heyman, handed down a decision which the Stirling council believed could change the liability of the council. That decision was subsequently reviewed by the Solicitor-General and the Crown Solicitor, and my colleague, the Hon. Julian Stefani, will refer in detail to the advice that was given. In essence, it was advice that was along the lines that the liability of the council, in light of the High Court case, could be different from that determined in the case of Delaney and Evans. Although the Government and the Solicitor-General were anxious to maintain an arm's length approach to the Stirling council's position, there is evidence in correspondence, particularly from the Crown Solicitor, and in opinions from the Solicitor-General that the Government and the Solicitor-General were of the view that the question of liability should be re-litigated.

The Government went so far, at that time, as to indicate that, although it was not prepared to become involved in the costs of any re-litigation at the trial stage, it was prepared to consider any costs of an appeal on the question of liability in that second case if that should become necessary. So, although the Government wanted to stay at arm's length from the re-litigation itself, there was encouragement from the council to do so in the light of the High Court decision.

The Hon. Anne Levy: To appeal to the High Court.

The Hon. K.T. GRIFFIN: To appeal; that's what I said. I thought I said that.

The Hon. Anne Levy: That is what the Government was suggesting.

The Hon. K.T. GRIFFIN: It did not mention specifically appeals to the High Court; it said 'an appeal'. In the correspondence I have seen and in the opinion it said 'an appeal', so that left it open to go to the full Supreme Court or to the High Court. I do not think it matters whether it is to the High Court or the Supreme Court. There was an indication that consideration would be given by the Government to meeting the costs of an appeal—wherever that appeal was going to go.

After the decision in *Delaney v Evans*, a flood of new claims was made against the council. Quite obviously, the publicity associated with the Supreme Court decision brought a lot of people out of the woodwork believing that, now the question of liability had been determined in relation to someone else, they might swing in on the coat-tails. So, some 200 extra claims were made. Of those, over 70 were out of time, remembering that the statute of limitations provided that claims for damages should be made within six years of the date when the cause of action arose. Some 70 of the claims were made after 20 February 1986, but subsequently the Supreme Court, in the exercise of its discretion, admitted those claims.

After a second case, the council was again found to be liable, and at the beginning of 1988 there were meetings between the Attorney-General, the Solicitor-General, the Crown Solicitor and solicitors for the Stirling council. Those meetings began to suggest that some settlement ought to be considered. In April 1989, the trial relating to damages for the Andersons plaintiffs began. The Andersons plaintiffs were a group of Stirling residents who, between them, had retained the solicitors, Messrs Andersons, to act for them. They acted in concert, quite obviously to minimise their costs because their cause of action was identical even though their claims were different and the quantum was significantly different. That group included the Casley-Smith family.

Subsequent to the commencement of that trial on the question of damages, pressure by the Government on the council to settle began to toughen up. The council wished to test many of the claims; in fact, it had a public duty to do so because public money was involved. Its own private investigator had undertaken extensive interviews with neighbours of claimants, others in the district and people who knew not only the Casley-Smiths but other claimants.

The strong view was expressed by the private investigator that some of the claims, particularly those of the Casley-Smith family, were grossly inflated. So, the council was caught in a difficult dilemma. It could either test the claims, which may have been dubious, on the basis of information that it had collected, or ignore that information that had been provided to them and settle, as they were now being more pressured so to do. Of course, the Government was proposing a fast-track system. At the time, the Opposition encouraged the appointment of an independent arbitrator for those claims where the parties were willing to have them arbitrated by a fast-track procedure, but we believed that where there was any dispute it should still be resolved by the courts where the arguments could be properly tested and the evidence weighed in the manner in which generally those courts weigh such evidence.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: The Minister can reply later if she doesn't agree.

The Hon. Anne Levy: I said that I don't disagree.

The Hon. K.T. GRIFFIN: I am sorry, I misunderstood; I thought you said that you did not agree.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The pressure for settlement was beginning to grow, and, of course, encouragement to re-test the question of liability and the essence of the claims was weakening. At that time, the Government appointed Mr Mullighan QC to act as an independent adviser. He was set an almost impossible task of advising on a mass of information about damages. In fact, in the brief which he was given by the Crown Solicitor acting on behalf of the Government, he was told to adopt a broad brush approach, so I would suggest that from the outset he was compromised, if there was ever any intention that he should assess the merits of the respective claims and counterclaims. He was offered access to a mass of information. It is not clear, though, from documents that I have seen whether or not he had the time to examine it in the context of the brief that he had been given.

However, putting that to one side, he was asked to give advice. Ultimately, he was asked to give advice on a settlement figure for the Anderson claimants of some $9.5 million.

The Hon. Anne Levy: Including costs.

The Hon. K.T. GRIFFIN: Yes, including costs. In some of the documentation I have seen, the Government gave the impression that it was anxious to take over the conduct of the matter.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: That is the impression that one gets from reading the documentation, the appointment of an independent assessor and in relation to the actual settlement. My colleague the Hon. Mr Stefani will deal with this matter in more detail, but the Government set parameters, it set figures for settlement, it paid amounts directly to the solicitors, Andersons, and it really played a much more—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: There was a reluctant acknowledgment by the council, but it was a very reluctant acknowledgment. There is no evidence in the documentation that I have seen that the council agreed initially to the figures or to the way in which Mr Mullighan was appointed or the brief which he was set. So, there are areas—

The Hon. Anne Levy: The council said that it would accept whatever he said.

The Hon. K.T. GRIFFIN: As I say, my colleague the Hon. Mr Stefani has some documentation to which he will refer in relation to that matter. I am told that, in relation to the task Mr Mullighan was set, he was offered some 29 boxes of information, much of which was relevant to the damages question, but that he did not, in fact, seek to peruse it.

That may be because the terms of reference of his brief were not wide enough to allow that to occur, but in any event he did not do it. I do not make any criticism of him in the context in which he was retained and in the context of his terms of reference. However, a mass of information was available to him which he did not peruse. That is one of the areas of concern that has been expressed to the Liberal Party: that he did not go into the assessment of the claims and counterclaims in as much detail as one would have expected, nor did he examine the evidence available which threw serious doubts upon the claims being made, particularly those by the Casley-Smiths. Not only were there some 29 boxes of information, but also I have here, as a matter of illustration, some 200 A4 pages listing chattels that comprised part of the Casley-Smith claim. On those pages were listed some 2 634 items. One can see that it was a fairly difficult task for him to come to grips with that. In respect of that example, I seek leave to table that document.

Leave granted.

The Hon. K.T. GRIFFIN: The Hon. Mr Stefani wishes to take some longer time than I to deal with this issue in more detail. In the context of all the issues that have been raised in relation to the claims, it is our view that the range of issues ought to be canvassed openly by a select committee, that all parties—the Minister, the Stirling council, the Casley-Smiths, other claimants and other witnesses—ought to have an opportunity to present their submissions so that we can make an assessment of the way in which this controversial issue was handled, particularly in the last two years when the issue came to a head.

The terms of reference extend also to the way in which the council was required to enter into the debenture for $14.5 million, signed prior to the election, but with any final decision being deferred until 31 March 1990—well after the election was out of the way. The terms of reference also relate to subsequent events dealing with the appointment of the investigator, the appointment of the administrator and, after a relatively short time, the return of the affairs of the district to the council and the withdrawal of the appointment of the administrator, and the relevance of statements relating to the current rates being fixed and the prospect for the council in future years. A range of issues are included. It would be helpful to have them properly explored by a select committee, and that is why I present it to the Council for consideration.

The Hon. J.F. STEFANI: I rise in support of the motion, which deals with the establishment of a select committee to investigate appropriately aspects of the 1980 Ash Wednesday bushfires and which has been moved by my colleague the Hon. K.T. Griffin. This afternoon, I will place much information before Parliament that has not been tested by the courts; nor has it previously been made available to the public. I will quote at length from letters and other documents. I will produce a great deal of new evidence to justify the inquiry that has been proposed by the Liberal Opposition. I will also reveal how the Bannon Government ducked and weaved in its approach to this issue and how the Labor Government urged the council to continue court action but refused for a very long time to give it any commitment of financial support.

I will reveal how the Labor Government expected a council, which even now earns only a little more than $3 million in rate revenue, to face, on its own, huge claims for damages and costs five times that amount. I will reveal how, despite these enormous difficulties, the Stirling council responsibly fulfilled its duty to protect its ratepayers with a determination to fight claims and costs that it believed were unjustified, and how claims against the council escalated after the fast-track process of settlement was proposed. I will reveal also how by far the largest claim on behalf of the Casley-Smith family is open to serious question and how a private investigator suggested that the claim was fraudulent, yet the Bannon Government agreed to pay $4 million in damages against that claim. I will reveal how the Government effectively pre-empted the fast-track process and forced the council to settle allegedly fraudulent claims because it wanted the matter out of the way before the 1989 election.

I have spoken to dozens of people, studied a mass of evidence and examined thousands of documents, most of which were not put before the courts. Little, if any, of this information has been responsibly considered by the Gov-

ernment. I have only one interest in this matter: to ensure justice for all and to ensure that everyone who has been affected by this tragedy receives fair treatment. This includes the Stirling council, the ratepayers of Stirling and the taxpayers of South Australia—all the people who suffered losses but did not claim—and finally those with legitimate claims for damages arising from the 1980 Ash Wednesday bushfires.

The events in the past year indicate that the Bannon Government acted only with political motivation, with its eyes on the election and with complete indifference to anything else. The Parliament has only one option, namely, to establish an inquiry as proposed by the Liberal Opposition so that we can resolve the burning questions that are still being asked. Through political motivation the Bannon Government has been responsible for a number of serious errors costing the South Australian community millions of dollars. The Government has betrayed the people of South Australia and the people of the Stirling council area.

I would now like to address widely the important issue of the Stirling council bushfires which have caused serious community concern and which have affected and are still affecting the lives of thousands of South Australians. For political expediency, in 1989 the Bannon Government deliberately forced the Stirling council to accept the fast-track system, bypassing the court process of testing the validity of some of the bushfire claims and thrusting upon the community of the Stirling District Council and all South Australian taxpayers a travesty of justice that has never before occurred in the history of South Australia.

Last year, before an imminent election, the Bannon Government, through the Minister of Local Government, contrived to implement a quick fix in order to clean up all the outstanding bushfire claims that were causing this incompetent and inept Labor administration a great deal of embarrassment and arousing public anger and frustration.

We all know that some of the bushfire claims had been the subject of litigation over many years but, because they represented such a controversial community issue in the leadup to an election, the Bannon Government decided to play it safe and clear the decks for the election. As this matter has enormous implications, it is important for me to detail the sequence of events which have led to the present disastrous situation and, finally, to the suspension of a democratically elected council by the Bannon Labor Government dictatorship.

The fire, which destroyed some 52 homes and damaged many properties, is alleged to have originated from the Heathfield dump, was operated by F.S. Evans & Sons Pty Ltd and supervised by the council. There have been suggestions that a second fire, known as the Aldgate Valley fire, may have been a separate second fire, in which case the Stirling council was not liable for the damage caused by that fire.

In January 1985, in an action *Delaney v. Evans and the District Council of Stirling*, the court found both defendants to have been negligent. The council was held to have been negligent in its inspection of the Heathfield dump. The court also found that the Aldgate Valley fire was a spot fire from the Heathfield dump fire, so that the council was liable for both fires. It became abundantly clear that the value of the public liability insurance cover of $1 million held by the council would be totally inadequate, as more than 200 claims were lodged following the Delaney decision, including 70 claims that were accepted by the courts after the statutory date for the issuing of the claims, which had expired on 20 February 1986.

In August 1986 the Stirling council assessed its financial position and established the potential liability of the claims to be approximately $3.6 million. After the review of its financial affairs it became apparent to council that it would not be able to meet the costs of the claims and it sought a meeting with the then Minister of Local Government, Ms Barbara Wiese.

In September 1986, council's representatives arranged a meeting with its solicitors, auditors, senior officers from the Department of Local Government, the Deputy Under Treasurer (Mr Peter Fleming), as well as a representative from the Local Government Association. A full report on the council's financial position was tabled at this meeting. Also at this meeting the Deputy Under Treasurer indicated that the Stirling council would have difficulties in raising loan funds because it was insolvent, but offered no suggestions, other than to advise council to seek financial assistance through the South Australian Local Government Grants Commission.

In October 1986, at the request of Mr Lennon, Deputy Director for the Department of Local Government, a meeting was arranged between the Director of Local Government, Mr Kelly from the Crown Solicitor's office and Mr Swan, solicitor representing the Stirling council. During that meeting Mr Lennon advised council's solicitors that their representations on behalf of council had been considered by both the Minister of Local Government (Ms Wiese), and the Attorney-General (Mr Sumner). He further advised that it had been decided that the Government had no legal liability and, further, no practical or moral responsibility to come to the council's assistance, and the Government was not prepared to make any financial contribution or give any financial assistance to the council to enable it to deal with the flood of claims admitted by the courts after the statutory date and arising out of the 1980 Ash Wednesday bushfires. Numerous claims had been lodged after 20 February 1986, following the decision of the Delaney case.

It is worth noting that the Minister of Local Government, Ms Wiese, had so far failed to meet with representatives from the Stirling council. Through the Crown Solicitor's office, the Bannon Government had made clear that it was not prepared to make any financial contributions or give any financial undertakings, but would only be prepared to assist in a more limited way with the defence of further claims and, in view of the High Court findings in the Heyman judgment, which found that councils did not have to carry a heavy legal burden of liability for their acts or omissions, potentially assist with an appeal to the High Court to further test the earlier judgment of the South Australian Supreme Court in *Delaney v. Evans and the District Council of Stirling.*

The Government agreed that the Stirling council should submit the particulars of the Delaney test case to the Attorney-General's Department for an opinion from the Solicitor-General. The Stirling council further obtained the joint opinions of two senior Queen's Counsel. In his opinion, dated 20 Novemeber 1986, sent to the Stirling council, the Solicitor-General, Mr J. Doyle, QC, says:

> I must say that on reading of evidence of Mr Thiem, Mr Wirth and Mr James, the finding against the council that its supervision was inadequate does not seem to me to be as clear as the trial judge thought.

Again quoting from Mr Doyle's opinion, he says:

> In my opinion, a court would be slow to conclude that there was imposed upon the District Council of Stirling a duty (giving a private right of action) to control rubbish dumps and to prevent fires. If there was such a duty, it would rest equally on every council. In my opinion, in the light of the decision in Heyman, a court is likely to conclude that the only duty imposed upon the District Council of Stirling was a duty of public law. If that is

so, then it must follow that the mere possession of the powers which the District Council of Stirling had did not carry with it any duty sounding in damages.

Mr Doyle continued by saying:

In short, it is my opinion that the District Council of Stirling has reasonable prospects of success in showing that neither the existence nor the manner of exercise of its powers to make by-laws gave rise to a liability in negligence. Taking everything into account, I consider that there are some prospects of the District Council of Stirling succeeding should the matter by re-litigated, but that, before a decision is taken to fight another case on liability, those most familiar with the facts should give careful thought to the prospects of success on the facts, if I am correct in the manner in which I have stated the legal issues. There is no doubt, in my mind, that the District Council of Stirling's prospects of success in the light of Heyman are better than they were. The critical issue is whether they are sufficiently good to warrant fighting another case.

Mr Doyle further remarked that substantial amounts were at stake and, therefore, those people (meaning the council) ultimately responsible would have to think carefully before forgoing any argument reasonably open to the District Council of Stirling.

In his conclusion, Mr Doyle advised that the District Council of Stirling had reasonably good prospects of success in denying a duty of care based on the existence and exercise of its powers of control and supervision. He concluded by saying that the final decision whether or not to fight another case would have to be made on the basis of an assessment of the facts relevant to liability in the light of the decision in Heyman, after due consideration of the cost of another case and the broader implications of appearing to refuse to accept the court's existing decision on the matter.

It should be noted that the Solicitor-General was cautious in his advice. However, given the liability which the Stirling council was facing, the councillors had a duty to their ratepayers to litigate the question again if the facts justified it. In a written opinion jointly given to council by Mr Angel, QC and Mr Debelle, QC, they advised that in their view the facts justified re-litigating the question. In their opinion, they further confirmed that a substantial part of the council's liability was represented by claimants who suffered losses in the Aldgate Valley fire and, given that such evidence was not available at the time of the first court hearing, they confirmed that it would appear that the District Council of Stirling was justified to re-litigate that question also.

The council's powers to borrow funds or raise revenue through increased rates were limited by sections 216, 218, 221 and 424 of the Local Government Act 1934. It was acknowledged that a realistic value of the potentially saleable property owned by the council was virtually insignificant compared to the potential liability which the district council was facing. The council faced the huge problem, on the one hand, of having to consider and discharge its duty by exploring every reasonable avenue of defence and, on the other hand, of having very limited resources to meet the huge liabilities and the mounting costs of legal representation. It was encouraged by a letter received from the Crown Solicitor, dated 20 November 1986, which stated:

As I have indicated to you on behalf of the Government, the Government will be prepared to consider the question of possible assistance to you at the appellate stage of any future proceedings so far as those proceedings raise the question of testing the principle in Heyman's case.

The Stirling council further received legal advice from its solicitors, who said:

In our view, now that the various options have been canvassed with the Government, and that the Solicitor-General has advised there there are at least arguable grounds for defending further claims, the council should further defend those claims. If it does not, it may be said both by is ratepayers and by the Government that the council has not exhausted every reasonable avenue to avoid this potentially crippling liability.

The Bannon Government cannot deny it encouraged the Stirling council to pursue this course of action because in a minute dated 27 July 1987 the Deputy Director of Local Government, Mr Lennon, wrote to his Minister advising her as follows:

Following an approach to you last year, a meeting was held with yourself, the Premier and the Attorney-General regarding the approach which the Government should take in relation to this matter. The outcome of that meeting was that the Government should distance itself from the liability of the council, but informally encourage the council to retest the principle established in the Delaney case. Advice was given to the council from an opinion gained by the Solicitor-General and it is my understanding that a further test case has been selected and is likely to be heard around February 1988.

Here we have the undeniable proof that the Bannon Labor Government was not prepared to assist the insolvent Stirling council to settle the claims but instead encouraged it to re-litigate a test case urging the council to follow the due processes of the law as advocated by the Labor Administration. It is blatently obvious that the only course of action open to council was to proceed with further legal action, because the Bannon Government had confirmed that it would provide funds only for this purpose.

That is the true position about the Ash Wednesday bushfire claims at that point in time. The Premier, Mr Bannon, together with the Attorney-General, Mr Sumner, and the then Minister of Local Government, Ms Wiese, had met and decided to encourage the Stirling council to re-test the principle of the Delaney case, but distance themselves from the liability of the council. In other words, at that stage the big-hearted Labor Government gave no financial support or assistance to the Stirling council to achieve an out of court settlement of the bushfire claims, but instead pushed it to further fight the outstanding claims in the courts. It is important for these facts to be on the public record because the community of South Australia has the right to know what really happened. It is right for the Stirling council ratepayers also to know all the circumstances of this matter.

It is appropriate that we expose the hypocrisy of this Labor Administration which arrived at its expedient and politically motivated decisions not for the good of the people but to safeguard its own political future. It is important to note that the pre-trial conference which was to take place on 27 May 1987 was deferred because the claimant's case was not ready. This conference was later held in July 1987 and, in October, Justice Olsson was appointed to hear the trial commencing in February 1988.

The council had sought the advice of two senior Queen's Counsel who had provided their opinion to the Stirling council that, given the liability which it was facing, it had a duty to its ratepayers to re-litigate the matter if the facts justified their decision. The two Queen's Counsel expressed a view that the facts justified the matter to be re-litigated. Mr Angel, QC, and Mr Debelle, QC, also recommended that in view of the limitations of its powers to raise revenue, governed by the Local Government Act, council should urgently seek financial assistance from the Bannon Government.

When an approach for assistance was made to the Government, the Acting Minister of Local Government, Mr Greg Crafter, in a letter dated 19 January 1988, responded by saying that the South Australian Government maintains that the claims against the council are the responsibility of the council itself and that the choice as to whether the claims should be negotiated is one for the council to determine.

In February 1988, just before the starting of the trial, the council's solicitors met with Mr Doyle, Mr Kelly and the Attorney-General who urged an out of court settlement but,

at the same time, advised that the State Government had no obligation to local government in terms of rendering financial assistance. They stated that the Government was prepared to facilitate a loan for $6 million which the Government believed could be serviced by the Stirling District Council. It was obvious that the Bannon Government left the Stirling District Council between a rock and a hard place, with nowhere to go. The council knew it could not meet the huge liability of the claims; it knew there was no way it could service a loan for $6 million because its yearly revenue from rates over the years had been: 1979-80, $903 971; 1985-86, $2 173 092; and 1987-88, $2 736 572. The council also knew it had a duty to take every possible step before authorising the payment of any public money, and that the only financial assistance the Bannon Government was prepared to consider was for a possible court appeal for which council had previously received legal advice confirming it had the justified grounds to pursue.

The Stirling District Council really had no choice. It took the only course of action which was available to it and pursued the validity of the claims through the courts. The incompetent Labor Administration had abandoned the Stirling District Council in its most crucial hour of need. The Labor Government, realising the political implications, immediately set about covering its tracks.

In early April 1988, the Minister of Local Government, Ms Wiese, wrote to the council stating that the Government was of the opinion that council should reconsider its position. The Minister said:

> I wish it to be clearly understood that the South Australian Government is not prepared to meet any of the liability which may be incurred by the council in the litigation.

On 18 April 1988, the Attorney-General, Mr Sumner, and Mr Mayes, representing the Minister of Local Government, with their advisers, met with representatives of the Stirling District Council urging a negotiated settlement, but gave no reason to negate the basis upon which previous Government's advice had been given.

This was a monumental about-face decision. From the information that has been supplied to the Liberal Opposition, it is quite obvious that the Bannon Government did a complete somersault on the Ash Wednesday bushfires issue and, since there was no legal basis for the reversal of its previous position, the logical reason for the Government to change its mind was the thought of the political implications that the findings of a court decision would have on the South Australian community in a period just before the forthcoming State election.

In November 1988, Justice Olsson again found the council liable. The difficulties posed by the judgment have been a matter of serious concern to the Stirling council and the community. On 14 November 1988, the solicitors for the Stirling council wrote to the Government seeking the financial support that had been promised previously to enable council to initiate an appeal. In her ministerial statement dated 15 November 1988, the Minister of Local Government announced that the Stirling ratepayers would not be required to pay any rate increases beyond the 1988-89 level to fund their portion of responsibility.

The Minister further advised Parliament that it would be months before the final liability figure was known because a number of claims were subject to assessment by the courts and that a series of Government initiatives were proposed to facilitate the availability of funds to ensure a speedy settlement process. The Minister (Ms Wiese) said that, at this stage, financial assistance from the South Australian Government did not appear to be required but that the situation would be monitored as settlements proceeded. The matter which the Minister stressed was:

> That Stirling ratepayers will not be faced with further rate increases on account of the bushfires.

She confirmed that current rate levels would be maintained to meet the liability and went on to say:

> We intend to monitor closely the process of settlement of all outstanding claims. If undue delays or intolerable legal costs arising out of the settlement process occur the Government will consider any separate procedure required to meet the circumstances.

By her statements, the Minister of Local Government clearly indicated to the public of South Australia that the Bannon Government was prepared to give the Stirling council very significant financial assistance beyond the council's capacity, and would intervene if intolerable legal costs, such as costs for an overseas court hearing, were incurred. In early January 1989, the Stirling council was facing a rate revolt as some 1 300 rate accounts amounting to more than $500 000 remained outstanding.

The Local Government Financing Authority refused to advance funds without a guarantee from the Government. The Stirling council faced a serious financial predicament and sought urgent assistance from the Government. On 12 January 1989, telegrams outlining the council's financial crisis were sent to both the Premier (Mr Bannon) and the then Minister of Local Government (Ms Wiese). In the meantime, council's solicitors were preparing for a court assessment of some of the bushfire claims which was due to commence in February and regular meetings had been scheduled with the Master of the court to consider the means by which evidence would be received by the court. It had been hoped that, by compelling each side to set out their contentions about each item of damage, some basis of compromise could be reached.

This process did little to achieve this goal because it was the defendant's contention that the court should value each item as it was secondhand as at the date of the fire, plus interest. The plaintiffs' claim was 'new for old' valued as at the date of the trial plus interest. On 4 January 1989, the Crown Solicitor's office had discussions with both parties in order to ascertain whether a settlement could be achieved. The Government advised both parties that it would be prepared to sponsor or to act as a broker to a scheme for the appointment of an inquirer who could be given access to all evidence in this action, including statements of all witnesses proposed to be called by the parties.

On 6 January 1989, the council received legal advice confirming that such a proposal would present enormous problems in resolving the claims made on behalf of the 13 claimants represented by the law firm of Messrs Andersons, and that the proposal was not appropriate in relation to the claims being pursued by Messrs Andersons. I will continue to refer to these claims as the Andersons' claims. They include claims made by the Casley-Smith family and other substantial claims.

Mr Kelly from the Crown Solicitor's office had also been informed by Mr Gray, QC, acting for the plaintiffs, that as a pre-condition he would require the payment of a $3 million deposit before he would advise his clients to consider any negotiations to have their assessment referred to any alternative process. On 9 January 1989, the council's solicitors advised Mr Kelly that they found it hard to rationalise how anyone could expect a council to pay such an amount when council had already filed offers for the amounts it considered appropriate to meet the plaintiffs' claims.

The solicitors further expressed the view that there was no possible ground upon which to pay the $3 million to Messrs Andersons and their clients, as the amount was considered more than they were likely to become entitled to through the court and that the payment of such an

amount would effectively fund the plaintiffs, enabling them to seek further and greater compensation payments. Again, on 9 January 1989, the Stirling council's solicitors, acting under instructions from the council, confirmed that they would be prepared to meet with representatives of the plaintiffs and Crown Solicitor's office with a view to hearing further details of the proposal the Government was prepared to sponsor. I refer to a copy of Finlaysons' letter written to the District Council of Stirling on 9 January 1989.

In this letter, the council's solicitors clearly advised that, having had the opportunity to give a more detailed consideration to the general proposal of determining the quantum of various claims through some type of reconciliation or arbitration process, and having discussed the matter with counsel briefed on the assessments, they confirmed a view that such a process, particularly in respect of the claims of those plaintiffs represented by Messrs Andersons, was likely to:

(a) delay the resolution of the claims;
(b) increase the costs likely to be incurred in the determination of the claims; and
(c) increase the overall liability of the council to those plaintiffs.

The council's solicitors went on to say:

So far as the last of these considerations is concerned, our defence of the claims being promoted by Messrs Andersons depends to an unusual degree upon combining many small inconsistencies and areas of attack to attempt to illustrate to the court the exaggerated and, in some cases, fraudulent nature of the claims.

Finlaysons said:

Such a suggestion cannot be made lightly and is only likely to succeed when all the evidence we have available to us can be properly put before the body assessing the claims.

Their letter continues, stating:

The nature of the plaintiffs' claims is such that, unless we are to simply accept exaggerated claims which, in many cases, have absolutely no basis, there is no alternative but to require strict proof of them whether that be before a court or an arbitrator.

The solicitors further advised that, in the case of a member of the Casley-Smith family, the issue of the psychiatric notes would:

Continue to be hotly debated and, if those notes were somehow to be made available to an arbitrator, the plaintiffs would seek court relief to prevent the arbitrator having reference to those notes.

The solicitors advised that the council was in the strongest position it had ever been in to substantially affect the outcome of the litigation, and that such position should not be lightly set aside. They concluded by advising council that the most efficient way in dealing with the claims represented by Messrs Andersons was to force the plaintiffs properly to prove their case before the court. On 24 January 1989 Mr Selway from the Crown Solicitor's office advised the council's solicitors that he had approached Mr Wells who was acting for the plaintiffs represented by Messrs Andersons, and asked him what figure the plaintiffs would accept in full settlement of their claims. The response he obtained from Mr Gray, QC and Mr Wells was:

That they would recommend to their clients that they accept $13 million all up and that they regarded that as the minimum figure they would accept and it was non-negotiable, and that they would want a result within a week.

The council solicitors said:

No breakdown was provided of the figure of $13 million.

Finlaysons advised the Stirling council that, in their view, there was absolutely no justification for the council agreeing to pay $13 million or any sum approaching that figure. It was their view that a somewhat generous assessment of the claims represented by Messrs Andersons totalled $1.291 million. They further advised that, even if the claim of Nicolas Casley-Smith was fully successful, it was difficult to see how the total liability including costs would exceed $4 million. The council's solicitors further said:

The plaintiffs have never given a breakdown of the total amount they are claiming. Indeed, when we specifically sought such a breakdown when they were claiming something over $6 million, shortly prior to the commencement of the liability trial, they refused to give it. We raised with them then that we could not see how, on their own information, their claim exceeded $6 million, and they gave no practical explanation of their method of calculation.

According to Finlaysons, Mr Selway of the Crown Solicitor's Office further indicated that Mr Gray, QC, had advised him that the plaintiffs were prepared to accept the $13 million payment by way of instalments with $5 million paid immediately, $5 million paid in six months time and the remaining $3 million paid within 12 months. Other methods of payments by instalments were also open for consideration, but would be subject to provision for the payment of additional interest. On 19 February 1989 the council's solicitors wrote a letter to Mr Kelly at the Crown Solicitor's Office. In view of the importance of the matters involved, Finlaysons clearly outlined the Government's position, which was put to them at a conference held on 8 February 1989 with Mr Kelly, representatives of Treasury and the Department of Local Government. At the conclusion of the meeting, Finlaysons understood the Government's position to be as follows (and I quote, in part):

1. The Government will consider the support of funding of costs of the council in the processing of claims by means of a procedure outside the formal court system, but would require that such procedure would not involve legal representation of the council.
2. The Government understands that our considered advice to the council is that such non-court procedure puts the council at risk of being found liable to pay millions of dollars more than is due. This extra liability could be in the vicinity of $10 million or more.
3. The Government considers that, despite that advice, the council should cooperate in having claims dealt with outside the court system.
4. The Government is aware that our assessment of the claims based on the information supplied by those plaintiffs represented by Messrs Andersons is that they are worth $1.316 million plus costs at highest.
5. The Government reccgnises that the plaintiffs represented by Messrs Andersons will not agree to any alternative procedure without an initial payment of $3 million.
6. The Government is aware that our advice is that $3 million may be more than these plaintiffs may prove to be entitled to for the total of their claims including all costs.
7. The Government is aware of our concern that implementing a non-court procedure will be more costly than the present process.
8. The Goverment accepts the risk that the non-court procedure will not enable the proper testing of the plaintiffs' cases, particularly that of the Casley-Smiths.
9. That the Government accepts that there is a risk that a non-court procedure will result in increased liability for the council, but maintains that the council has no alternative.
10. The Government is aware that our advice is that the filed offers put the plaintiffs at real risk of being liable to pay the council's costs. Therefore, there is a real possibility that further expenditure on court costs by the council will be recoverable and, in any event, further costs which may be incurred in that process will be more than offset by reductions in the assessed claims.
11. The Government notes our offer to take it into our confidence as to all the evidence we have as to the plaintiffs' claims so that it may satisfy itself as to our assessment, but declines to accept that offer and does not question our assessment in any way.

In response, the Crown Solicitor confirmed that the Government would not provide financial support or accommodation for ongoing court action. The Crown Solicitor further acknowledged that the Government was aware that the proposed assessment procedure may produce a different figure from the figure produced if the matter was litigated. The Government was aware that a settlement offer of

$416 000 had been made to settle the 13 Andersons claims other than the Casley-Smith claim. An offer of $900 000 had also been made to settle all of the claims from the Casley-Smith family. Andersons had refused the offer and further refused to breakdown their figure of $13 million for all of their claimants.

On 6 March 1989 the District Council of Stirling wrote to the Minister of Local Government (Ms Wiese) confirming the two most important reasons which influenced the Government to become involved in dealing with the liabilities arising from the 1980 bushfires. They were identified as the ultimate quantum of costs and claims and the proper assessment of council's financial capacity. The council did not resile from its responsibility to make some contribution to the cost of the bushfire litigation. The council was seeking to achieve the determination of a figure of quantum as quickly as possible, but such figure had to be fair and reasonable to all parties. In his letter to the Minister, the Chairman of the council said:

To accept all claims as they now stand would be, we believe, unreasonable and unfair. We have always been concerned that the Casley-Smith claims, particularly, should be properly tested.

The letter continues:

Despite our best endeavours, there now seems to be no way that a suitable procedure can be established by 30 April 1989, given the attitude adopted by Messrs Andersons.

The Chairman concludes his letter by saying:

I am concerned that continued obstructive action, as now clearly demonstrated by Messrs Andersons, whether or not on the instructions of their clients, will precipitate an unmanageable situation.

On 16 March 1989, the Chairman of the Stirling Council again wrote to the Minister of Local Government (Ms Wiese). He advised the Minister that council considered that no feasible alternative existed but to assess the Casley-Smith claims in court with the normal rules of evidence to apply. He said:

Council seeks an indication on the Government's willingness to fund the Casley-Smith court assessment, or provide council a viable alternative by which to assess the Casley-Smith claims.

The Chairman of the council concluded by advising the Minister of Local Government that the court assessment of the Casley-Smith claims was scheduled to commence on 28 March 1989 before Justice Olsson, and said 'Your urgent advice on the matters raised is sought.'

The Minister acknowledged the letter, but offered no suggestions other than to confirm that the Government's preferred proposal of settling the claims by a fast-track system had been rejected. On 13 March 1989 the Liberal Opposition urged the Bannon Government to assist the Stirling council in paying all reasonable claims, and suggested that any claim which remained unresolved should be settled through the court system, but should not be allowed to delay the assessment and settlement of other agreed claims. The Casley-Smith assessment trial commenced on 28 March 1989. The Stirling District Council sought advice from its solicitors regarding the conduct of the defence and on 10 April 1989 its solicitors replied as follows:

The Town Clerk,
District Council of Stirling,
P.O. Box 21,
Stirling, S.A.

Attention: Mr P. Dobrzynski

Dear Sir,

Casley-Smith v. District Council of Stirling

You have sought our advice about the conduct of the defence of this case and in particular you have asked us to summarise the events to date in the assessment, you have sought our views as to the likely outcome and you have sought our advice as to what would happen were the council to decide to withdraw from the Casley-Smith case.

The assessment commenced on Tuesday 28 March. Mr Gray QC began his opening address which has continued and which we believe will be completed by the end of this week. The court went to Mylor on Wednesday 29 and Thursday 30 March to view the house property and the farm property. On Friday morning, 31 March, the court went to Tennyson to view the Casley-Smith house. On that same morning Mr Willett with Mr Trim and Mrs Robinson conferred with Mr McCarthy QC, the most senior Queen's Counsel in South Australia, about events which had occurred during the views at Mylor. On the basis of his advice and with instructions we made application to Justice Olsson on Friday afternoon to disqualify himself on the ground that he had displayed apparent bias towards the plaintiffs. The application was refused.

On Monday 3 April the court went to Hallett to view Mrs Casley-Smith's property. The court did not sit on Tuesday 4 April. Wednesday, Thursday and Friday of last week were occupied with appeals to the Full Court by the plaintiffs about the Glenside Hospital notes and our appeal against the decision to allow the use of affidavit evidence. On Thursday 6 April after obtaining instructions from Mr Dobrzynski we renewed our application to the judge to disqualify himself. The application was refused.

The court will not sit today, 10 April. There will be a view of the plaintiffs' property at Meningie on either Tuesday or Wednesday of this week and Mr Gray QC will continue and we hope complete his opening address in court. So far the plaintiffs have not put final figures on their claims to the court. However, from what we have heard in the opening address so far and from other material given to us, the claims can be broken down into the following components.

1. *Property Damage at Mylor*
   The house, outbuildings and fences, in excess of $200 000.
2. *The Contents of the House*
   Approximately $1.2 million.
3. *The Personal Injury Claims*
   Each of the four plaintiffs, Dr Casley-Smith, Mrs Casley-Smith, Richard and Georgina are alleged to have suffered a post-traumatic stress illness which seriously affected their quality of life and their ability to earn income. Informally, Mr Gray QC has said that Georgina's claim was worth $750 000 and John's claim was said to be 'millions'. The claims by Mrs Casley-Smith and Richard are unquantified. It is alleged that Nicolas Casley-Smith suffered schizophrenia as a result of the fire. He is permanently institutionalised and is unemployable. It is said that his claim is worth in excess of $3 million.
4. *Hallett*
   Mrs Casley-Smith has claimed approximately $150 000 said to be caused by her inability to muster sheep because of the death of a Gordon setter, a Rottweiler and a blue heeler, and because of difficulties caused by the forced removal of the family's horses from Mylor to Meningie after the fire.
5. *Meningie*
   A claim was put forward in February 1989 for $1.7 million. It is claimed that shortage of funds caused by the bushfire forced the plaintiffs to sell some 7 000 acres at Meningie and they now claim the possible capital gain had they been able to retain that property.
6. *The Remaining Claims*

	$
Loss of income from cat and dog breeding—not quantified.	
Loss of income from horse breeding and training	50 000
Loss of 40 cattle—now included in the Meningie claim	
Loss of crops, apples, nuts, etc.—in excess of	56 000
Loss of flowers	29 033
Loss of trees and gardens, vegetable garden, etc.—in excess of	60 000
Loss of food production, vegetables, sheep meat, poultry and eggs, honey—in excess of	31 000
Clean-up costs—in excess of	9 000
Re-insemination costs	6 520
Sheep costs	12 240
Horse costs	4 890
Loss of lucerne hay	42 831
Sundry items burnt—in excess of	4 500
Items stolen	8 204
Repairs to pump and bore	1 607

The council's defence will be put by our bringing forward evidence to the following effect:

1. *Property Damage*
   In so far as there was damage to the Mylor house property we believe the proper measure of loss is diminution in value of the property as a whole before and after the fire. Our valuer, Mr Graham Fenwick, puts a figure of $50 000 on this. Within weeks of the fire the plaintiffs received a total of $112 465 from various insurance claims, more than sufficient to rebuild and re-equip the house. Rather than restore their position we can prove that they elected to buy other property.
2. *Contents*
   There is a major dispute about the way this part of the claim is to be assessed. If the plaintiff can establish that all of the items were destroyed (which we think is unlikely) the advice of our valuers is in the order of $300 000.
3. *Personal Injury Claims*
   There is an argument that the four family members other than Nicolas should not receive any damages because it is not customary for courts to award damages for the anguish and grief caused by bushfires where the claimants were not present at the scene of the fire at the time the fire passed through their property. So far as Nicolas is concerned there is good evidence that his accepted psychiatric illness is not a consequence of the bushfire but was caused by other things including drug abuse.
4. *Hallett*
   The entire basis for the sheep claim is unacceptable. Strong evidence has been marshalled from adjoining land-owners that the basis of the claim is false. We are confident that this claim can be defended successfully in its entirety.
5. *Meningie*
   An accountant's analysis of the financial affairs of the plaintiffs demonstrate that the sale of the Meningie property was not in any way related to the bushfire. No evidence has been produced which justifies the amount claimed.
6. *The Remaining Claims*
   Analysis of the plaintiffs' tax returns and other documents produced together with available evidence demonstrates that these claims are grossly excessive and in some instances were not sustained at all.

We can elaborate on each item at great length but we have chosen to make this as brief as possible. We believe that if a proper assessment is made the plaintiffs will receive less than the offers filed which puts them at risk of having to pay some of the council's costs.

There have already been occasions which led us to make two applications to the judge to disqualify himself for apparent bias towards the plaintiffs. Notwithstanding the concerns which led us to make those two applications there is no doubt that a defence of the assessment will result in savings of several millions of dollars more than the costs of conducting the defence.

If the council permits the assessment to proceed uncontested none of the evidence that goes to reduce the claims will be put to the court. We cannot recommend that the council abandon its defence of the various assessments, in particular the Casley-Smith action. The fundamental basis for this advice is that the ultimate judgment must eventually be paid from funds which will probably have to be raised from the ratepayers.

For the reasons which we have discussed in conference, it is our opinion that if the claims are not properly defended the judgment in favour of the plaintiffs could be in excess of $10 million more than a proper assessment.

Yours faithfully,
Finlaysons

On 20 April 1989 Ms Levy became the new Minister of Local Government. On 1 May 1989 the Stirling District Council sought suitable material from its solicitors to release to the press. A list outlining the principal claims by the Casley-Smith family, as put to the court in the opening address and in the evidence-in-chief of the first witness, Mrs Judith Casley-Smith, was sent to the council in a letter dated 1 May 1989 which reads as follows:

The Town Clerk,
District Council of Stirling,
P.O. Box 21,
Stirling, S.A.

Dear Sir,

Casley-Smith v. District Council of Stirling

You asked us to prepare an outline of material suitable for release to the press now that the assessment is under way. We enclose an outline of the principal claims by the family as put to the court in the opening address and in the evidence-in-chief of the first witness, Mrs Judith Casley-Smith.

Yours faithfully,
Finlaysons

The list reads as follows:

Outline of principal claims for damages by the Casley-Smith family against the District Council of Stirling:

1. *Chattel Claim* $
   The Casley-Smith family's claim for the contents of their house and two railway carriages destroyed by the fire 1 200 000
2. *Buildings and Structures*
   The claim is for the cost of rebuilding the house, the railway carriages, outbuildings, fences, yards, etc.—in excess of 200 000
3. *Sheep Property North of Burra*
   Mrs Casley-Smith claims for losses sustained at her sheep property north of Burra caused by the loss of three dogs burnt in the fire at Mylor, being a Rottweiler, a Gordon setter and a blue heeler, the loss of horse facilities at Mylor and her emotional disability caused by the fire 168 111
4. *Meningie*
   The Casley-Smith family claims that they were forced to sell a property at Meningie in 1982 as the result of the Mylor fire. Their claim is for the loss of capital appreciation and other grazing losses sustained by them in excess of 800 000
5. *Agricultural, Horticultural and Loss of Food Claims*
   The Casley-Smith family claims for losses sustained at their Mylor farm, in particular:
   - Loss of apples and other fruit and nut crops . 53 765
   - Loss of trees and garden plants 60 456
   - Loss of food production:
     - vegetables 11 068
     - sheep meat 8 568
     - poultry and eggs 11 168
     - honey 1 109
   - Loss of cut flowers 29 033
   - Loss of 6 000 bales of lucerne hay 42 831
6. *Horses*
   The Casley-Smith family claims $53 046 for loss of income from the sale of horses, and from the sale of children's ponies trained by them 53 046
7. *Personal Injury Claims*
   Four of the five members of the family claim to have suffered post-traumatic stress disorders as a consequence of the fire. None of the family members were present at the time the fire passed through their property. Dr and Mrs Casley-Smith allege their condition has led to a loss of professional advancement and impaired their income earning capacity and has diminished their enjoyment of life.
   It is alleged that Nicolas Casley-Smith suffers from schizophrenia as the result of the fire. It is alleged that before the fire he showed no signs of psychotic illness and was warm hearted, easy going and emotionally stable. It is alleged that part of his delusion is that drugs will provide a cure for his problem and that he injects himself with all sorts of substances and takes all forms of drugs in the belief that they will cure him. It is asserted that Nicolas Casley-Smith's claim will attract an award at the top level of awards for damages ..... Amount of claim unspecified
8. *Dogs and Cats*
   The Casley-Smith family claims loss of income from breeding dogs and cats of $100 000

The figures set out above are the most recent figures produced by the Casley-Smith family but in each instance they reserve the right to update the figures again to the date of trial.

Responding to a request from the Town Clerk, the council's solicitors expanded on their previous letter to council dated 10 April 1989. In a letter dated 5 May 1989 they wrote as follows:

The Town Clerk,
District Council of Stirling,
P.O. Box 21,
Stirling, S.A. 5152

Attention: Mr Dobryznski

Dear Sir,

Casley-Smith v. District Council of Stirling

We refer to our letter dated 10 April and enclose a copy of it for ease of reference.

You asked us to expand that letter to include a summary of the evidence we have to refute each of the plaintiffs' claims. We confirm that you have sought a summary of the evidence gathered on behalf of the council in order to be able to brief the 'new' council on *(a)* the claims made to date and *(b)* the evidence we have to counter the claims and more particularly to demonstrate why the Casley-Smith claim must be properly and fully defended.

This letter should be read in conjunction with our letter of 10 April 1989.

1. *Damage to House, Railway Carriages and Other Structures at Mylor*

   As a matter of law our contention is that the proper measure of damages is the diminution in value of the property as a whole, not the replacement and rebuilding of the house, and custom building of railway carriages, etc.

   Our reason for taking this stance is that the plaintiffs had opportunity to reinstate the house almost immediately after the fire. They received $112 000 by way of insurance within weeks of the fire. Instead of rebuilding they chose to invest that money in the Hallett and Meningie properties.

   An expert valuer, Mr Graham Fenwick, has stated that the diminution in value of the house before and after the fire was $50 000. That sum was offered to the plaintiffs nearly six months ago.

   Alternatively, we say that they are only entitled to the cost of rebuilding in 1980, not 1989. There is little difference between the cost of rebuilding in 1980 and a diminution in value before and after the fire.

2. *The Contents of the House and Railway Carriages*

The plaintiffs claim $1 200 000 for a house full of treasured items said to have been in mint condition. The claim is based on 1989 prices. For items other than antiques new prices have been claimed no matter what the age or condition of the items lost. The claim is based on prices in the most expensive shops, galleries, antique dealers, etc., in Australia and overseas.

We have evidence from a number of witnesses who lived locally and who visited the house from time to time who will state that:

the furniture was not in good condition,
that the furniture was knocked around,
that the upholstery was rough,
that the interior of the house was dark, dingy and smoke stained,
that nothing was well maintained,
that there was a great deal of rubbish in and about the house,
that several cats and several dogs lived in the house, and
that the interior of the house was filthy.

The council has not contested that the house, carriages and their contents were destroyed.

We have had experts value each of the items claimed to have been lost. We have employed valuers by and large not from the top antique dealers in South Australia, but from auction houses and shops where we believe comparable items could be purchased.

Witnesses have suggested that the plaintiffs have grossly exaggerated the quality and condition of many of the items claimed. In some instances the items would simply not have fitted into the rooms as claimed. We have suggested the council put the plaintiffs to strict proof for these reasons.

3. *The Personal Injury Claims*

   The largest of these claims is that of Nicolas Casley-Smith. It will be alleged that the claim is worth about $3 million. To refute the claim that the fire caused Nicolas to become schizophrenic we have retained Professor Christopher Tennant of Sydney University. He is a world authority on schizophrenia. He will say that bushfires do not cause long-term schizophrenia, but at most a six month psychosis. There is documentary evidence from Dr Casley-Smith himself and from a psychologist, Mr Brian Costello, who treated the family, that Nicolas recovered from whatever emotional reaction he may have suffered as a consequence of the fire by the end of 1980. His ongoing condition, according both to Professor Tennant and to a Mr Young, whose services we have also retained, is not related to the fire. Mr Young is an English psychologist who specialises in the function of the brain, and in particular the effects of drugs on the brain. It is his firm view that Nicolas' ongoing condition is a drug induced psychosis. We have marshalled strong evidence that Mrs Casley-Smith, Nicolas and his elder brother all consumed marijuana before the fire. Indeed, Nicolas was arrested on drug charges before the fire. The family history of pre-fire drug taking is crucial to minimising Nicolas' claim.

   All other members of the family claim to have suffered massive post-traumatic stress disorders following the fire which have far-reaching effects. For example, Dr John Casley-Smith has alleged that the effects of his illness have resulted in him being denied promotion to a personal professorial chair. We suggest the council resist these claims principally by challenging the credit of the Casley-Smiths. If they can be discredited then the claimed symptoms and consequential disability should not be accepted by the court. Further, Richard and Georgina claim to have turned to drugs as a consequence of the fire. Again, the strong evidence of family participation in drug taking before the fire is most important. We have also gathered a body of evidence to indicate that the children did not have a proper upbringing in their formative years. That is also most relevant to the claims that they are psychologically damaged.

4. *Hallett*

   This claim (for $168 000) is based on the alleged unavailability of sheep dogs and horses. Logic does not support the claim. Nor do the facts.

   We have interviewed an adjoining land-owner at Hallett and the former farm manager of the Casley-Smith's farming properties at Mylor and Meningie. Both say that the basis of this claim is false. Both will be called as witnesses. There is other evidence which points to this claim being unsupportable.

   We are also in a position to establish that Mrs Casley-Smith made a claim in the Supreme Court for damages arising out of a motor car accident in 1983. In that claim she has asserted on oath that the personal injury she sustained in that accident was the sole cause of the income loss with her sheep property from 1983 to 1987.

5. *Meningie*

   We propose to call the Casley-Smith's former manager to establish that the serious financial difficulties they got into at Meningie had nothing to do with the fire. The plaintiffs were already overcommitted financially at the time of the fire and made a number of bad management decisions. In addition, there is documentary evidence which establishes beyond doubt that the basis of this claim is false.

6. *Other Claims*

   Without descending into great detail there are witnesses, principally neighbours, who are prepared to say:

   (i) that there was no horse breeding being carried on at Mylor;
   (ii) there was no large well cultivated flower or vegetable garden at Mylor;
   (iii) there was no proper garden around the house at Mylor;
   (iv) there were no large numbers of ornamental trees planted around the house;
   (v) there was no productive orchard—it was overgrown and stock used to graze in it;
   (vi) forty cattle did not abort.

   Because of this evidence, we believe that claims such as the claim for more than $100 000 for cat and dog breeding and $29 000 for cut flowers for the home can also be successfully defended.

7. *Legal Defences*

   In addition to the factual defences to the claim set out above there are a number of legal defences which may bar many heads of damage. For example, some of the uses to which the Mylor house property was put and some of the improvements to the property were contrary to the conditions of the Crown leases and the planning regulations. Further, the proposed reinstatement of the railway carriages is contrary to the planning regulations. Thus damages should not be recoverable for those heads of damage.

   Another example of a legal defence that may be available to the council is that the very large claim in respect of the Meningie land may be barred because it is the individual family members who have brought the claim whereas the land was owned at the relevant time by a company that was the trustee for a family trust which is not a claimant.

In summary, therefore, there is a substantial body of evidence that should enable the council to persuade the court that the claims are inflated by many millions. In some cases the council should prove that the damage did not occur at all and in all instances that the claims have been grossly exaggerated.

We wrote on 7 October 1988 setting out the allowances which we believe should be made for the plaintiffs' claims. A formal offer has been filed at court for $900 000. We think that that is a proper assessment of what the claim is worth.

We stress that it is imperative that the contents of this letter be kept highly confidential.

We confirm Mrs Robinson's offer to you that we be available to speak to a meeting of the new council if steps are taken to convene such a meeting to discuss the ongoing conduct of the case.

Yours faithfully,
Finlaysons

From the contents of the letter which I have just read and from the enormous amount of documentary evidence contained in some 29 boxes, one can understand the reason why the council's solicitors were urging the full defence of the Casley-Smith claim. The letter indicates that the Casley-Smith family received $112 000 by way of insurance within weeks of the fire. In a claim lodged in March 1980 with the Lord Mayor's bushfire appeal, an application for assistance was signed by J.R. Casley-Smith and witnessed by a justice of the peace. The claim is held in file No. 104 by the Adelaide City Council. The claimant stated that most of the losses were covered by insurance.

The Mylor House, which was destroyed by the fire, had been built on Crown land, and part of the building structure was encroaching on to a public road as noted on page 21 of the Engineering and Water Supply Department field book reference 15/72. At the time of the fire the Crown land was held under a perpetual lease arrangement by Lamorna Investments Pty Ltd of 94 Cambridge Terrace, Malvern, and Mrs Judith Casley-Smith of 97 Seaview Road, Tennyson. In the court evidence, reference was made to the Certificate of Title Nos 808 folio 16, and 1341 folio 47. The correct reference should have been 'Crown lease' and not 'Certificate of Title'. The property was in the name of the company. The claim for compensation was made by individual members of the Casley-Smith family. Under the terms of the lease, the whole of the land was to be afforested with *pinus radiata* or other commercial timber trees suitable for afforestation. No livestock was permitted to be depastured or kept upon the land.

From the court evidence given under oath, Mrs Judith Casley-Smith testified that horses were kept on the demised land. An aerial photograph taken on 26 March 1979 clearly shows that the whole of the land was not afforested. Some of the improvements on the property were contrary to the conditions of the Crown leases and the siting of the railway carriages upon the land to provide further accommodation was in breach of the planning and building regulations. In the process of establishing their claim for $1.2 million for the contents of the house, the two railway carriages and two sheds, the Casley-Smiths prepared and submitted a list of chattels which contained 2 244 groupings of various articles claimed. For example, grouping No. 1668 represented a claim for 263 items of groceries which ranged from: ¾ salami stick; to ½ a large bottle of White King; to 1½ loaves of bread; to 10 lemons; to 1½ bottles of nail polish remover; to 2½ tubes of toothpaste; and to ½ tin of Dante olive oil. Grouping No. 1660 was a claim for food in the deep freeze comprising: 200 kg beef cuts, packaged; 200 kg lamb cuts, packaged; 20 kg pork; 10 kg ham; 5 kg bacon; 10 free-range turkeys; 24 free-range hens; 10 free-range geese; and 25 litres soup. It is estimated that more than 20 000 individual articles have been claimed.

With reference to the personal injury claims for schizophrenia suffered by Nicolas Casley-Smith, in a writien report to the council's solicitors Professor Christopher Tennant, from the Sydney University, a world authority on schizophrenia, refutes the claim that the bushfire was the cause for the long-term schizophrenia disorder. In fact, he notes that earlier on neither the professionals nor, indeed, Nicolas's family had alerted themselves to the possible link between the bushfires and Nicolas's illness. Professor Tennant said that it appeared that their preoccupation with the bushfires seemed to come some substantial time after. He says that perhaps there are other processes that may explain this phenomenon, and notes that Nicolas himself (at least as reported in the case notes), does not comment on the bushfires as a significant precipitant to his disorder.

Mr Young, an English psychologist, who specialises in the function of the brain, and in particular the effects of drugs on the brain, expressed a firm view that Nicolas's ongoing condition was a drug induced psychcosis. Records, which purported to be police records, show that evidence marshalled by the defence lawyers suggested that Nicolas and his elder brother consumed drugs before the fire. Those records state:

Nicolas Verne Casley-Smith
was charged as follows

Date	Offence	Court	Result
13/12/78	Possessing Indian hemp Possessing pipe for smoking Possessing hashish	Juvenile Court	All found proved, dismissed under Juvenile Courts Act—without conviction
29/10/79	Smoking Indian hemp	Lismore, NSW	$50 fine or 48 hours in detention shelter
29/10/79	Possessing Indian hemp	Lismore, NSW	$50 fine or 48 hours in detention shelter

and that

Richard John Geeves Casley-Smith
was charged as follows:

Date	Offence	Court	Result
9/9/77	Possessing Indian hemp	Juvenile Court	No evidence tendered—dismissed
9/9/77	Smoking Indian hemp	Juvenile Court	Without conviction—good behaviour bond of $50 for 6 months

None of the members of the Casley-Smith family were on the property when the fire occurred. It has been alleged that there is an appendix to a letter of discharge dated 5 June 1982 in the Hillcrest Hospital case notes which refers to the 1979 mental history of Nicolas Casley-Smith. It has been alleged that he was treated by a Dr Kristall. Nicolas was then 17 years of age, and it has also been alleged that he was admitted to Kahlyn Private Hospital for one week in 1979. It has been alleged that in October 1980 he was admitted to the Enfield Psychiatric Hospital and that medical records in that hospital refer to his mental history in 1979. These allegations all raise serious doubts about the validity of the claim made on behalf of Nicolas Casley-Smith which has resulted in the payout of $1 million under the Bannon Government's fast track system.

On the question of the claim for losses of almost $170 000 at the Burra property caused by the loss of three dogs burnt in the fire at Mylor, the defence lawyers advised that logic does not support the claim. The property was under a quarantine order from 13 September 1977 to 25 October 1982 and neighbours and the former farm manager of the Casley-Smith's disputed the basis of this claim.

In relation to the Meningie property, for which a claim of $800 000 was made, documentary evidence dated 10 August 1981 shows that a loan application was lodged with the Commonwealth Development Bank seeking funds for the Meningie property. These documents indicate that the Meningie property was in serious financial difficulties which had nothing to do with the bushfire. The proposal suggested that if a loan application failed, one of the options to be considered was to sell the Mylor property and the major portion of the Meningie property to cover debts in order to sufficiently reduce interest payments. The loan application from the Commonwealth Development Bank failed, the Mylor stud property, together with a substantial part of the Meningie land, were sold, and the farm manager resigned.

In his opening address by the Casley-Smith's counsel, it was claimed that after the fire this manager became unreliable and, fortunately, gave notice and the farm was sold before he had to be dismissed. This statement is in conflict with a reference dated 16 November 1981 (after the fire), which was given to the former manager, Mr David Westley, by Lamorna Investments Pty Ltd and was signed by Dr J. R. Casley-Smith, in which the manager was described as a conscientious, intelligent, efficient, hard-working, cheerful and trustworthy person. The reference reads as follows:

Lamorna Investments Pty Ltd,
97 Seaview Road,
Tennyson,
S.A. 5022

(Telephone 356 4528)
16.11.81
To whom it may concern,

Mr David Westley has been employed by us as our manager for the past 12 years. We have found him to be a most conscientious, intelligent, efficient, hard-working and cheerful person. So much have we trusted his conscientiousness, that we arranged for him to be able to sign cheques for us. This allowed him to exercise a good control of the accounts and to verify, or argue about, the individual items.

During this 12 years we have conducted a breeding program to get pure-bred Simmental cattle at Mylor. He (and his most helpful wife) have looked after the cows with great care and success, and maintained the records. Over the last four years we have been developing a 6 500 acre property at Meningie. His knowledge of cropping and his skill at farming (to say nothing of fixing machinery) have been of tremendous value. He has been able to achieve lupin crops which gave the maximum yield in the State per acre, and which were well above the maximum which the Department of Agriculture thought possible. This he did by meticulous attention to killing weeds. He has also been able to produce the best paddock of lucerne in the district. In addition, he is a first-rate fencer, a good shearer and can also grow magnificent vegetables. We are very sorry that we have to take the stud to Meningie, and that personal circumstances make it impossible for him and his family to come too. I can most heartily recommend him, and we wish him and all his family well for the future.

Yours sincerely,
(signed)
J.R. Casley-Smith, DSc MBBS

With respect to other claims, defence counsel gathered evidence from witnesses, principally neighbours, who were prepared to give evidence and say that there was no horse breeding carried on at Mylor; there was no large, well-cultivated flower or vegetable garden at Mylor; there was no proper garden around the house at Mylor; there were no large numbers of ornamental trees planted around the house; there was no productive orchard (it was overgrown and stock used to graze in it) and; 40 cattle did not abort.

Council's solicitors believed that, because of strong evidence which had been gathered and was available, such claims as the claim for more than $100 000 for cat and dog breeding and the $29 000 claim for cut flowers for the home would be successfully defended. Defence counsel advised that, in some instances, the Stirling council was in a position to prove that the damage did not occur at all and, in all instances, that the claims had been grossly exaggerated.

In early May 1989, local government elections saw a new council elected for the Stirling area. The Town Clerk prepared a briefing paper on the Ash Wednesday bushfires liability for the first meeting of the new council, which was held on 16 May 1989. On page 3 of the briefing paper, the Town Clerk identified the details of the Casley-Smith claim to the extent to which it had been formulated as at that date, whether by evidence given under oath to the court by the Casley-Smiths or their solicitors.

The Town Clerk further advised the new councillors that it was Finlaysons' opinion that there were great doubts that many of the aspects of the Casley-Smith claim were sustainable and, in other instances, the claims were simply not sustainable. The Town Clerk indicated that there were enormous implications if this claim was allowed to go unchallenged. He advised that there had been detailed discussions on the Casley-Smith case with the Crown Solicitor's office and the Department of Local Government and agreement existed that the enormous claim by the Casley-Smith family was plainly questionable and should be put to the test of proof.

The Labor Government had so far avoided every attempt to involve itself in the bushfires matter. Obviously, the Premier saw this as a means of keeping open the Government's political options. It was suggested that council should put the option to the Government that, without financial assistance, council would have no alternative but to quit its defence due to its impecuniosity and the focus would shift onto the Government to make a decision.

On 16 May 1989, the Minister of Local Government (Ms Levy) wrote to the new council members, who were due to meet that evening, and advised them as follows:

The council has a responsibility for the management of the affairs of the area, including the current proceedings. Council also has a duty to act reasonably, in a businesslike manner and with the exercise of reasonable care, skill and caution. Individually, members of council have a fiduciary duty to act in the best interests of the council, and members may be in breach of that duty if they act unreasonably merely so as to give effect to their pre-election manifesto. The effect of a withdrawal by the council from the current proceedings is that damages will be assessed without the court having the benefit of the testing of the plaintiffs' evidence, legal argument and submissions for the council. There is a real risk that damages would be assessed at a higher amount as a result.

On 17 May 1989, the Chairman of the new council responded to the Minister and advised her that all new council members were anxious to ensure they properly discharged their duties, and expressed the view that it was illogical for the Stirling District Council to simply agree to claims that should be questioned, just because the council had neither the ability to fund the defence nor the financial resources to meet the ultimate payment. In a letter to the members of the District Council of Stirling dated 24 May 1989, the Minister of Local Government (Ms Levy), confirmed that the Bannon Government realised the position of the Stirling Council, stating:

The current litigation will eventually achieve a fair resolution of the claims . . . The council does not have the financial capacity to meet the whole or even a significant proportion of the amount of the claims as currently estimated by the plaintiffs without a substantial increase in rates or an elimination of services, which the Government accepts would be undesirable.

In her letter, the Minister further confirmed that:

The Government has advised the Stirling District Council that the Government is prepared to brief (at its own expense) a leading Queen's Counsel to advise the Government in writing on:

(i) An appropriate settlement figure for each of the Anderson claims or for such of the claims as he can; or

(ii) If unable to do so in respect of any claim, a possible range of settlement figures for that claim and the issues

that need to be determined to enable an appropriate figure to be determined; or

(iii) If unable to do so, the procedures that should be adopted (whether in court or otherwise) to bring the proceedings to a speedy and fair resolution.

Such advice could only be given by Queen's Counsel if both parties and their legal advisers cooperated with Queen's Counsel in his considerations. The Government would provide a copy of the advice to each party but would respect confidentiality attaching to any information given to it on a confidential basis. It would not bind them to accept or follow that advice, but hopefully would assist the parties in agreeing a fair, speedy and cheap resolution of the claims. The Government has informed the District Council of Stirling that the Government understands that the Anderson plaintiffs will agree to adjourn the current proceedings so as to facilitate the performance of the above brief by Queen's Counsel, but only if the Anderson plaintiffs are paid $4.5 million on account of liability costs, damages to be assessed (including interest, if any) and damages costs. If final liability is less than $4.5 million, they will undertake to repay the amount of the overpayment.

The Government understood that the District Council of Stirling was generally supportive of the concept of the Government's appointing an eminent Queen's Counsel as discussed previously, and that the District Council of Stirling was prepared to pay $4.5 million to the Anderson plaintiffs as discussed previously subject to the issue of the financing of that sum. It is important to note that the Anderson plaintiffs increased their upfront payment condition from $3 million to $4.5 million in the three-month period which expired since they spoke to the Crown Solicitor's office in February 1989.

The council responded to the Premier when, in a letter dated 30 May 1989, the Chairman, Mr Michael Pierce said:

Given the extent to which the Government has been involved in this long-running litigation and has moved to informally encourage the council to continually test its legal liability whilst distancing itself from this liability, we suggest the issue of future legal costs should appropriately be addressed now.

And:

The Stirling District Council undertakes to commit itself to abide by the inquiry decision.

The Hon. Anne Levy: What did you say?

The Hon. J.F. STEFANI: You've heard it.

The Hon. Anne Levy: Say it again.

The Hon. J.F. STEFANI: You can read it in *Hansard* tomorrow. The letter continues:

The council is this week forced to consider its other options. The first of these must necessarily involve withdrawal from the current Supreme Court proceedings; and further involves an attempt at settlement of the current claims. Therefore, council considers this issue to be one of the utmost urgency. The exorbitant costs involved in a continuing litigation and the proposal to move the court to London are a public scandal which cannot be tolerated further.

From the above statements, Mr President, it is obvious that the Labor Government has finally backed the Stirling council into a corner, forcing it to succumb to its political masters. In a letter to the Chairman of the council dated 6 June 1989 the Premier (Mr Bannon) rejected that in the past his Government had encouraged previous councils to undertake litigation. From the information which I have tabled in this Parliament and to which I have referred during my speech, the people of South Australia are now in a position to judge for themselves and are not fooled by the Premier's denials. In his letter, the Premier concludes by saying:

I am sure you will appreciate the Government must do everything possible to protect its position and to ensure that there is full accountability for the public funds which may be involved in this arrangement.

Here, Mr President, we have the Premier on public record telling the people of South Australia that his Government must do everything possible to protect its position. I guess he was referring to its political position, because, finally, there has not been full accountability for the public funds which have been paid out by the Treasurer through the Government sponsored fast-track system adopted to settle the bushfire claims.

On 6 June 1989, the Minister of Local Government (Ms Levy) wrote to council and referred to a letter which council had written to the Premier. In her letter the Minister detailed the terms and conditions which applied to council before it received assistance from the Government. Some of the conditions were as follows:

The council shall adopt and comply with any recommendation by Government following the receipt by the Government of the advice of the Government legal adviser in respect of any of the following matters:

(a) agreement to settle the Andersons claims or any of them;

(b) offers to consent to judgment in the Andersons claims or any of them;

(c) agreement of any facts currently in dispute in the Andersons claims or any of them;

(d) agreement of any point of law currently in dispute in the Andersons claims or any of them;

(e) instructions to the legal advisers to council respecting the conduct of the Andersons claims or any of them; and

(f) the appointment and retention of legal advisers to the council.

If the council does not immediately adopt and comply with such recommendation, and instruct its legal advisers accordingly, then the Government's undertaking to pay the legal costs shall wholly cease and determine.

Subsequent to the commencement of payments by the Government, the council shall comply with any recommendation by the Government respecting the future conduct of the proceedings relating to the Andersons claims and shall instruct its legal advisers accordingly. If the council should fail to immediately so comply, then the Government's undertaking to make further payments for legal costs shall cease and determine and the council shall repay any moneys paid by the Government to the council plus interest at the 90-day bank bill rate payable at the commencement of each 90-day period (which interest will be calculated from the date of any payment by the Government).

That is what the Minister said: a big stick over the people's heads. The Minister concludes by saying:

If council agrees to these conditions, I ask for your written acceptance as soon as possible. In that regard, I am sure that you will agree that the legal adviser should give the highest priority to those aspects bearing on the proposed visit by the court to the United Kingdom, and I am anxious for that process to commence at the earliest opportunity.

As we can see, Mr President, the Stirling council was given very little choice. It was caught between a rock and a hard place. It had finally been manipulated into submission by the political will of an incompetent Labor administration. It was forced to accept its inevitable fate, falling victim to ruthless political Labor dictators. But the Stirling council, in the discharge of its public duty, was honest and diligent to convey to the Minister of Local Government that as a condition of accepting the terms set down by its political masters, and I shall quote what it resolved, and it shows the honesty of this council. It shows that it was absolutely dedicated to being honest and following what it could within its own resources. That is what it was on about, and this is what it decided:

To seek adequate and appropriate documentation on all disbursements undertaken to Messrs Andersons and forming part of the conditions attaching to the alternative claims assessment procedure initiated by the State Government.

That is what the council wanted: substantiation of payments. And it was right. This condition of course has never been honoured by the Premier and Treasurer or his Government. The Bannon Government was now planning for an imminent election and wanted to clear the decks before going to the voters. It is obvious that that is what the Bannon Government had in mind. It did not want the embarrassment of the years of Government incompetence over this issue to become an election problem.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.F. STEFANI: The Labor Government was keen to appease the anger and frustration of the Stirling community. It wanted to smell like roses.

So, it carefully orchestrated a plan of action which provided a quick-fix solution to these problems. On 7 June 1989, the Government instructed the Crown Solicitor to write to Mr Mullighan, QC, advising him to adopt an expeditious broad brush approach which would be expected and would be acceptable to the Government in dealing with the bushfire claims. In its indecent haste to clear the decks for the election, the Labor Government was prepared to break all the rules and set aside all the standards applicable to public accountability for the expenditure of taxpayers' funds. The Bannon Government gave only weeks in which the independent assessor could assess the mountain of documentary evidence or interview the hundreds of witnesses. The inept Labor administration swept aside all standards and gave the assessor an impossible task to provide advice and prepare his written opinion about the claims, within a ridiculous time frame.

The Hon. Anne Levy interjecting:

The Hon. J.F. STEFANI: Would you like me to quote the time frame? The Crown Solicitor told the independent assessor to report to him by 22 June 1989—giving this assessor three weeks.

The first letter was dated 7 June and it said, 'Please report by 22 June.' You read and you will find out that what I have said is exactly right.

The PRESIDENT: Order! The honourable member will address his remarks through the Chair.

The Hon. J.F. STEFANI: The independent assessor must have had some real concerns when, during his investigation, a private investigator's report was hand delivered on 5 July 1989 whilst he was undertaking his assessment of the claims. The private investigator's advice in relation to the Casley-Smiths said:

> Whilst some aspects of their claims might be accurate, the totality of their claims bears little relationship to the facts. In fact, in some areas the plaintiffs' claim is diametrically opposed to all the objective evidence available. I have been unable to discover a single witness who confirms their claims to the existence of the large flower and vegetable gardens, or to a large quantity of well-kept antiques, although we have spoken to dozens of people who assert that this was not so. There is little doubt that if this case continues to run its course the court will find in favour of the Stirling council.

The private investigator further suggested the names of more than 60 people who may be available for assistance in the investigations.

On 8 June 1989, upon the requirement of the Crown Solicitor's office, the Stirling council forwarded a letter of undertaking to the Crown Solicitor. The terms and conditions of the undertaking were drafted beforehand and were dictated to the council by the Crown Solicitor's office. In other words, the Stirling council had no say in these arrangements and the Labor Government dictated the terms, the conditions and the method by which the settlements of the bushfire claims were going to be achieved through the Government sponsored fast-track system, which bypassed the court process of full accountability and cross-examination.

So much was the Bannon Government controlling the events and dictating the terms that on 14 June 1989 the Treasurer and Premier authorised Treasury to make a direct down payment of $4.5 million to Messrs Andersons, bypassing the previous written arrangements which the Government had reached with the Stirling council and deliberately choosing to advise them of his decision after the direct payment had been made. Preoccupied by the urgency and the panic of protecting its political position in the lead-up to the imminent election, the Bannon Government sold out the Stirling District Council ratepayers together with the taxpaying public of South Australia.

In its indecent haste to sweep the problem under the carpet, the Labor Administration failed to exercise duty in dealing with the disbursement of public funds. By taking decisions which were motivated by political reasoning, the Bannon Government sold the South Australian taxpayers down the drain and compromised its position as the honest broker, by horsetrading quick-fix solutions to resolve this difficult community problem. Where on earth would you ever find any organisation which is willing to make an up-front payment of $4.5 million, without the absolute and unqualified condition that all court proceedings, particularly those overseas, be totally suspended for an indefinite period to allow the appropriate assessment of the claims by the independent assessor? I ask you!

[*Sitting suspended from 6 to 7.45 p.m.*]

The Hon. J.F. STEFANI: So much was the haste and determination to clear the decks that the Bannon Government even pre-empted the first opinion received from Mr Mulligan, QC on 4 July 1989 and had a debenture document prepared in advance for the amount of $12.5 million to cover all claims. This 11 page document was prepared on 4 July 1989 and was sent to the Stirling council for signature by the Minister of Local Government (Hon. Ms Levy) on 4 July 1989. It was received by council on 5 July 1989. But the saga continued. The Stirling council wrote to Ms Levy on 12 July 1989 and expressed the view that, with the court sitting about to commence in London on 18 and 19 July 1989, it would seem that the endeavours of Mr Mullighan had foundered.

The Chairman of the Stirling council advised the Minister that the fast track method was not progressing in the manner agreed between the council and the Government. In his letter, the Chairman said:

> While council is forced to incur continually increasing legal costs, the matter has not only returned to court, but also overseas. Council strongly contends that the financial pressures which continue to be imposed upon its resources are fast leading to an untenable position for the council. It is council's view that the necessity for the Supreme Court to sit in London, together with the fact that the 'Mullighan process' is not working in the manner indicated, combine to provide proper and sufficient cause for the State Government to cover all further legal costs associated with the assessment of bushfire claims represented by Messrs Andersons.

In a mad scramble to bury this problem once and for all, and in order to settle the Casley-Smith claim before the court commenced its hearing in London on 18 July 1989, at a meeting of Cabinet held on 17 July 1989 the Bannon Government determined that the Government should advise the Stirling District Council to settle the Anderson claims for $9.5 million all inclusive.

At this juncture, it is important to note that previously, as at 1 May 1989, the claims for property damage presented by the Casley-Smiths totalled $2 739 155; this amount excluded the amount claimed for personal injury by four of the five members of the Casley-Smith family and legal costs. Against this claim a formal offer of $900 000 had been filed in court by the council's solicitors. It has been clearly established that the out-of-court amount of compensation paid to Nicolas Casley-Smith was $1 million; the Labor Government has further agreed to provide to the plaintiff Nicolas, at all times, full and free care and medical treatment in South Australia, such care being sufficiently

provided in a Government or Government-funded hospital or institution in South Australia.

In July 1989, as a result of the fast track settlement system, the Casley-Smith family received $3 million; Nicolas received $1 million; and an additional $3.5 million was paid directly up front through Treasury, by the Treasurer and Premier (Mr Bannon), for legal costs. All these payments were made without full public accountability which the Premier, Mr Bannon, had written in his letter to the Stirling council.

The Government had put itself in a corner and was forced to pay all the Anderson claims on the basis of all or nothing, with the pressure of the court sitting overseas without the Stirling council's being represented by senior counsel. The decision by the Bannon Government again pre-empted the written opinion prepared and signed by Mr Mullighan, QC on 19 July 1989.

Under instructions from the Premier and Cabinet on the very next day, 18 July 1989, the Minister of Local Government (Hon. Ms Levy) hurried into action to dispose of the problem, again pre-empting Mr Mullighan's written opinion, and writing to the council as follows:

> The Anderson plaintiffs will accept $9.5 million plus an undertaking by Government to provide free medical care to Nicolas in a Government hospital for as long as he needs it. The figure of $9.5 million is an all-up figure to settle all claims and counterclaims between council and the Anderson plaintiffs arising from the fire. It is for the plaintiffs to apportion that figure amongst themselves, and they take the risk that the sum they wish to pay to Nicolas is not acceptable to the judge. I can advise you that $3.5 million of the toal amount of $9.5 million is attributable to the Anderson plaintiffs' legal costs. Of course, this figure of $9.5 million includes the amount of $4.5 million already paid to the Anderson plaintiffs 'on account'.

Here we have the undisputed written evidence of the Government's and the Minister's attitude about the full accountability for the expenditure of public funds which the Premier wrote to the Stirling council about just one month previously on 6 June 1989. By her own admissions, the Minister, Ms Levy, has stated that it was for the plaintiffs to divy-up the loot amongst themselves and apportion the $9.5 million which they were to receive. It was up to them, the Minister said. They took the risk that the sum which they (meaning the 13 plaintiffs) wished to pay Nicolas may not be acceptable to the judge.

This is what the Premier called full accountability for the payment of public funds. What kind of justice is this? What kind of accountability is this? How can the Bannon Government and its Ministers ever claim that they have exercised duty of care in the discharge of their public duties in performing their responsibilities when Ms Levy, as Minister of Local Government, has publicly stated that it was up to 13 people to divide the prize money. What if they never reached agreement amongst themselves, I ask? What if the judge ruled that Nicolas should receive the lion's share of the payment? Who of the 13 claimants would have missed out, I ask?

It is no wonder, therefore, that the Stirling council wanted no part of this dishonest deal. It is no wonder that its solicitors, in a letter written to the Stirling council on 19 July 1989, said:

> We confirm our advice to you that in our opinion the settlement sums proposed by the Government are too high. We have not participated in the negotiations which have led to the settlement figures being agreed. We are not able to approve the settlement.

The Stirling council consistently refused to be part of a scandal. South Australian taxpayers are now aware that all the bushfire claims which have been paid through the fast-track system have been paid by the Bannon Labor Government without full and public accountability. The Stirling council ratepayers and the South Australian public who are footing the bill have a right to know whether the claims have been properly assessed through the fast-track system.

They are entitled to know the amount and the breakdown of each claim. If the Premier, Mr Bannon, were honest about his statements regarding the full and public accountability for the expenditure of public funds, he would not have implemented a quick fix solution to clear the decks for the election. Mr Bannon, as Treasurer, was responsible for the pay out of millions of dollars from the taxpayers' purse. And now, on behalf of the people of South Australia, I want to ask the Premier and Treasurer about his public accountability of the payments he has made. I want to ask Mr Bannon to make public all the details of the claims he has paid. The public has a right to know, because it is their money that he has used to buy his Government another term in office. I support the motion.

The Hon. ANNE LEVY secured the adjournment of the debate.

PARLIAMENTARY PRIVILEGE

Adjourned debate on motion of Hon. K.T. Griffin (resumed on motion).

(Continued from page 276.)

The Hon. K.T. GRIFFIN: This is a motion for a joint select committee to examine the very important question of parliamentary privilege. I am pleased to note that last week a resolution was passed in the House of Assembly indicating that it was prepared to agree with setting up a joint select committee on this issue.

In a sense, although this motion has been moved during private members' time, the issue affects all members, and one could equally say that the issue was appropriate for Government time. Be that as it may, the issue needs to be addressed. I think it is important that I outline the way in which the issue of parliamentary privilege arose on this occasion. It arose out of a District Court action between Mr Lewis MP, the member for Murray-Mallee, as plaintiff, and the defendants, Mr Stephen Wright and Advertiser Newspapers. In the House of Assembly, Mr Lewis asked a question in relation to Mr Wright and a subdivision in the Adelaide Hills, in particular property belonging to Mr Wright. Mr Wright gave a response by letter published in the *Advertiser*, and there was an accompanying article by the *Advertiser* on that issue.

Mr Lewis issued proceedings, claiming damages for defamation, against Mr Wright, as the author of the letter, and Advertiser Newspapers, as the publisher of the letter, alleging that the letter was defamatory. The two defendants, Mr Wright and Advertiser Newspapers, administered interrogatories as one of the procedural steps in the District Court action, and some of those interrogatories sought information about the facts that had been raised by Mr Lewis in Parliament, about the sources of his information, and about his motives. Those interrogatories sought information directed towards establishing whether or not there was available to Mr Wright and Advertiser Newspapers one of the defences of truth, justification or fair comment. Mr Lewis objected to those interrogatories as an infringement of parliamentary privilege and Master Lunn struck them out. Mr Wright and Advertiser Newspapers took that matter on appeal—

The Hon. C.J. Sumner: Judge Lunn.

The Hon. K.T. GRIFFIN: I am sorry. I thought he was dealing with it as Master. The defendants took that issue

on appeal to the Full Supreme Court. In the Full Supreme Court the Attorney-General intervened and presented arguments in three parts. A letter that the Attorney-General wrote to me on 12 July 1990 encapsulates the argument that he presented to the Full Court. He wrote as follows:

The position submitted by me to the Full Court was that:

1. A court cannot inquire into the truth of what is spoken in Parliament or the motive of a member when speaking in Parliament. It is doubtful whether this privilege can be waived.

2. A court can receive admissible evidence to prove as a fact that a particular statement was made in Parliament. Parliamentary privilege may render inadmissible some otherwise relevant evidence on this topic. However, *Hansard* can be received in evidence for this purpose.

3. Any person who is attacked by a speech in Parliament has a qualified privilege to publicly answer that attack. The qualified privilege will apply so long as the answer is a reasonable response to the attack and is not actuated by malice. The truth or otherwise of the answer need not be proved.

The Attorney-General wrote to the Speaker of the House of Assembly drawing his attention to that intervention and sought a direction from the Speaker, or the House, as to whether or not the House wished him to represent it in presenting a particular point of view.

As I understand it, the Speaker consulted all parties. There was some difference of opinion as to the way in which the submission should be made to the Full Supreme Court. The Liberal Party took the view that it was not proper for the House of Assembly to seek to intervene formally, which would have made it a party before the proceedings and would have meant that it would have to submit to the jurisdiction of the court. Constitutionally, that would not have been a proper course to follow.

On the other hand, I acknowledge that there is a precedent for Speakers, in particular, to seek leave to make representations to a court on issues which affect a Parliament or a House of Parliament and for such submissions to be made on the basis that the court was being assisted by the submissions of the Speaker or a representative of the Speaker. In this case, the Attorney-General having intervened and having indicated the nature of the argument that he was proposing to advance, it seemed to me and to my colleagues in the Liberal Party that that position ought to be maintained and that the House of Assembly should express a view as to whether or not it supported that argument.

In the House of Assembly on 21 February 1990 the member for Hartley (Mr Groom) moved a resolution which, in effect, endorsed the argument of the Attorney-General before the Full Supreme Court. That resolution is specifically referred to at page 313 of *Hansard* of that date. I do not think that there is any need for me to repeat it here. Again, I say that it significantly follows the position that the Attorney-General put to the Full Supreme Court.

The Attorney-General's argument was not successful, because the Full Court made a decision which, in my view, weakened the parliamentary privilege attaching to both Houses.

Two judges of the Full Court were of the view that in the circumstances of this case in particular, but it does apply generally, a defendant faced with an action by a member of Parliament for defamation has a right in those circumstances to cross-examine the member of Parliament as to the facts of the statement which was made in the Parliament and to which a citizen's response may relate, the motives and even the sources of information.

That means that, rather than the mere qualified privilege argument, which the Attorney-General put and the House of Assembly supported, and which did provide adequate and reasonable protection for the member to raise issues under parliamentary privilege, the Full Court watered down that privilege. In my view we have a situation that means that, if a member of Parliament were to raise an issue in either House which, if raised outside, would be defamatory and, in the context of that issue, named a particular individual, the individual outside Parliament could respond, one would expect, in moderate or temperate terms. If the citizen so referred to replied in abusive or defamatory terms and continued to do so, the member would be constrained in the action that he or she could take in the knowledge that the member, in taking action for an injunction to restrain the abuse or the defamation, or for damages for the defamation, would then expose himself or herself to cross-examination on the sources of information upon which the statement in the Parliament may be based; the facts and the motives, all going towards establishing the defences of fair comment, justification or truth.

That has some serious consequences. The Attorney-General said in relation to the Lewis matter that that was an inappropriate case upon which the issue of privilege ought to be determined by the courts. I do not agree with that. Whatever the merits of that particular case, one has to face up to the fact that the issue was raised. It was decided by the court and, whether it was that particular member, that particular case or some other, at some time in the future that situation is likely to arise again.

Mr President, I have been very careful to ensure that I have not made any comment on the merits of the case, because that quite rightly is *sub judice*, but the issue of privilege nevertheless is an important one in that sense. What the decision of the Full Court does mean is that, unless we take action to review it and to legislate to give proper and reasonable protection to members of Parliament to raise issues, members of Parliament may well be constrained from doing their public duty in the future in raising issues of significance that may result in some abusive or defamatory response.

One can think of a number of occasions where that might occur. I can remember Mr Peter Duncan, when he was still a member in the House of Assembly, making allegations about Mr Saffron under parliamentary privilege. It would have been quite possible for Mr Saffron to have responded in defamatory or abusive terms, and even to have continued that defamation. Unless Mr Duncan had taken some action to stop it, it could have gone unchallenged.

The problem is that, if Mr Duncan wanted to take action to prevent the defamation continuing or for damages for what might well have been a quite unwarranted defamatory or abusive response, he would have had to be prepared to expose himself to cross-examination in the courts, not only as to the facts but also to his motives and the sources of information. That applies to any Minister and to any member of Parliament. In that instance, it may have been that Mr Duncan received information from the police which, if he were questioned before the courts in any civil action taken by him, may have resulted in the exposure and identification of sources which otherwise a member or Minister could have been expected to keep confidential. So, it has some serious consequences for Parliament, for members of Parliament and for the community at large.

Subsequent to the decision in the Full Court, the Attorney-General sought leave to appeal to the High Court on the basis of the same argument that he put to the Full Supreme Court. He is to be commended for that. He took a course of action which I supported and which, I suspect, a number of Mr Sumner's colleagues also supported. However, the ALP State Council sought to give him a direction to discontinue it. Quite rightly, he refused to comply with that direction and, subsequent to that ALP State Council meeting, Mr Clyde Cameron wrote to Mr Sumner, reflecting

his own views and those of the Albert Park sub-branch of the Labor Party. I will read part of that letter, which will put Mr Cameron's views into context. Incidentally, I point out that Mr Cameron sent the letter to the Attorney-General with a request that it be circulated to members. That was done by the Attorney-General, so I take it that the letter is a matter for the public record. The letter, which is dated 27 May, reads:

My dear Attorney, this morning's meeting of the Albert Park sub-branch of the Labor Party had before it a copy of your letter of 24 April 1990 to the Party's State Secretary (Mr Terry Cameron), in which you gave your reasons for refusing to comply with a resolution of the Party's State Council not to proceed with the High Court appeal against a decision of the South Australian Full Court concerning the very precious and ancient right of parliamentary privilege.

After reading your letter, a very well-attended meeting of the sub-branch unanimously adopted a motion calling upon the next meeting of the Party's monthly council to congratulate you upon the steps you are taking to safeguard the privileges enshrined in the 1688 Bill of Rights. In essence, the Full Court's action in setting aside the decision of Judge Lunn means that, if a member of Parliament dares to exercise the freedom of speech guaranteed by the Bill of Rights, the South Australian Full Court will authorise the media to punish that member by publicly branding him or her as a defamer.

The logical extension of such a ruling is that that member will have no redress against other defamers who repeat the first defamer's accusation. Primarily, the Bill of Rights is to protect the right of each citizen to be able to reveal to his or her elected representatives in Parliament complaints concerning corruption, etc., in the certain knowledge that the parliamentarian will be absolutely free to raise that complaint in the Parliament. That is no longer the situation in this State.

To even allow the person aggrieved to demand the right to have a statement read in Parliament in response to an exposure is a very, very dangerous intrusion on parliamentary privilege. The next step will be a demand that that statement carry the privilege reserved under the Bill of Rights to the Parliament. When that happens, the 'rights' under the Bill of Rights will go out the window! Please do not allow the current press-created climate to panic the Parliament to make any inroads into your right to fearlessly speak out on behalf of those whom you represent.

The Senate will rue the day that it made this concession; and I don't want to see my State Parliament finding itself in the same situation. So, my plea is, 'Stand firm!' I have a special reason for wanting you to succeed in your appeal because, in 1958, I was threatened with expulsion from the Australian Workers Union for having made a speech in the House of Representatives on 14 May 1958 exposing ballot corruption and the tyrannical behaviour of the paid officials of an unnamed union.

He then goes on to detail his experience in relation to the Australian Workers Union. At the end of that letter he refers specifically to an action that he took in the Commonwealth Industrial Court where he was giving evidence in relation to the Australian Workers Union, and he was urged by his then counsel to claim parliamentary privilege. He continues:

I chose, instead, to waive parliamentary privilege and allow the court to determine the matter according to law. When I subsequently told the late Edward J. Ward MHR of my decision he told me I was wrong to have waived privilege and recalled his own experience before the royal commission hearing in which he was represented by John Barry KC (as he was then). In those proceedings Ward had volunteered to waive parliamentary privilege when questioned on the matter by counsel assisting the royal commissioner, at which point John Barry immediately sprang to his feet to object, saying that parliamentary privilege didn't belong to Ward: it belonged to his constituents, and he therefore had no power to give away that which was not his to give.

I conclude by re-echoing Barry's assertion that parliamentary privilege doesn't belong to the members of Parliament; it belongs to the people!

So, Mr Cameron—and I know of others—was firmly behind the Attorney-General in the action that he was taking not only in the Supreme Court but also in seeking leave to appeal to the High Court.

I want to turn to the issue of the ALP State convention, because that convention saw a dramatic change in the position of the Attorney-General. Publicly I have criticised the Attorney-General for weakening in the face of the onslaught from the big guns, Don Dunstan and others, because I think that he unfortunately bowed to some outside political pressure from persons who had a special interest in this matter not as constituents but because of their relationship with one of the parties to the action; but, that is an issue for another occasion. It is interesting that at the convention Mr Sumner argued quite strenuously—

The Hon. C.J. Sumner: Did you get a transcript of the speech?

The Hon. K.T. GRIFFIN: Yes.

The Hon. C.J. Sumner: You got a copy of it! I didn't get a copy.

The PRESIDENT: Order! The honourable Mr Griffin.

The Hon. K.T. GRIFFIN: Mr Dunstan made an impassioned plea in support of his former secretary—

The Hon. Barbara Wiese: Are expressions in this transcript as well?

The Hon. K.T. GRIFFIN: I can imagine what the expressions would have been like. He made an impassioned defence of his former secretary, Steven Wright, and was highly critical of the stand that the Attorney-General was taking. But, to his credit the Attorney-General responded—

The Hon. R.I. Lucas interjecting:

The Hon. K.T. GRIFFIN: Well, he responded quite vigorously. He was also supported by Mr Terry Groom. I am happy to make all of the transcript available in due course, but the relevant parts are as follows:

I would ask you to assume a situation where a member of Parliament is legitimately using privilege to expose something—organised crime. It might be a massive problem of occupational safety and health within a particular company; it might be a matter of environmental abuse; it could be any number of issues where, perhaps, a trade union shop steward, a member of the public, has come to that member of Parliament and has put a position to him that he wants raised in the Parliament. The member of Parliament then raises the issue in Parliament, but what if there are very strong and powerful interests out there that don't want this particular matter to be pursued outside of the Parliament or in the community?

What they can do is call the member out, call him for everything they like, accuse him of lying, accuse him of corruption—and what can the member do? The member has to cop it; because, if he sues, it will enable that powerful corporation, whatever it be, or the organised crime or the crooks; it will enable them to get at the member of Parliament, get behind the shield of parliamentary privilege and expose who gave them the information, what their sources were, etc. Now that, I think, is the critical issue—

The Hon. Anne Levy: He said it much better than you.

The Hon. K.T. GRIFFIN: That is all right.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Griffin.

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

Now that, I think, is the critical issue that we are concerned with. That is where I say that parliamentary privilege should be maintained. What we should be doing is providing adequate means for people to respond to issues that are raised in the Parliament, which is what my proposition does, and what the proposition does of giving people a right in the Parliament themselves, by a statement to respond . . . but my proposition gives people that right without undermining privilege and putting members of Parliament in a position where they can be attacked in the manner which I have outlined.

Then, later, he said:

So, in summary, the situation that I am putting is that we should have a position that is a principle which will allow full public debate on matters raised in Parliament without permitting courts to make rulings on the truth or motives of what is said in Parliament. In this case, I have argued that the member of the public has a qualified privilege for defending himself or herself from attack and, in addition to that, we should have a procedure

in the Parliament which enables people to go into the Parliament, to put a statement in the Parliament to respond to an attack.

The position of qualified privilege that I put means that, unless they are actuated by malice, members of the public can make a reasonable public defence of themselves or their position in response to an attack in Parliament, and they do not have to prove to a court that the response is true. They will only be liable to be sued if they are actuated by malice or if the response goes further than is necessary to protect themselves or their reputation. That's the position I have argued for, and when talking about the substance of this issue I believe it is a position that should be adopted by the Party. It is the position adopted by the Federal Parliamentary Caucus in the Parliamentary Privileges Act. It is consistent, what I have said, in fact on all fours with that particular Act.

The second issue I wish to deal with is: what is an appropriate procedure? Whatever our views are of the substance of the matter, and obviously there are differing opinions in this Party and within the community and, indeed, within the courts, there are different opinions. The procedure that I wanted to adopt was to take the matter to the High Court to enable the matter to be determined by the highest court in the land.

It is not just a matter that involves South Australia: it involves differing opinions within courts around Australia, and I think it would be important, it would be in the public interest, for the matter to be determined by the High Court. I have indicated the differing views that have been taken, and I think those differing views should be put to the High Court for decision.

In that context, I should say that that is a view with which I agree, and a view that I put—

The Hon. R.I. Lucas: Bipartisan.

The Hon. K.T. GRIFFIN: It is a bipartisan view.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: Then the Attorney-General indicated that the Government had undertaken to pay the costs of the litigants in taking the case to the High Court, and he says:

The Government has undertaken to pay the costs of the litigants in taking the case to the High Court because I think it is a matter of public interest for the issue to be determined by the High Court.

It is for that reason that Steven Wright's costs of the appeal to the High Court will be met by the Government quite legitimately, I believe, to enable an issue of this kind to be tested.

Again, I should interpose that I do not quarrel with that. It is an issue of public importance and it was quite proper for the Government to pay the costs of the defendants in litigating a very important public point, although I must say that now that he has withdrawn the issue of costs—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The Government is meant to represent the people.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: We are not debating that particular issue. I am merely saying that I agreed with the view that the Attorney-General took, that it was only proper in this case to ensure that the costs of parties to the High Court appeal, in light of his appeal, on an issue of public importance was paid. Then he goes on, in conclusion, to say:

I suggest to delegates that it would be an unfortunate precedent on the question of how we deal with this matter to pass the motion of this kind—

That is the motion before the ALP State Convention—

in the middle of what are court proceedings. I suggest to you that a rational approach is to enable the High Court to adjudicate on this matter, to hear the various arguments, and when the High Court has made its decision, then if the party is not happy, if the Parliament is not happy, if the community is not happy then we can have a debate about the principles that the matter should be dealt with by the High Court; we can have a debate about the substance of the matter at some later date if that is desired. But, if it is insisted that the matter be dealt with today, I would suggest that, for the reasons I have outlined, the position I have taken is a reasonable one and provides the citizen with the right of reply, but it does not attack parliamentary privilege and means that members of Parliament can be the subject of intimidation when going about their business.

I agree with what the Attorney-General put to the convention which is consistent with the view he put to the full Supreme Court and a view which, until last week, was going to be put by him to the High Court. However, now there is another member of the ALP Caucus who supported the Attorney-General—at least one—and that is Mr Terry Groom, the member for Hartley.

The Hon. R.I. Lucas: A member of the Left?

The Hon. Barbara Wiese: Another good speech.

The Hon. K.T. GRIFFIN: Yes. I do not profess to be able to present it with as much persuasiveness as Mr Groom.

The Hon. Barbara Wiese: We have heard this debate.

The Hon. K.T. GRIFFIN: It needs to go on the public record.

Members interjecting:

The PRESIDENT: Order! The honourable Mr Griffin has the floor.

The Hon. K.T. GRIFFIN: Mr Groom said: 'Thank you, comrade Chair'.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: He then said:

Delegates, I want to support the amendment by Chris Sumner. The position adopted by Chris is the same as that passed in 1987 by the Federal Act.

Then he went on to talk about the Murphy case, and he made some observations about the Lewis and Wright case which I do not propose to repeat here because I think, in some respects, they might be regarded as being in contempt of court.

Members interjecting:

The Hon. Anne Levy: You have privilege to say them.

The Hon. K.T. GRIFFIN: I know I do, but I am sensitive that I have not, in any way, attempted to deal with the merits of the case between the parties, and that is the way I want to keep it, because I think the issue of privilege is much too important to cloud with that issue of who is right and who is wrong in that particular case.

The Hon. T.G. Roberts interjecting:

The PRESIDENT: Order! The honourable member will address the Chair.

The Hon. K.T. GRIFFIN: Mr Groom then goes on to say, in respect of the Federal Act:

Delegate Dunstan's response may well be that South Australia should take the lead and alter the position from the Federal Act. I doubt that there will be an alteration of the Federal Act, and what we would be left with if delegate Dunstan's motion gets up is a position where Federal parliamentarians are able to have protection with regard to their sources of information and their motives but State parliamentarians can't. Members of Parliament must be able to speak in Parliament against corruption, malpractice, frauds on consumers, and also to defend people in State Parliament from unjustified attacks without fear of intimidation. This means, though, delegates, that you can't ask in court proceedings, whether started, whether initiated by the MP or not, you can't ask for the sources of an MP's information to be revealed nor question motives or intention of that member.

Then he goes on to deal with another matter, but it appears from the transcript I have that he was interrupted, presumably because what he was about to say had some hint of potential defamation. Then Mr Duncan steps in.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I can only presume, as it was something to do with that the commercial tenancies legislation and a very well-known large shopping centre, and he was going on to talk about some aspects of that.

Members interjecting:

The Hon. K.T. GRIFFIN: It probably dealt with parliamentary privilege, anyway. I should say that Mr Peter Duncan at the convention had a quite different view and I am surprised at that because, as a member in both State and Federal Parliaments, he has on occasions felt the need to use—

The Hon. R.I. Lucas: Avail himself of privilege.

The Hon. K.T. GRIFFIN: Avail himself of parliamentary privilege. It is interesting that those statements by those two State members of Parliament are consistent with the views which I put. Again, I can only express my disappointment that at least the Attorney-General and, I suspect, Mr Groom may have gone to water on the issue in the face of the ALP Convention carrying the Dunstan motion. However, I would hope that, in a select committee, away from those sorts of pressures, we can look at parliamentary privilege in the way it will affect the opportunities of members of Parliament, whether Government or Opposition, and whoever is in Government or Opposition or on the crossbenches, in the raising of issues of public importance.

I had the view that, although there was a legitimate point of view that there was some risk in taking the matter to the High Court, the issue was of such importance that it would be important for the High Court to rule on this issue of parliamentary privilege. Although the argument was presented that, in recent cases, the High Court has been seen to whittle down Crown privilege and the rights of the Crown, I would suggest that that has never yet been applied by the High Court to parliamentary privilege. I would be most surprised if the High Court, even comprising the sorts of judges who are now there and who have ruled on Crown privilege, would find itself in a position of agreeing with the South Australian Supreme Court. But I acknowledge quite freely that that was certainly a risk.

The issue was important for another reason in the High Court. As far as I could ascertain, two other legislatures were giving serious consideration to making representations to the High Court and at least one State Attorney-General was very seriously contemplating intervening also. They regarded the issue to be of such importance as to warrant submissions being made if the matter went on appeal to the High Court. As Mr Groom, the member for Hartley, said at the ALP State Convention, the difficulty now is that, in South Australia at least, the law is as fixed by the Full Supreme Court. Other States may find that that is a precedent which, although not binding, nevertheless is persuasive.

We may have a hotchpotch of determinations about parliamentary privilege across Australia, and I think that is undesirable. There is presently a distinction between the position under the Commonwealth Parliamentary Privilege Act of 1987, which supports the submission put by the Attorney-General on an earlier occasion, and what occurs in this or other States or Territories.

So, as the Attorney-General is no longer going to appeal, the only other person who can appeal is Mr Lewis. I make no observation on that except to say that, regardless again of the merits of the claim or counter-claim in that particular case, it is a burden on any individual litigant to have to take an issue of such public importance to the High Court, and I am disappointed that there is not governmental backing for that to occur.

Let me just say that in relation to this select committee—which, I gather, will be set up—I hope it will explore the Commonwealth Parliamentary Privilege Act of 1987. In the way in which it is structured, it does not override the Bill of Rights of 1688, but seeks to clarify aspects of it without compromising privileges which may not have been directly addressed in that legislation.

I would not want the select committee to finally conclude that the position of the Full Supreme Court is the position which ought to prevail in this State, because I think that is a serious weakening of parliamentary privilege. The select committee will give the media, which has a specific interest in this matter, an opportunity to make a submission, just as it will give people such as Clyde Cameron and Don Dunstan and others that opportunity.

The history of the development of parliamentary privilege is a fascinating one. I do not propose to deal with that on this occasion, although the select committee will obviously have to address the development of parliamentary privilege since 1688. It is necessary to have adequate protection for members of Parliament, in the future to be able to raise issues without fear or favour and I hope that this select committee will move towards achieving that objective. So, I commend to the Council the motion for the joint select committee.

The Hon. C.J. SUMNER (Attorney-General): I support the motion. The honourable member has outlined the history of this matter to the present time. I would refer any prospective researchers of this topic to the *Hansard* of the House of Assembly for further details of debate on it. I think it is sufficient for me this evening to provide to the Council the reasons for my decision to withdraw the appeal to the High Court. The best way that I can do that is by reference to a letter that I wrote to the Hon. N.T. Peterson M.P., Speaker of the House of Assembly on 12 July 1990, which was tabled by the Speaker in the House of Assembly. That letter stated:

> You will be aware of the recent public discussion about this matter—

that is, the parliamentary privilege case of *Lewis v Wright and Advertiser Newspapers Limited*—

> and in particular would have noted the opposition to the course adopted by me and agreed to by the House of Assembly. In particular, both major print media organisations, namely, the *News* and the *Advertiser*, have opposed our position on this matter. Also, at the most recent State Convention of the Australian Labor Party, the following motion was passed:
>
> (1) Members of Parliament must be able to speak in Parliament free from the fear of actions for defamation, and therefore the rules of parliamentary privilege must be maintained.
>
> (2) Subject to (1), in order to protect citizens from unfair attacks in Parliament, the Parliament should adopt procedures to supply swift redress, for example, by way of censure and/or apology, to any person who has been unfairly and unjustly defamed in Parliament.
>
> (3) In order to protect freedom of speech and the right to legitimate dissent, where a person criticises the action in Parliament of a parliamentarian, no rule of parliamentary privilege shall be applied so as to prevent that person from raising or proving any defence to an action for defamation brought by that member of Parliament which would be available to the defendant if the plaintiff were not a member of Parliament.
>
> As you are aware, I have sought the leave of the High Court to appeal from the decision of the Full Court of the Supreme Court of South Australia in these proceedings. Appeal books have been prepared and filed. It is expected that the application for special leave will be heard in the August sittings of the High Court in Adelaide in the week commencing 20 August. However, in the light of the public concern about this matter, I am currently considering whether or not that appeal should proceed. I would be grateful of receiving any representations you wish to make to me before I decide whether to withdraw my appeal.
>
> In considering this issue, you may care to take into account the following matters. You will note that the House of Assembly specifically declined to instruct me to arrange for counsel to appear for it and intervene on behalf of it at the hearing before the Full Supreme Court. Apparently, Liberal members of the House of Assembly were not prepared to countenance the Parliament appearing directly in those proceedings, although, as I have

indicated previously, there is a precedent for such a case (see, for example, *R. v. Murphy* [1986] NSWLR 18,24).

If I were to withdraw my application for leave to appeal, I believe that Lewis could make an application himself. Lewis was a respondent to the Full Court appeal. However, following my decision to appeal, Lewis advised that he would not appeal and would not appear to my appeal. The time for seeking leave to appeal is 21 days from the date of the Full Court judgment (Order 69A Rule 3 High Court Rules). That time has now well passed. However, the court does have the power to enlarge the time (Order 60 Rule 6 High Court Rules). The power to extend the time is discretionary, however, I consider it likely that Lewis would be granted an extension of time to file an application for leave to appeal if I determine not to proceed with my application or had discontinued it.

Although, as I have said, Liberal members of the House of Assembly apparently were reluctant to instruct the Attorney-General or independent counsel to intervene or to appear as *amicus curiae* in the Full Court proceedings, I believe that it would be possible for the House of Assembly to review this decision and to instruct counsel to so appear in the High Court proceedings. Leave to do this would have to be sought from the High Court. However, the Senate instructed independent counsel to appear and put argument on privilege in the criminal trials concerning Justice Murphy of the High Court (see above). In *R. v. Jackson* [1987] 8 NSWLR 116, counsel for the Speaker of the House of the Legislative Assembly appeared before me as *amicus curiae*. Accordingly, it is my view that the House through the Speaker may instruct counsel to appear and put argument in respect of privilege if the matter is heard by the High Court. It is not clear whether such counsel would be an intervenor or would appear as *amicus curiae*, but in both cases, leave would be required from the High Court so the capacity in which counsel could appear is probably not of great significance. Accordingly, it would be possible for the House of Assembly to instruct the Solicitor-General through the Crown Solicitor or other counsel to appear in the High Court on its behalf, and I am reasonably confident that leave to do this would be granted by the High Court.

In the light of the public criticism and, in particular, the reasons for the Full Court of the South Australian Supreme Court decision, the House of Assembly may wish to consider whether or not this is in fact an appropriate case in which to intervene before the High Court. In the judgments of the Full Court, King C.J. and White J. confined their restriction on parliamentary privilege to circumstances where a member of the Parliament sues a citizen who was responding to something said by that member in Parliament. In those circumstances, King C.J. and White J. held that the normal privilege accorded to members of Parliament in the courts could not be upheld and that the court in examining the full justification defence of the citizen was entitled to inquire into the truth, motive and sources of information of the member who raised the matter in Parliament.

The judgment of Olsson J. on the other hand amounts to an even greater restriction on what was considered to be parliamentary privilege. The judgment of Olsson J. has the effect that a parliamentarian cannot be prosecuted or sued for what is said in Parliament. However, the parliamentarian can be called as a witness, be cross-examined about what was said, be questioned about his/her sources of information, and judges can make determinations of whether the parliamentarian was telling the truth when speaking in Parliament. A parliamentarian can be called to give evidence in a private legal dispute, and the court can determine the truth or otherwise of the statements made by the parliamentarian in the Parliament that are relevant to that issue. This judgment is similar to that of Hunt J. in *R. v. Murphy* (above). It was this view of privilege which led the Federal Parliament to pass unanimously with support of all members and Parties, the Parliamentary Privileges Act 1987. That Act and the privileges granted by it are consistent with the position that I put to the Full Court of the South Australian Supreme Court. However, it is fair to say that the critics of my and the House of Assembly's position in this matter have argued that the Federal parliamentarians could not have contemplated the particular circumstances of the Lewis and Wright case, and have argued that they would have limited the privilege more in line with at least the judgment of the South Australian Full Court in *Lewis v. Wright and Advertiser Newspapers Ltd.* This, of course, must be a matter of pure conjecture.

It seems to me that the House of Assembly must consider whether in the light of criticisms made of its position, it would be wise to intervene in these proceedings. Indeed, Lewis himself might well consider whether it is appropriate to continue. My concern is that this is the worst possible case on its facts to use as a vehicle to test the extent of the parliamentary privilege. The extreme position adopted by Lewis, namely, that no reference can be made to the parliamentary proceedings at all before the court is manifestly unjust. Even the position adopted by me and the House of Assembly has been the subject of criticism, although, in my view, the defence of qualified privilege for which we have argued was the correct one.

The House of Assembly might wish to consider whether or not it should intervene in these proceedings or whether a more appropriate course of action would be either for Lewis to withdraw his proceedings or for the House of Assembly to waive its privilege in this case. Regrettably, there have been some notorious cases of the abuse of privilege in recent times, and it is likely that the courts will take a more activist view in intervening on privilege where abuses are allowed to go unchecked by the Parliament itself. In retrospect, in this particular case, it might have been better for the House of Assembly to have examined Lewis' claim for privilege, and if dissatisfied with the approach taken by him either encouraged him to withdraw the proceedings or to have waived the privilege. In this way, this manifestly unjust position would have not got before the courts and placed the whole question of what was considered to be parliamentary privilege in jeopardy. These options would, of course, still be open for the House of Assembly to consider at this stage.

On the question of waiver of privilege, it is unclear whether Parliament can waive its privilege. The terms of the Bill of Rights do not admit of any waiver and, so far as I can ascertain, no Parliament has ever attempted to waive the privilege, so there is no precedent to be used for a guide. The Crown Solicitor before the Full Court argued that privilege could not be waived. However, I think that the better view is that privilege can be waived, but that an effective waiver must be made by both the House and the relevant member. I think this situation is analogous to the privilege that no person is compellable to give evidence in respect of the matter occurring in the House. This privilege may be derived, at least in part, from the privilege of freedom of speech (see Erskine May [20th Ed.] pp. 83-84). It is clear that this privilege may be waived but both the member and the House must do so (see Erskine May [20th Ed.] pp. 741-742). I consider that it could not be the case that the House could, by itself, waive the privilege. To so allow would mean that the Party having a majority in the House could effectively stifle Opposition debate by leaving the Opposition open to a suit for defamation. The House of Assembly may wish to take further advice on this topic.

In summary then, in the light of the public criticism of the position taken by me and the House of Assembly in this matter, I am currently considering whether to proceed with the application for leave to appeal to the High Court. In doing so, I will be considering the matters referred to above and would also suggest that you and members of the House of Assembly might give further consideration to its approach to this matter.

I would be grateful of the opportunity of discussing this with you and representatives of the other Parties in the House of Assembly. I have sent a copy of this letter to Mr Dale Baker, MP, the Leader of the Opposition, Mr Martyn Evans, MP, Mr P. Blacker, MP, and the Labor Party Whip, Mr John Trainer, MP.

There was other correspondence, to which I will not refer, and there were discussions between a number of members of Parliament about this matter. However, on 7 August 1990 I wrote another letter to the Hon N.T. Peterson, MP, Speaker, as follows:

Dear Mr Peterson,

Re Parliamentary Privilege
(Lewis v Wright and Advertiser Newspapers Ltd:)

I refer to my letter of 12 July 1990. I have now had the opportunity of further considering this matter.

In that letter I indicated my concern about proceeding with an appeal to the High Court in the light of the criticisms made of the position adopted by me and the House of Assembly in the South Australian Full Court. The criticism has been made despite the fact that in my view the position would have allowed an effective defence to Wright and Advertiser Newspapers. I am also concerned that the actions of Mr Lewis, MP, in taking these proceedings for defamation, and arguing to totally deny the defendants any effective defence, has brought the concept of parliamentary privilege into disrepute.

I repeat my concern that this is the worst possible case on its facts to use as a vehicle to test the extent of parliamentary privilege. It seems to me that a more prudent course is for the appeal not to proceed (indeed, if possible, for the whole proceedings to be dropped) and for Parliament to consider the issue of privilege unencumbered by the potentially unjust case which is currently before it. The Parliament could then consider whether legislation to cover privilege should be introduced.

Accordingly, it is my view that the appeal to the High Court should not proceed and I advise that I intend to withdraw it.

It should be remembered that I only became a party to the proceedings by intervening in the Full Court to assist the court with argument on the extent of parliamentary privilege. Mr Lewis, MP, is the instigator of these proceedings and as plaintiff is one of the principal parties before the court. Whether he decides to seek leave to appeal is a matter for him.

I then asked the Speaker if he would advise the House of my decision and table this letter of 7 August and my letter of 12 July.

I think that brings the matter up to date as regards the decisions that I have taken and the reasons for them and adequately explains why, in my view, the Parliament should now consider this issue in the manner that has been suggested by the Hon. Mr Griffin, that is, by the establishment of a joint select committee. That will enable submissions to be made and for members of Parliament to consider the issue in a dispassionate manner divorced from the emotions of the case which has provoked this situation.

It will then be for the joint select committee and for the Parliament to determine whether or not a Bill, similar to the Parliamentary Privileges Act 1987, should be introduced, or whether a Bill that in some way differs from that Act should be introduced, to deal with the issue of privilege. It seems to me that in some way or other, given that the Federal Parliament has done it, there is probably a case for codification of the law relating to parliamentary privilege. Of course, the content of that code can be considered by the joint select committee that will be established with the passage of this motion.

The Hon. I. GILFILLAN: I express Democrat support for the motion and the establishment of the joint select committee. I acknowledge, with respect, the contributions to the issue from two erudite colleagues, the Hon. Trevor Griffin and the Hon. Chris Sumner. It is an esoteric area for an ordinary member to analyse in precise detail, and it will be a difficult concept for the public to grasp enthusiastically. Indeed, it may be open to some criticsm from the media, in that it may appear that, from self-interest, politicians are attempting to establish some impregnable barrier around the words that they express in Parliament.

However, the longer I am in this place the more I realise that one of its cardinal virtues is that of all the places in the land this is a place where members representing the population, the people, can say without fear or favour what they believe to be right.

It is a good step, however, that it got to this point and that the issue will be analysed away from a particular case where emotions and prejudices can come into play. I admire the Attorney's steadfastness in the face of strong emotional forces that blow from various quarters within his own Party. It augurs well for the objective analytical way that the work of this select committee will be addressed. I would like to endorse strongly the work of the select committee and wish it well. I have not been involved in any discussions as to who specifically will be involved in it, but I trust my colleagues in both places to come up with a constructive and helpful result. I enthusiastically support the motion.

The Hon. K.T. GRIFFIN: I welcome the indications of support for the select committee, and I hope it will be a constructive one where we do achieve some lasting protection of parliamentary privilege. The Attorney-General read into *Hansard* two letters, and I think it is important that I read a further letter that is not from the Attorney-General but from Mr Stephen Baker, the Deputy Leader of the Opposition, to Mr Peterson, who quite properly forwarded to the Opposition the Attorney-General's letters to which he has just referred.

The view that Mr Baker expressed to Mr Peterson in reply ought in my view to be put on the record in this Council. It is already on the record in the House of Assembly, but I think it is an important addition to an appreciation of the sequence of events if I put it on the record in this Council. I must say that it is a letter in the preparation of which I had a great deal of involvement. I quote the letter to Mr Peterson, the Speaker of the House of Assembly, dated 8 August, as follows:

Dear Mr Peterson.

Thank you for your letter of 7 August 1990 enclosing two letters from the Attorney-General in relation to his appeal to the High Court in *Lewis v. Wright and Advertiser Newspapers Limited.* My Party was disappointed to read of the Attorney-General's decision in this morning's *Advertiser* newspaper before the letters are tabled in the House of Assembly.

The Attorney-General's decision not to proceed is a serious blow to parliamentary privilege. Initially, the Attorney-General intervened in the Supreme Court appeal without reference to the House. Subsequently, the House unanimously supported that intervention as *amicus curiae* and the argument which he presented. Now, in the face of pressure from unelected members of the ALP State Convention, he has buckled under and withdraws an appeal which sought to maintain the reasonable position unanimously agreed by the House of Assembly, a position, incidentally which also prevails under the Federal Parliamentary Privilege Act. In addition, he has yielded to what he claims are views of both the *News* and the *Advertiser*, one of which has a direct interest in the litigation.

The Liberal Party held the view at the time when the Attorney-General first raised this issue that it was not constitutionally proper for either House of Parliament to become a party to the proceedings and thus subject to the jurisdiction of the court. And, as the Attorney-General had already intervened and was putting arguments to the Supreme Court which were consistent with the unanimous views of the House of Assembly, it was not believed necessary for the House also to put the same view through counsel as *amicus curiae.* Now, by his decision to desert the House of Assembly, the Attorney-General has betrayed the confidence we had that he would endeavour to protect and support the privileges of the Parliament without fear.

On the advice which we have it is not possible for the House of Assembly to appear as *amicus curiae* before the High Court if there is no appeal. Whether or not Mr Lewis takes over the burden of the appeal at substantial personal cost to argue on behalf of all members of Parliament and the public is a matter for him. It is most unfair and unreasonable for the Attorney-General to attack Mr Lewis and blame him for the raising of the issue of privilege. He has not brought parliamentary privilege into disrepute as asserted by the Attorney-General. Such an attack is unwarranted and seeks to divert attention from the Attorney-General's own lack of action. To suggest, as he does, that this is the worst possible case to resolve the question is a nonsense and seeks only to cloud the issue.

Whether it was Mr Lewis MP or some other member of Parliament who made allegations in Parliament about any person, whether Mr Wright (a member of the ALP) or anyone else, is of no consequence. The fact is, it could have been any member who raised an issue which, if raised outside Parliament, would not have been protected by parliamentary privilege. It could have been any person so named who responded outside Parliament in terms which may have been intemperate, even defamatory. In those circumstances, the member of Parliament would only be able to sue to prevent the continuation of defamatory remarks or for damages if the member of Parliament is prepared to be cross-examined as to sources of information, motives and the truth of the allegations made in Parliament. Such a prospect may well intimidate members when in the public interest issues should be raised. Two specific issues spring immediately to mind: Mr Peter Duncan's statements, when a member of the State Parliament, in relation to Mr Saffron and questions last year relative to Mr Burlock.

My Party has no difficulty with a citizen named in Parliament responding outside Parliament in temperate terms but believe that it is prejudicial to the democratic process if abusive and defamatory terms are used in such responses. I hope that all members reflect upon the consequences of allowing the full Supreme Court judgment to stand unchallenged. It compromises the right of any member of Parliament to raise important issues whether they relate to corruption, collusion, maladministration or other areas of public concern. And the consequences apply

whether one is in Government or Opposition or is an Independent.

One can appreciate some nervousness on the part of the press about the Attorney-General's appeal, but I suggest that such nervousness is unnecessary and any criticism is unfounded on closer examination of the issues. It should be remembered that the press is protected by qualified privilege to report matters raised in Parliament and that is as it should be. On many occasions the press regard a matter as one of considerable public importance but because of defamation laws won't report it unless it is raised first in Parliament. If the issue is raised by a member based on information supplied by the press and the response by the person named is abusive and defamatory, the honourable member may be discouraged from pursuing the issue or may not be able to prevent a repetition of the abuse or defamation unless he or she is ultimately prepared to disclose sources and be cross-examined on motives and substance. Even the press will ultimately be compromised by that. I conclude by expressing again my Party's grave concern about the Attorney-General's decision.

The letter makes reference to a motion in the House of Assembly and a desire that it be tabled at the same time as the Attorney-General's previous correspondence is tabled in the House of Assembly. That sets the full picture before the Council and I hope that we can be successful, as I said earlier, in achieving the objective of proper recognition and protection of parliamentary privilege. As Mr Clyde Cameron said, it does not belong just to us or to Parliament but to the people.

Motion carried.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

The Hon. BARBARA WIESE (Minister of Tourism) obtained leave and introduced a Bill for an Act to amend the Administration and Probate Act 1919. Read a first time.

The Hon. BARBARA WIESE: I move:

That this Bill be now read a second time.

It deals with the amendments to the Administration and Probate Act 1919 ('the Act') concerning the commissions, charges and fees made by the Public Trustee.

The Public Trustee charges:

(a) Capital commission calculated as a percentage of the amount involved in administering an estate. With two minor exceptions, the capital commission rates are fixed rates rather than maximum rates.

(b) Income commission calculated at a fixed percentage.

(c) Fees in respect of a number of services, for example, the preparation of tax returns. These fees are generally maximum fees.

At present the Public Trustee is not able to charge capital commission at a rate less than that specified in the regulations unless court approval is obtained. The Public Trustee now seeks authority to charge capital commission up to a maximum rate as opposed to a fixed rate. This would enable the Public Trustee to reduce capital commission on the grounds of hardship or equity in a particular estate, reduce capital commissions for all estates or for all those in a particular class of estate. In addition, reduced capital commission is sought on the share of the proceeds of the sale of a matrimonial home payable to a surviving spouse. At present the reduction applies only to transfers to a surviving spouse.

In respect of the fees prescribed in the regulations, the maximum rates have not been adjusted for inflation since the last review in 1982. As a consequence they require revision to reflect more accurately the cost of providing those services and market rates charged by other organisations for similar services.

A proposal is currently being considered that will enable the Public Trustee to be in a position to rely less on commissions and more on fees, with the result that a charging system may be developed in which charges more closely relate to the cost of providing those services for which a charge is made. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 amends section 112 of the principal Act. Section 112 authorises the Public Trustee to charge a commission and fees in respect of any services provided. Subsection (6) empowers the Governor to fix a scale of commission and fees for the purposes of the section. This clause strikes out subsection (6) and substitutes a new subsection that confers a broader power to prescribe fees. Under the new subsection the Governor is empowered to fix a commission or fee for the purposes of the section, but is also empowered to fix a maximum or minimum commission or fee. Where a maximum or minimum is set, the Governor may authorise the Public Trustee to determine the amount applicable to any given case, subject to that maximum or minimum. The clause also makes a consequential amendment to subsection (5) and deletes an interim provision (subsection (7)) that has become redundant.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

LANDLORD AND TENANT ACT AMENDMENT BILL

The Hon. BARBARA WIESE (Minister of Tourism) obtained leave and introduced a Bill for an Act to amend the Landlord and Tenant Act 1936, and to make a related amendment to the Commercial Tribunal Act 1982. Read a first time.

The Hon. BARBARA WIESE: I move:

That this Bill be now read a second time.

It amends the Landlord and Tenant Act by improving the level of disclosure to those who propose entering into commercial leases in respect of premises from which retail businesses are conducted and by expanding the protection given to tenants under leases executed by them. It replaces a similar Bill introduced earlier this year which itself replaced a Bill introduced at the end of the last Parliament by the Attorney-General. These revised Bills reflect a number of submissions made by interested parties in particular, some amendments designed to improve the drafting of the legislation proposed by the Building Owners and Managers Association.

The Statutes Amendment (Commercial Tenancies) Act 1985, gave to tenants, under leases having a rental of $60 000 per annum or less, certain rights including the right to refer disputes to the Commercial Tribunal, a limitation on the amount of bonds, and other protections.

Many complaints have been made by tenants about the actions of some landlords to members of Parliament and the Department of Public and Consumer Affairs since the Act was passed. In 1988 the Government asked the Commissioner for Consumer Affairs to establish a working party consisting of persons representative of landlords and tenants to consider whether legislation relating to retail premises

leases should be amended. In this Bill certain of the recommendations of that working party are adopted.

The level of complaints by tenants has prompted the Government to take action in relation to the legislation. The types of complaints reveal a lack of appreciation by many tenants of the effect of lease documentation executed by them. The Bill therefore provides for a better standard of disclosure to tenants before lease documents are signed.

The Bill allows tenants to obtain a lease for a minimum five year term. The creation of a minimum five year term for all leases affected by the legislation (if required by the tenant) will alleviate a major concern of tenants, namely, that tenants are not able to secure a reasonable lease term over which to write off expenditure on fixtures and fittings incurred at the commencement of a lease. Also, the opportunity to sell the goodwill in a business at least early in a five year lease term will be afforded by the minimum five year term.

Representatives of landlords support the notion of better disclosures to potential tenants but oppose granting to tenants the right to have a five year minimum term if required by them. It is argued that the minimum term represents an unwarranted intrusion into the market for the leasing of retail premises, will discourage development in South Australia and will disrupt the optimisation of tenancy mixes in large shopping centres. It should be noted, however, that in Victoria and Western Australia tenants have the right to a five year minimum term. A draft code of conduct under the New South Wales Fair Trading Act proposes a similar right,

This Bill reflects submissions made on the Bill tabled in the last Parliament by exempting family arrangements and short-term tenancies where independent legal advice has been sought from the five year minimum term provisions. The Government concedes that it is desirable to insert these specific policy exemptions into the Act rather than leaving them to individual applications to the Commercial Tribunal for exemption (probably with the consent of both parties) under section 73 of the Act. The Bill also now makes clear that holding over beyond an initial minimum five year period should not, of itself, give rise to a possible further five year term. The original Bill's provisions have also been amended to provide for clearer and potentially longer notice of tenants' applications to extend lease terms.

Problems have also arisen in relation to the registration of leases under the Real Property Act. In order to make leases definitely enforceable by a tenant against the successor in title of a landord, registration of lease is necessary. Some landlords include provisions in leases the effect of which is to prevent registration. The Bill includes a provision which renders void any provision in a lease preventing registration and requiring landlords to sign leases in registrable form. Representatives of landlords and tenants support this proposal.

The other major issue to be addressed in the Bill is the scope of the Act. At present, the provisions of the Act apply to all leases under which the rental payable is $60 000 per annum or less. A majority of the working party recommended that, in lieu of a rental limit, the determinant of whether a lease should be affected by the legislation would be whether that tenant employs 20 persons or less. The suggestion was made because the majority of those consulted in relation to the matter believed that, on the assumption that it is desired to protect 'small business tenants', the best way to do so is to use a determinant which is directly related to whether a business is small. The Small Business Corporation uses the 20 person level as the determinant of whether a business is small or not.

While appreciating this view, the Government considers that introducing the notion of determining whether a lease is affected by the legislation by reference to the number of persons employed may lead to confusion and misunderstanding. Linking protections offered under this Act to employment levels is also considered to be a disincentive to employment. The Bill therefore retains the notion of a monetary limit being the determinant and increases the current limit to $200 000 per annum. This course of action is generally supported by representatives of small businesses.

In response to submissions on the original Bill the Government has also decided that public companies and their subsidiaries do not need the protection of this legislation and they will be specifically exempted.

The Bill also addresses the circumstances under which a landlord can require a tenant to move his or her business during the term of a tenancy. In connection with the proposal for a minimum five-year term, and as a result of comments made in the working party's report, the Bill will allow a landlord to request that a tenant move his or her business to other premises within a shopping complex if the term of the tenancy has been extended under the Act. Furthermore, the Bill will require a landlord to give a tenant at least three months' notice before he or she can require the tenant to move (whether that requirement is exercised after an extension under the Act, or by virtue of the terms of the tenancy). A tenant will be entitled to apply to the Commercial Tribunal if a dispute arises with the landlord. The Government considers that these provisions will provide a fair balance between the interests and rights of landlords and the interests and rights of the tenants.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 amends the definition of 'shop premises' to include expressly business premises at which services are supplied to the public. The amendment is proposed as a result of comments made by the Supreme Court in *Hilliam Pty Ltd v. Mooney and Hill* (143 L.S.J.S. 386). In this judgment, the Supreme Court considered existing paragraph *(b)* of the definition of 'shop premises', which refers to business premises 'to which the public is invited with a view to negotiating for the supply of services', and questioned whether the words 'negotiation for the supply of services' might restrict the scope of the definition in some cases. The Government considers that the relevant definition should apply to any business premises at which services are supplied to the public, whether or not negotiations are also conducted on those premises. Other definitions are included as a result of other amendments to the principal Act proposed by this Bill.

Clause 4 amends section 55 (2) of the principal Act to exclude certain companies from the operation of the commercial tenancy legislation. Another amendment will allow the regulations to exclude agreements from the operation of the provisions of the Act subject to conditions prescribed by the regulations.

Clause 5 revises section 56 of the principal Act. Section 56 vests exclusive jurisdiction in the Commercial Tribunal to hear and determine any claim that arises under or in respect of a commercial tenancy agreement. It is proposed to clarify the relationship between this jurisdiction and the

jurisdiction of the courts and to revise the procedures that apply under this provision. Under the existing section, a person must begin proceedings in the Commercial Tribunal and then if the proceedings involve a monetary claim in excess of $5 000, the proceedings must, on application by a party to the proceedings, be transferred to a court competent to hear and determine a claim for the same amount founded on contract. The new section will provide that proceedings should be commenced in a court at first instance in some cases. The provision will allow proceedings to be transferred from one forum to another if the character of the action changes during the course of the proceedings, or if it is appropriate to do so because of cross-claims. As is the case with existing section 56 (3), a court in which an action involving a claim under or in relation to a commercial tenancy agreement is commenced will be entitled to exercise the powers of the Commercial Tribunal under this legislation. Finally, new subsection (8) clarifies the relationship between Part IV of the Landlord and Tenant Act and the remainder of the Act. The exclusive jurisdiction of the Commercial Tribunal under Part IV of the Act was confirmed by the decision in *Hemruth Advertising Pty Ltd v. John Karafotias Anors.* In that decision, the Honourable Acting Justice Lunn said 'Upon a reading of the Act as a whole, and the Commercial Tribunal Act 1982, it makes good sense to construe the legislation as a complete code for dealing with all disputes relating to commercial tenancies. The efficient operation of a specialist tribunal with powers to conciliate and to resolve disputes in an expeditious and inexpensive way would be partly defeated if parties to such a dispute could resort to other courts as they saw fit'. This provision is consistent with that view.

Clause 6 proposes the insertion of two new provisions into the principal Act. Under proposed new section 61a, a landlord will be required, on the request of a tenant who is entering into a commercial tenancy agreement for a term exceeding one year, to prepare a lease in registrable form and to have the lease registered. A provision in a commercial tenancy agreement that purports to prevent registration will be void. The Commissioner for Consumer Affairs in his May 1989 report on the commercial tenancies legislation noted that the Law Society supported a proposal that would allow a tenant to require that his or her tenancy agreement be in registrable form. The registration of a lease provides the best protection for a tenant if the landlord transfers his or her interest in the premises to another person. However, there is no need to apply the provision for agreements where the term does not exceed one year as section 119 of the Real Property Act 1886, provides that every registered dealing with land is subject to a prior unregistered lease for a term not exceeding one year to a tenant in actual possession. Under proposed new section 61b, if a landlord requires that a commercial tenancy agreement be prepared by himself or herself, or by his or her representative, the costs for the preparation of the document, and for any associated attendances on the tenant (as described in subsection (3)), will be borne by the landlord. If the tenant has asked that the agreement be in registrable form, and the landlord is undertaking the preparation of the document, the costs for the preparation of the document, and for any associated attendances on the tenant (as described in subsection (3)), will be shared equally between the landlord and the tenant.

Clause 7 revises section 62 of the principal Act. In particular, where a commercial tenancy agreement is prepared by the landlord (or his or her representative), the landlord will be required to give to the tenant a written statement in the prescribed form specifying the information required by the regulations, and advising the tenant to read and sign the statement, and to read the proposed commercial tenancy agreement, before he or she executes the commercial tenancy agreement. If a landlord fails to provide such a statement, provides a statement that is not true and correct, or fails to provide the tenant with a copy of the commercial tenancy agreement, the tenant will be able to apply to the tribunal for relief. This proposal was put up by the working party established by the Commissioner for Consumer Affairs and was a major recommendation in his report.

Clause 8 makes a technical amendment to section 63 of the principal Act. It has been argued that section 63 could extend to a provision in a contract of sale of a business (conducted in premises subject to a commercial tenancy agreement) that requires the purchaser to pay an amount for goodwill or stock. This is not intended under section 63. It is therefore proposed to amend the section to clarify that it only extends to a provision under an agreement between a landlord and a tenant in respect of the sale or assignment of a business or rights under a commercial tenancy agreement.

Clause 9 proposes an amendment to section 66 of the principal Act on account of the decision in *Hilliam Pty Ltd v. Mooney and Hill.* That case is authority for the proposition that the warranty under section 66 relates to the condition of the demised premises at (or immediately before) the commencement of the tenancy. The amendment will make the warranty a continuing warranty of structural fitness that will continue even if the tenant assigns his or her rights under the commercial tenancy agreement, or sublets the demised premises. However, it will be a defence to a claim under section 66 to prove that any change in the structural suitability of the premises is attributable to the acts or omissions of another.

Clause 10 inserts a new section 66a that relates to any commercial tenancy agreement that does not provide for a term of at least five years, including any extensions or renewals (other than where the tenancy is for no more than two months and the tenant has received independent legal advice to exclude the operation of the provision or where the landlord and the tenant are related in a prescribed fashion). Under such an agreement, the tenant will be entitled to apply to the landlord for an extension of the term so that it expires on the fifth anniversary of the date on which the tenancy first took effect (or on some earlier date). If the landlord or the tenant cannot agree on the terms of an extension of the tenancy, either party may apply to the Commercial Tribunal for a resolution of the matter.

In order to assist a landlord determine a tenant's intentions under this provision, the landlord will be entitled to serve a notice on the tenant requiring the tenant to decide whether or not the tenant will make application under the provision. The tenant will then have 21 days in which to initiate an application to the Commercial Tribunal. Furthermore, new section 66ab will regulate the circumstances under which a landlord can require a tenant to move his or her business during the term of the tenancy. Subsection (1) will allow the landlord to exercise such a right if the term of the tenancy has been extended under new section 66a. This provision is intended to provide a reasonable balance between the interests of landlords and the interests of tenants. Under subsection (2), a landlord exercising any right to require a tenant to move his or her business will be required to give the tenant at least three month's notice of his or her proposals. This right may arise under subsection (1) or exist in the lease. (It is common practice for landlords to include in leases a provision that allows the landlord to require the tenant to move his or her business to other premises.) The Government is keen to ensure that

a tenant is given adequate notice in these cases. The tenant will be entitled to apply to the tribunal for relief.

Clause 11 clarifies the rights and liabilities of a landlord to deal with goods that have been left on premises after the termination of a commercial tenancy agreement. The new section is based on a similar provision in the Residential Tenancies Act 1978.

Clause 12 amends section 68 of the principal Act in conjunction with the review of the operation of section 56 of the Act. It is also intended to clarify that a party to a related guarantee can apply to the Tribunal for relief. The Tribunal will be empowered to restrain the breach of any law, or to ensure compliance with any law, and will also be able to make other orders as it thinks fit. (Such powers are necessary in view of the nature of the Tribunal's jurisdiction).

Clause 13 amends section 70 (2) of the Act to delete the requirement that the tribunal must be consulted before income derived from the investment of the Commercial Tenancies Fund is applied under the Act. The relevant provision relates to an administrative or policy matter and it is preferable that the tribunal not be involved.

Clause 14 will allow proceedings for offences to be commenced within two years after the alleged offence (unless the Minister allows an extension of this period).

Clause 15 will enable regulations to prescribe codes of practice to be complied with by landlords and tenants.

Clause 16 provides for a revision of the penalties under the principal Act.

Clause 17 makes a related amendment to the Commercial Tribunal Act 1982. During the review of the Landlord and Tenant Act 1936, it has become apparent that it would be appropriate to allow a party to proceedings before the Commercial Tribunal to obtain a default judgment in certain cases. The amendment would allow appropriate regulations to be made under the Commercial Tribunal Act 1982.

Clause 18 is a transitional provision.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

NATIONAL FREIGHT INITIATIVE

The Hon. DIANA LAIDLAW: I move:

That this Council—

1. Endorses the recommendation in the report 'National Freight Initiative' by consultants Booze-Allen and Travers Morgan in relation to the establishment of a national rail freight organisation to perform the interstate rail transport task;

2. Considers that the Adelaide-based Australian National has the proven expertise and vision to be the manager operator of a national rail freight business; and

3. Requests the President to convey this motion to the Prime Minister and the Federal Minister of Land Transport.

Yesterday, I was fortunate to hear an address by Sir Arvi Parbo, Chairman of BHP, Western Mining Corporation and Alcoa, on the theme of the changing world. In part, he stated:

> It is important for us to deal with the reality of change. Much of our thinking, our institutions, trade, diplomacy, economics, teaching, party platform and union strategies are geared to circumstances that have passed us by.
>
> We should not fear changes, which present opportunities, as well as threats. The major message for business, labour, government and all concerned with living standards, is that we can only succeed if we accept that we are operating in a global market place and that, however hard it will be, nothing less than the best world competitive standards will bring success.

Sir Arvi's message is pertinent to the issue of the National Freight Initiative (NFI) the objective of which is to establish a national rail freight business under a single management, providing profitable and competitive interstate services. The NFI arose from the findings of a committee established in October 1989 to evaluate strategies (six in all) for a viable interstate rail freight business. The committee comprised representatives of the five Government-owned railways, the ACTU, BHP, the three major freight forwarders (TNT, Brambles and Mayne-Nickless), plus Mr Ted Butcher, representing the Federal Minister for Land Transport, Mr Bob Brown. To assess the strategy scenarios the committee commissioned Travers Morgan Pty Ltd and Booze-Allen & Hamilton (Australia Ltd) to report on the financial and economic benefits of each strategy and the pre-conditions required to achieve these benefits.

In April the committee accepted the consultants' conclusions that a single enterprise responsible for all national freight could become profitable within a reasonable time, and could yield substantial national economic benefits, provided that certain pre-conditions were met. Subsequently, the committee put this proposal to all Federal and State Governments and, as part of the consideration by all Governments, a further report was released last Friday, 10 August, outlining in broad terms a proposed implementation plan. I note, however, that the latest report does not address corporate and management structures—matters which are central to the second part of my motion.

Mr Acting President, I move the motion this evening because I and my Liberal colleagues support the need for a national freight organisation in Australia. We also believe that if the Federal and State Governments across Australia embrace the idea of a national freight business under a single management structure that Australian National, in a restructured form, is the most appropriate body to manage and/or operate the business. Federal, State and Territory Ministers of Transport are to meet in Hobart early next month to determine their views on the NFI proposals. It is opportune therefore that this Council determine our view on the NFI.

Of course, if members endorse the motion, we will be providing the Minister of Transport, Mr Blevins, with the opportunity to present a bipartisan view on this important issue, assuming that the NFI is a proposal that has the Government support. Part of my reason for moving this motion is to determine the degree of that support. Also, I suggest that the time is opportune for South Australia to push strongly for Australian National to be the single operator manager of the line. As I have said, the NFI committee, in its report released last week, did not address the corporate and management structure for the proposed national organisation, which is to be responsible for the national rail freight movements.

As I understand from speaking to Mr Butcher in the past, one of the reasons why the committee has not made such recommendations to date is the sensitivity on the part of State rail authorities who are rather nervous, I understand, by the aggressiveness that AN has shown in the past in its operations. It is believed that the most important thing at this stage is to get all State and Federal Governments to agree to the concept of a national freight initiative. After they have that agreement, they would look at the corporate and management structure.

As I said, it is considered that, if AN was pushed as the national operator at this stage, the Federal and State Governments would have some difficulty even reaching agreement on an NFI. In the opinion of the Liberal Party, AN has the proven expertise and vision to be responsible for the management and operation of the national rail freight business.

On this matter, we are not simply taking a parochial perspective, although I acknowledge that any decision to assign the headquarters of the new business in Adelaide will bring lasting benefits to the State. In fact, a restructured Australian National was nominated last November by the House of Representatives Standing Committee on Transport, Communications and Infrastructure, in its report titled 'Rail—Five Systems, One Solution', as the body to operate interstate freight and passenger services in Australia. In assessing the efficiency of Australian National's East-West operations, the House of Representatives Standing Committee listed the following obstacles in the way of sending a container from Sydney to Perth: three non-integrated rail systems; four changes of locomotives; five different safe working systems; six different sizes of loading gauge; 10 different engineering standards; and 12 or more hours at sidings or junctions for crew changes, refuelling and inspections.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That as well. The Minister of Local Government made a very wise and pertinent interjection. It is a horror list of inefficiencies. This list of inefficiencies is part of our heritage but it is one aspect of our heritage that I am not interested in seeing maintained. Our colonial forefathers have—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, in this case, that is true, and I hope there will be bipartisan support in opposing our heritage in this matter. Perhaps I will have the support of the Minister, because it was really our colonial forefathers who loaded us down with a ridiculous mess of rail systems which are coupled loosely and with much obstruction at State borders. We now have a patch-up job for what should be a true trans-continental freight and passenger railway.

Some 18 months ago, Dr Fred Affleck, AN's assistant General Manager for Corporate Relations, outlined AN's vision for the operation of a trans-continental railway system. He stated:

> What we would like to do is operate trains between capital cities—from Sydney through Port Augusta all the way to Perth. At the moment we operate only between Broken Hill and Kalgoorlie. Westrail takes over at Kalgoorlie and New South Wales' State Rail Authority at Broken Hill. This means we cannot control the standard of service over the whole distance. We cannot control the timetables or the crewing. We have to change locomotives at the borders. We cannot control the cost levels in terminals or the way terminals are run or the equipment they use.

At the time Dr Affleck outlined this vision, his words sounded like wishful thinking, but over the past 18 months AN has been busy in redressing the mess arising from our current substandard trans-continental rail system. For instance, AN and Westrail have made moves to integrate their services, although these moves have gone into limbo in more recent times because the Western Australian Government has been occupied in cleaning up other financial messes.

Also, some progress has been made with the New South Wales State Rail Authority. Some New South Wales locomotives now run through to Adelaide and the State Rail Authority is establishing mainline fuelling between Broken Hill and Parkes, plus some new loops. Both these initiatives will save time and allow Australian National to run much longer trains to and from Sydney, and many members would be familiar with AN's new road railer initiative. I have also had the opportunity to see the piggy back system and the five-pack system that AN operates, initiatives from the United States that it has introduced in recent times.

In addition, AN and Victoria's V-Line are talking about the standardisation of the Melbourne to Adelaide route. Of course, AN still has possession of Tasmania's railways and operates a highly successful Ghan line from Adelaide to Alice Springs.

This outline reveals that AN already owns or operates about half the main inter-city rail lines in Australia and is in the throes of discussing options for its trains to run over the other half. AN has also introduced a number of innovative reforms to improve the efficiency and effectiveness of its service. In April of this year, AN completed laying a fibre optic cable across the Nullabor to improve communications, allowing controllers to improve the speed, accuracy and safety of their train service.

Some years earlier, AN eliminated over-manning, a chronic problem in all State rail operations in Australia. In 1978, staff totalled nearly 12 000; now, the total is 6 500 and still falling. Notwithstanding this fall in numbers, there has been a 200 per cent increase in productivity over the past 12 years from 500 000 to about 1.5 million net tonne/kilometre per freight employee. Last year, AN made $9 million profit on its freight, which is a stunning result for any rail authority in this country. As I understand it, on freight as well as on passenger travel, other authorities continue to lose millions of dollars a year. AN's result is one that I believe could be reflected in a national rail freight business if AN was entrusted with responsibility as the manager/operator of that business. Of course, entrusting AN with that responsibility would require restructuring, but that would have to be addressed at a later stage.

Such a decision will ultimately have to be made by Federal, State and Territory Ministers at their conference next month. I hope that, prior to that conference, members in this place will see fit to support this motion, which looks toward the establishment of a national freight initiative in this country. There is a dire need for reform of our railways and a particular need to address the efficiencies in our national rail freight system. I repeat the Liberal Party's hope that AN will ultimately be entrusted with the responsibility as manager/operator of that line.

In conclusion, I repeat the words of Sir Arvi Parbo in terms of 'The Changing World' when he said:

> It is important for us to deal with the reality of change. Much of our thinking, our institutions, trade diplomacy, economics, teaching, Party platforms and union strategies are geared to circumstances that have passed us by.

I argue in respect to this motion that the current rail system for interstate freight is geared to circumstances that have passed us by and is ripe for reform. I hope that members in this place agree with me and support this motion.

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

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 14 August. Page 226.)

The Hon. I. GILFILLAN: I support the motion and in doing so express my good wishes to the Governor and his wife, Lady Dunstan, and my appreciation for the excellent way in which they have fulfilled the responsibilities of their position. I believe that most South Australians would agree that they have enhanced the role of the governorship, maintaining it as a position of respect and dignity in this State. I thank and congratulate them both.

The State Government has promised much to the people of South Australia this year, highlighting what it terms as 'an impressive fiscal performance played out under tightening and increasingly difficult economic circumstances'.

Although the delivery of many of the Government's promises has yet to be determined, a number of issues are worthy of comment from the Australian Democrat perspective.

The Democrats are, like most people, concerned about the State's economic performance in recent years and the growing feeling of uncertainty about the future, which I believe can be gauged from the views of the people of the State. We understand the problems associated with funding shortfalls resulting from the recent Premiers' Conference, although there is some speculation about the Premier's claim of a loss of $180 million, which apparently will not be forthcoming from Canberra.

Given the recently announced loss of the State Bank's wholly owned subsidiary, Beneficial Finance, of more than $21 million, it seems the financial problems of the Premier are continuing to mount. This shortfall, serious though it may be, is not the cause of all the economic woes of this State. The problems are much deeper and have been accumulating during the life of this Government.

Poor economic management in recent years has seen the advent of the economic rationalist within the ranks of the Labor Party. and a cure-all which the Government believes will somehow produce a much needed remedy for its ailing economy. It has produced such projects as Roxby Downs, costing millions of dollars in infrastructure, provision and start-up expenses. In return, the Government is expecting to receive a payment on its investment, although under the current indenture agreement with its joint venturers it is doubtful whether any Government is likely to see a return on its investment above a low royalty payment.

The Hon. L.H. Davis: At one stage you were accusing the Government of being ripped off by Western Mining.

The Hon. I. GILFILLAN: Oh well, I have modified my language somewhat, but there is not much coming into the Government's coffers and to the taxpayers as a result of this whizz-bang Roxby Downs project.

The Hon. L.H. Davis: How many people are employed there?

The Hon. I. GILFILLAN: Well, there are a lot employed, but at what cost? The actual product, as far as return to the State is concerned, is very small.

The Hon. L.H. Davis: Oh that's ludicrous.

The Hon. I. GILFILLAN: The actual cost of putting schools and police stations—

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): Order! The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: Thank you, Mr Acting President. I do not altogether reject the interjection, because the honourable member is renowned for putting an inane defence of Roxby Downs. The real defence, as far as the State goes, will be when there is some economic return to the State. To date there has been no indication of appropriate return to the State from the vast amount of investment that the State has put into Roxby Downs. Of course, that aspect is totally detached from the morality of having the State involved in the mining and export of uranium. There have been other projects, such as the Golden Grove housing project, which has successfully provided thousands of homes, schools and a wide range of services.

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order! I call the Hon. Mr Davis to order. The Hon. Mr Gilfillan has the floor.

The Hon. I. GILFILLAN: Thank you, Mr Acting President. Unfortunately, the Government was unable to grasp the importance of undertaking the Golden Grove housing project itself. Much of it was handed over to private developers who, I understand, made handsome profits from such a generous Government offering. The question of the handling and development of these projects and their subsequent impact on the economy of this State is debatable, but there have been promises that the Government has clearly failed to deliver. It has failed because it incorrectly interpreted the wishes and desires of the broader community, and in many instances made last minute promises to a hesitant voting public. Homesure is a classic example of a desperate bid to win electoral support through the lure of an ill-conceived scheme of housing support, filched from the Liberals at a time when so many young home buyers were buckling under the impact of devastating increases in interest rates.

The Hon. L.H. Davis: I agree with that.

The Hon. I. GILFILLAN: That interjection is so unique that I have to acknowledge it. The Hon. Legh Davis actually agrees with a comment of mine. He obviously missed my observation that it was an ill-conceived scheme. The Government changed the rules for Homesure only days after being returned to office and has since revised its predictions on the scheme's effectiveness after receiving little support for the program from the public.

The Hon. L.H. Davis: How could it be ill-conceived if people were suffering, as you say, and needed some relief?

The Hon. I. GILFILLAN: The Government has attempted to mask some of the State's economic problems through additional rates and charges and back-door taxing of the community. In recent years, it has been selling off many of the State's assets, off-loading buildings, land, plant and equipment to the tune of approximately $40 million a year. The effects of this type of fire sale mentality have been far reaching, not only in reducing the State's assets but also in changing the face of our environment.

The recent sale to private developers of the Baker's Gully Reserve on Fleurieu Peninsula, an area set down in the 1970s as a future water conservation area, is a good example of asset versus environment. So, too, is the unbridled development of the Mount Lofty Ranges hills face, which has left just 7 per cent of that area under natural vegetation. Although this may seem modest in the overall budget picture, it does indicate the desperate lengths to which the Government has been reduced in keeping from the public of this State the real seriousness of its economic problems.

At the same time, the Government has been putting off much needed spending on maintenance and replacement of its ageing infrastructure. Eventually, this must catch up with the Government and it will find itself in an increasingly desperate situation, with vast amounts of capital needed to replace infrastructure and a dwindling supply of assets to sell. Ultimately, the Government will be forced, by its own economic management, to increase taxes and charges on a community which has learnt to live with the uncomfortable exercise of annual belt-tightening.

The Hon. Diana Laidlaw: Like Victoria?

The Hon. I. GILFILLAN: I am not sure how far down the track we will follow Victoria. It is within this context that the State Government has focused its long-term plans for survival on the controversial and little understood multifunction polis project, which was hailed as an economic miracle just waiting to happen. South Australia won the dubious honour of playing host to the MFP after losing out to Queensland in the original lottery. Through an unusual set of circumstances, Queensland rejected the prize it had won—through default—and South Australia was then able to desperately grasp the MFP chalice.

Despite continued reassurances from the Government, no-one in South Australia understands what the MFP is and of what it will eventually consist. The Government

appears unable to present a clear picture of it. There is a danger in a Government's asking for the endorsement of a project that it is unable to explain to the community. Expecting the people of South Australia to say 'Yes' to something without qualification verges on being undemocratic. Even the Government's published MFP proposal is vague when it states:

> Each village will have at least one feature that marks its individuality or a totally new industry yet to be identified.

It is that inability to identify that is the cause of so much concern among the community, and yet when questions are asked the Government responds with labels such as 'anti-development' and 'Luddite'. The MFP site at Gillman, an area originally surveyed and subdivided last century, has stood vacant since the days of settlement. It has been used primarily as a dumping ground for industrial waste and the soil is now severely degraded and abounds with heavy metal salts, leaving large parts a wasteland, yet the Government suggests that such an area will 'provide opportunities for local food and flower production' and that a 'full scale permaculture will be possible'.

I have been to the Gillman site and seen first-hand the massive amount of degradation that has taken place over many years. The notion of self-sufficiency in food production is difficult to comprehend when so much of the area is virtually under water now, or, at the very least, highly susceptible to flooding. It acts as a massive drainage zone for many parts of Adelaide and no amount of topping up of soil will change the existing drainage patterns. The building of a levee along much of the southern bank of the North Arm of the Port River has seriously added to the problems of the site.

Vast areas of what was once rich mangrove swamp, an area so important in the future of the Gulf of St Vincent fishing industry, have been decimated by the advent of the levee. Much of the area is now a graveyard of dead and decaying mangrove, deprived of its natural environment of tidal flow and organic deposit. It has been replaced instead by a thick black sludge high in waste products. These two factors have combined to strangle the life out of previously healthy mangroves.

Yet we are to believe, according to the Government, that it is this type of area that will be reconstituted as a housing and technology-based development eventually accommodating up to 100 000 people. To do so will require the development of new environmental techniques and land management, which have yet to be developed, but which the Government assures us will be.

Suggestions of covering the entire site with an additional 1.5 metres of topsoil are meant to placate the ignorant. Apart from the enormity of such a prospect, it does not alter the fact that, according to many of the world's leading scientists working on the problem of global warming, much of Gillman as it is at present will be under water within 20 years. Vast areas are just zero to 10 centimetres above sea level and are already suffering from regular flooding whenever there is a storm, tide and heavy rain.

The height of the watertable in much of the area ensures that huge tracts of land will always be subject to flooding, and simply covering the site with additional topsoil will not reduce the watertable level, especially given that, according to the United Nations environment program, we can expect the world's sea levels to rise by at least about half a metre by the year 2005, bringing the subsequent rise in the watertable as well.

Yet the Government continues to ignore these daunting facts, or answers its critics with solutions which would fail to pass primary school science tests. It claims that the sensitive mangrove swamps can be developed and environmentally managed at the same time. The evidence suggests quite the contrary. I believe that the levy separating what is left of the mangroves from the degraded area should be breached and tidal waters allowed to follow their natural course. The land would be reconstituted through natural means and it would become a large mangrove swamp once again as it used to be. The area should be declared a conservation park, not a housing development. The mangroves that are left constitute the last of the southernmost mangrove area in the world, and their importance to our environment, our waterways and as a breeding ground for the Gulf fisheries cannot be overstated.

By its own admission, the Government is yet to develop the land management techniques required to renew successfully the seriously degraded Gillman site. Despite this, however, the Government is able to come up with the financial cost of doing so and provide an argument that it will save money in the process. Its MFP proposal states:

> By renewing a partially degraded environment rather than developing a greenfield site, South Australia will minimise environmental costs and maximise benefits.

How it reaches this conclusion is unclear, like much of its proposal, but it goes on to add that providing the infrastructure to such an area will cost in the order of $282 million. It claims that any other site would cost approximately $600 million to provide services to. Again, its rationale is undefined in the proposal.

The Government suggests the cost of the MFP to the taxpayers of South Australia will be $200 million, so presumably some other party will have to contribute to infrastructure costs. Who that other party is likely to be is not clear, but it would seem doubtful if overseas investors would be prepared to plough large sums of money into sewerage, gas and electricity. The real money and profits lay not in the provision of hidden services and maintenance but in the prospect of vast international land sales. That prize will rest in the hands of private developers, not the State Government!

The Government's proposal at one point states that 'analysis of such a large and complex project as the MFP is problematic at this stage'. My understanding of the definition of 'problematic', which is supported by the Oxford dictionary definition, is something which is doubtful, questionable or supporting something which is not necessarily true. This is the overall picture of the MFP as presented by the Government. It is an exercise in kite flying, a conglomeration of ideas, some practical, most illogical and poorly considered, aimed at providing a focus for the future. It is a diversion away from the real problems and difficulties before the Government, and of course there is always the possibility that some of what is proposed may come about. I believe the most we can expect from the MFP, as presented by the Government, is a real estate development, paid for by the taxpayers of this State, with the profits in the hands of overseas interests.

Meanwhile there are a number of other, more mundane matters to be considered, such as saving the lives of people on our roads. Once again the Government has displayed its insensitivity in the debate over the lowering of the blood alcohol content for drivers from .08 to .05. The Federal Government's offer of $10 million dollars in aid to the State Government in dealing with so called 'black spots' on our roads serves its own political agenda. I make the aside that I totally reject the blackmail attitude that the Federal Government took in presenting these issues, but let that not be a matter which clouds the basic point, that is, whether we will make our roads safer by having a .05 limit instead of the .08 limit.

Canberra wants uniform road laws and through its Federal Minister of Land Transport, Bob Brown, has offered an olive branch in the guise of additional road funding to all States. In South Australia the evidence is overwhelming that a lowering of the blood alcohol content for drivers will, at the very least reduce alcohol related accidents and at best save many lives. Yet the debate rages within Government, the Opposition and, of course, special interest groups, such as the Hotels Association, as to the merits of lowering the blood alcohol limit. Surprisingly, the State Government has taken some time to come around to the Federal offer, mainly because of the pressure being applied by lobbyists from the pro-drink lobby. The argument seems to revolve around just how many lives, if any, will be saved, by such a move. This astounds me, because it means Government and other groups are attempting to place a price-tag on the value of a human life before determining whether lowering the blood alcohol limit is really worth it.

The Government reeks of hypocrisy in dealing with the issue and I was personally appalled when I received from the Transport Minister (Frank Blevins) a document entitled 'The Case for the Maintenance of .08 Blood Alcohol Concentration Limit', produced by the Road Accident Research Unit from the University of Adelaide. Despite publicly supporting the Federal Government's push for .05 the Transport Minister was freely circulating the counter argument in what can only have been an attempt to cause dissension among interested parties. A recent letter from the office of Federal Transport Minister (Bob Brown) states:

> ... nobody denies that the risks of fatal crashes for young drivers who drink are extremely high. It was for this reason that the Federal road safety package called on all States and Territories to introduce zero blood alcohol concentration limits for young drivers under 25 in their first three years of driving.

He adds that the proposal for .05 must not be seen in isolation from the whole package and suggests a number of measures that need to be coordinated to deal with the drink-driving problem. He writes:

> ... apart from the national .05 blood alcohol concentration level, the package advocates zero blood alcohol concentration for young drivers in the first three years of driving, and for heavy vehicle drivers as well as a high level of random breath testing using the best practice which currently exists in New South Wales.

I would like to add the extra aside that there is no point in having a blood level limit unless there is testing to detect drivers who are abusing it.

Mr Brown's office provides additional research carried out by Associate Professor Ross Homel, a visiting senior research fellow at the National Centre for Research into Prevention of Drug Abuse in Perth. Professor Homel's findings were presented to the International Congress on Drinking and Driving, in Canada in March this year. It showed that lowering the legal limit from .08 to .05 had a significant effect on fatal crashes on Saturday nights in New South Wales. It showed a 12.9 per cent reduction in fatalities at this time, so there is a real saving in lives lost which statistically has proven to be the period of highest risk for alcohol-related road fatalities.

Professor Homel believes there are only three successful legislative countermeasures that can be implemented to deal with alcohol related road accidents. They are zero blood alcohol concentration limits for young drivers, random breath testing and the general lowering to .05 of the blood alcohol concentration limit for all drivers. Yet, the State Government has attempted to hedge its bets on the issue in an attempt to serve all parties, but in the end it serves no-one, because this is an argument in which 'fence sitting' is not an option. There are simply two sides: either believe lives can be saved by reducing blood alcohol concentrations and, therefore, accept the Federal offer of money, or reject the offer.

The Democrats believe the .08 limit must be reduced to .05. Doing so will definitely save lives, reduce injuries and alleviate the stress on our hospital and emergency service facilities. The Federal Office of Road Safety has produced evidence to show that almost 40 per cent of drivers killed in 1987 had a blood alcohol level in excess of .05.

Overall, alcohol related road accidents cost Australia more than $1.2 billion a year, and here in South Australia surveys show a majority of community support for a reduction in the blood alcohol limit. The argument is not over how many lives will be saved by such a move but over the responsibility the Government has to the community in ensuring that it is doing all it can to reduce the road toll in this State.

'Reducing' or 'reduction' is very much the word among many of the State's small business operators, except that the term applies to a reduction in retail trade brought about by the worsening economic situation in South Australia. Recent retail trade figures show an overall slump in the industry Australia-wide, with South Australia's small business sector having its worst fall in more than a decade. Yet, the State Government and the Opposition appear to be as one on the issue of extended shop trading hours.

If this move proceeds, it is destined to send many small businesses to the wall because they cannot compete with large retail outlets on the issue of increased labour and operating costs. More than 75 per cent of retail employees come from small business, and they are hurting more and more as their share of the retail dollar decreases. The pool of consumer dollars is finite and the big retail chains are taking a larger share of that pool all the time. The issue of extended trading will serve to increase their market share.

The big chains have already done their sums, and I understand that one major retail outlet, Coles Myer, has calculated with some glee that extended trading will lift its market share from 20 per cent to 24 per cent over a 12 month period. That will directly reduce the turnover of market share to small business. The equation will amount to an indeterminate number of small businesses which will be extinct after this 12 month period. Small business operators will be forced into bankruptcy at a time when a record number of businesses in this State are folding.

This time last year, 11 per cent of South Australian small business operators stated that they would be rationalising staff numbers in coming months. This year, that figure has risen to 43 per cent of businesses that will be forced to lay off or retrench staff because of the tightening fiscal climate. Any move towards extended trading is bad for small business and is not wanted by many retailers. Many retailers have made direct, personal pleas to us. Motor traders, small business operators and those who are not so small regard their only chance of survival is for existing trading hours to be retained. It is an act of betrayal by the Government which has caved in to the demands of big business interests—an act that is commonplace within Government ranks.

Reference to acts of betrayal brings me to the issue of justice and the state of our correctional facilities in South Australia. Recently I spent some time overseas viewing prisons and their administration. Throughout Scandinavia I was impressed by the developments in correctional services, most notably in Denmark, Sweden and Finland. It appeared to me that an enormous difference in attitude was exhibited by all concerned with the prison system. There was a marked appreciation and sense of pride in the job being done by prison administration and an overt willingness to show off the prison system and facilities in those

countries. I could only reflect on just how different the attitude is in South Australia.

It is fair to indicate that there are varying degrees of quality in prison management in the Scandinavian countries, and they are not all of the standard that I would like to see introduced in South Australia, but many of them set an excellent example for us to follow. It seems to me that our Anglo-Saxon heritage has meant that we have also inherited the British system of prison administration, with all its faults. This does not mean that there are not within the system people who are trying their best and want to see change incorporated. However, in many instances, it seems to start at the top, and there needs to be an acceptance by senior administration and Government that the system needs to be dramatically improved.

As I have mentioned before in this place, it was with a lot of pleasure that I became aware that nine or ten months ago Mr Barry Apsley, the Deputy Director, took a tour through prisons in Scandinavia and elsewhere. I am grateful to him for his help in suggestions of prisons to visit. I was most impressed with the enthusiastic analysis he made of many of those prisons and the steps taken to invite a leading penologist from Denmark to come to South Australia. I remind members that that makes it more important that the select committee is established and the prison system is at its most receptive when we have this visitor in South Australia.

The Hon. R.J. Ritson interjecting:

The Hon. I. GILFILLAN: Check it in the dictionary. Penology is the study of prison systems. If not, we, too, could be in danger of heading down the path that our British counterparts have gone in recent years as prisoners and prison facilities have been increasingly neglected in that country—witness the horror at the Strangways prison. I was shocked, whilst in Britain, to hear of the setting up by the European Economic Community's Parliament of a commission of human rights to investigate the prison system in Britain. As a matter of fact, while there, the press indicated that the Thatcher Government expected to get quite a severely critical report from that commission.

In coming months the Australian Democrats will be focusing a good deal of attention on South Australia's correctional services with a view to significant improvements that might be undertaken (and I have already moved to establish a parliamentary select committee into prisons).

The concerns of the Australian Democrats reflect the concerns of many people in the community. Questions remain unanswered by the Government. Will people be able to pay their mortgages? Will their children receive the best education opportunities? Can business prosper in this State without many small operators going to the wall because of senseless and callous Government policy? What will the MFP really mean for most South Australians, and should not the Government be telling the people of this State more before asking for its approval? Will the economic resources of the State remain intact despite widespread financial failures that have occurred interstate and the more recent problems associated with Beneficial Finance and other enterprises in the State Bank?

These questions need answers and cannot any more be deflected through well-rehearsed Government rhetoric. The political climate of Australia is changing, the electorate is expecting more from all political Parties, and those who refuse to hear the cry of the concerned voter will pay dearly at the ballot box. I support the motion.

The Hon. PETER DUNN secured the adjournment of the debate.

ADJOURNMENT

At 10.3 p.m. the Council adjourned until Thursday 16 August at 2.15 p.m.