LEGISLATIVE COUNCIL

Tuesday 4 September 1990

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

SUPPLY BILL (No. 2)

His Excellency the Governor, by message, intimated his assent to the Bill.

Hon. M.B. CAMERON'S RESIGNATION

The PRESIDENT: For the information of members, I advise that I have received from the Hon. Martin Cameron notice of his resignation, effective as from last Friday. Accordingly, he is no longer a member of the Legislative Council.

PETITION: SELF-DEFENCE

A petition signed by 95 residents of South Australia concerning the right of citizens to defend themselves on their own property or in a public place, and praying that the Council will support legislation allowing that action taken by a person in self-defence or in the defence of his/her property, or in the apprehension of another person in the act of committing a felony, will not result in the victim becoming liable to prosecution was presented by the Hon. K.T. Griffin.

Petition received.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following Questions on Notice that I now table be distributed and printed in *Hansard*: Nos 32 and 36.

TRUCKING INDUSTRY

The Hon. DIANA LAIDLAW (on notice) asked the Minister of Local Government: Does the Minister of Transport endorse the call by the State Secretary, Transport Workers Union, Mr Keith Cyss, that Government regulation of the trucking industry, including the setting of minimum freight charges, is vital for the survival of independent owner-operators (*Sunday Mail* 12 August 1990)?

The Hon. ANNE LEVY: This Government does not necessarily support any form of economic regulation of the trucking industry, including minimum freight rates. In this, we are in step with the national approach. Transport Ministers reiterated their opposition to economic regulation at the September 1988 Australian Transport Advisory Council, when Ministers '... agreed that regulation of entry and regulation of freight rates were not the answer' (Communique, 77th ATAC, 16/9/88, pl).

DIRECTOR, ARTS PROGRAMS

The Hon. DIANA LAIDLAW (on notice) asked the Minister for the Arts:

1. Has the position of Deputy Director, Department for the Arts yet been filled following the resignation some months ago of Ms Winnie Pelz?
2. If so, by whom and on what terms?
3. If not, when will the position be filled?

The Hon. ANNE LEVY: The replies are as follows:

1. The position of Director, Arts Programs, Department for the Arts, has not been filled. The selection panel has conducted interviews and is in the process of making a recommendation to the Commissioner for Public Employment.
2. See 1. above.
3. It is anticipated that a nomination will be made in the near future.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the report of the Auditor-General for the year ended 30 June 1990.

PAPERS TABLED

The following papers were laid on the table:

By the Minister of Tourism for the Attorney-General (Hon. C.J. Sumner)—
- Friendly Societies Act 1919—Alterations and Amendments to the Constitution of the Independent Order of Odd Fellows Grand Lodge of South Australia.
- Promotion and Grievance Appeals Tribunal—Report, 1989-90.
- South Australian Superannuation Fund Investment Trust—Report, 1989-90.
- State Bank of South Australia and Subsidiary Companies—Accounts, 1989-90.
- District Criminal Court Rules—Local and District Criminal Courts Act 1926—Arraignment and Stays of Proceedings.
- Regulations under the following Acts—
  - Boating Act 1974—Fees.
  - Local and District Criminal Courts Act 1926—Bailiff Fees.
  - Marine Act 1936—Floating Establishments.
  - Supreme Court Act 1935—Bailiff Fees.

By the Minister of Tourism (Hon. Barbara Wiese)—
- Drugs Act 1908—Regulations—Veterinary Products.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—
- Regulations under the following Acts—
  - Builders Licensing Act 1986—Licensing Exemptions.
  - Commercial and Private Agents Act 1986—Devices and Exemptions.
  - Land Agents, Brokers and Valuers Act 1973—Education Programs.

By the Minister of Local Government (Hon. Anne Levy)—
- Department of Employment and Technical and Further Education—Corporate Review and Report 1989.
- Public Parks Act 1943—Disposal of Parklands at Fuller Street, Walkerville.
- Regulations under the following Acts—
  - Aboriginal Lands Trust Act 1966—Yalata Reserve—Alcohol.
  - Education Act 1972—Non-Government Schools—Registration Fees.
  - Road Traffic Act 1961—
    - Traffic Prohibition—Woodville.
    - Weighing Devices.
- Corporation By-laws—
  - Campbelltown—
    - No. 28—Tents.
    - No. 35—Caravans.
  - Glenelg—
    - No. 1—Permits and Penalties.

No. 3—Vehicle Movement.
No. 4—Streets and Public Places.
No. 5—Parklands.
No. 7—Caravans.
No. 9—Inflammable Undergrowth.
No. 10—Dogs.
No. 12—Garbage Containers.
No. 14—Repeal of By-laws.
Tea Tree Gully—
No. 5—Garbage Removal.
No. 7—Animals and Birds.
District Council By-laws—
Naracoorte—
No. 1—Permits and Penalties.
No. 8—Repeal of By-laws.

STIRLING COUNCIL

The Hon. ANNE LEVY (Minister of Local Government): I seek leave to table for the information of honourable members the report presented to me by the former Administrator of the District Council of Stirling (Mr Des Ross) on the administration of the affairs of the council pursuant to section 33 (11) of the Local Government Act.

Leave granted.

QUESTIONS

PETROL PRICING

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about petrol pricing.

Leave granted.

The Hon. K.T. GRIFFIN: The Prices Act is the responsibility of the Minister of Consumer Affairs. It allows for both price control and price monitoring in South Australia. In respect of petrol prices, I understand that the Government has deferred to Canberra, and that the Prices Surveillance Authority exercises a nationwide responsibility for price monitoring in respect of motor spirit. As a result of the Middle East crisis the price of petrol at the pumps in Adelaide generally is 69.9c a litre. In the country it is much more. There has been speculation that the price will go to around 80c a litre.

The food industry predicts that the current increase in fuel price could force prices up by about 6 per cent. That means that a family now spending $100 on food each week will have to find an extra $6 per week as a result of the increase in fuel prices. Of that amount, a substantial proportion goes to the Federal Government, because it reaps about $100 million a year when the price of crude oil increases by $1 a barrel. It has increased from $18 a barrel to $29 a barrel since the crisis began. So, the gains to the Federal Government are windfall gains dependent upon an unpredictable crisis.

Also, I have seen reports indicating that, consistent with that increase of $18 to $29 a barrel since the crisis began a month ago, the revenue of the Commonwealth has jumped by about $1 100 million, all of which ultimately is reflected in prices, not just fuel prices but foodstuffs and other goods and services, and that must be met by the hard-pressed consumer. The RAA in a recent public statement called it a 'rip off' and I believe that most Australians would agree with that description. I have called for the Federal Government to give up those windfall gains to relieve the hardship that Australians will suffer in this crisis. My questions to the Minister are:

1. Does the Minister agree that the Commonwealth Government should forgo its windfall gains on petrol prices?

2. Has the Minister made any representations to the Commonwealth Government with that object in view and, if so, when were those representations made?

The Hon. BARBARA WIESE: I have not made representations to the Commonwealth Government on petrol pricing. At this point it seems to me that such action may not be appropriate. However, I have taken the view, particularly with respect to the powers of the Minister of Consumer Affairs as they relate to petrol pricing, that at this point we ought to adopt a monitoring brief on retail petrol prices in South Australia with a view to aiming to maintain the current parity with retail petrol pricing that has existed with other States. I have no evidence that that parity is being upset in any way as a result of the circumstances in the Middle East and the increasing price of petrol in Australia. I will certainly be watching that situation during the coming weeks and, if it appears that action should be taken, I will consider that at the appropriate time.

I understand that during this past week the Premier has written to the Prices Surveillance Authority on the question of the price of petrol. Although I asked for a copy of that letter to be placed in my briefing folder for Parliament, I do not have it here. For that reason, I am not fully aware of the contents of the letter that the Premier has sent. If it has a bearing on the points raised by the honourable member, I will ensure that he is made aware of its contents.

The Hon. K.T. GRIFFIN: I should like to ask a supplementary question. First, will the Minister indicate why it may not be appropriate for her to make representations to the Federal Government in relation to the relinquishing of some, if not all, of the windfall gains? Secondly, will she indicate what action she would contemplate if, in the context of price monitoring, the parity of South Australian retail petrol prices with interstate prices is not maintained?

The Hon. BARBARA WIESE: I will take the second issue first. It seems to me that, if the parity were to change, it would be because South Australian retailers were wanting to gain unreasonably from the present situation, because the circumstances would be no different now from what they have been at any other time in the past few years with respect to profit margins and other things that determine the fixing of retail prices. Therefore, I would be very keen to examine why the price differential between South Australia and other States was shifting, if that should occur, and clearly I would consider price control in those circumstances. However, that is a course of action that I would be reluctant to take because, as I understand it, the situation in the past has never been particularly helpful for consumers in South Australia when Governments have decided to intervene in petrol pricing in the marketplace where that sort of action has occurred.

This is for a number of fairly complicated reasons that, I think, in many respects, are rather unique to the South Australian marketplace. A number of factors affect the setting of petrol prices here. The proximity to retail outlets and the ease with which people can move around the metropolitan area are, for example, factors that have led to considerable petrol price discounting—the sort of discounting that has not been enjoyed by consumers in other parts of Australia.

When it comes to petrol pricing, it seems to me that market forces in this State have worked very effectively in the interest of consumers. Therefore, I would be very reluctant to intervene in that process. However, as I have said, if the parity between pricing here and in other States is upset, I will look very closely at it at that time and consider

what action may seem appropriate in order to preserve the interests of consumers.

In relation to the other question about making representations to the Federal Government, it seems to me that the situation has not reached the point where it necessarily requires my intervention by way of representation to the Federal Government. What the Federal Government does with respect to its revenue raising measures essentially is a matter for it. I would be extremely distressed if the Federal Government wanted to intervene in the measures taken by the State Government relating to issues of this kind, and the circumstances would need to be extremely severe indeed for such action to be taken.

DIRECTOR, ARTS PROGRAMS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the position of Director, Arts Program.

Leave granted.

The Hon. DIANA LAIDLAW: In response to a Question on Notice, I received the following reply from the Minister earlier in Question Time:

1. The position of Director, Arts Programs, Department for the Arts, has not been filled. The selection panel has conducted interviews and is in the process of making a recommendation to the Commissioner for Public Employment.
2. See 1 above.
3. It is anticipated that a nomination will be made in the near future.

I find that reply quite surprising, considering that in the employment section of Saturday's *Advertiser* the Department for the Arts readvertised the position of Director, Arts Programs. As the Minister will appreciate, the position has been vacant I think since 11 May, over three months, following the resignation of Ms Winnie Pelz.

The Hon. L.H. Davis: Four months.

The Hon. DIANA LAIDLAW: Four months, yes. The Minister will also appreciate that in Adelaide the arts industry is relatively small, and that it is difficult to keep any matter under wraps for long, particularly when the subject of interest is the important matter of who will fill this key position of Director, Arts Programs, which, incidentally, attracts a salary of some $62 500 per annum.

For many weeks it has been widely and reliably speculated that the three people short listed for the job were Carol Treloar (currently Women's Adviser to the Premier), Penny Ramsay (currently Director of an arts consultancy company Ramsay and Roux), and Ken Lloyd (currently Chief Project Officer (Finance), Department for the Arts); and, also, that the selection panel had determined by a majority vote that Mr Lloyd be appointed to the position.

As I indicated at the start of my question, it is curious to find in the answer I received earlier today to a Question on Notice the statement that the selection panel had conducted interviews and was in the process of making a recommendation to the Commissioner for Public Employment when, in fact, this position was readvertised on Saturday. My questions are:

1. Will the Minister explain why she provided this advice to the Council in the light of the fact that the position was readvertised on Saturday?
2. Why was the position readvertised?
3. Why has a new selection panel been appointed?
4. In determining that the position be readvertised, why did the Commissioner for Public Employment (Mr Strickland) act against the wishes of the Director of the Department for the Arts (Mr Amadio), who, I am led to believe, argued against the readvertising of the position?

The Hon. ANNE LEVY: This matter can readily be explained. The answer received by the honourable member today was prepared quite some time ago.

The Hon. Diana Laidlaw: It is dated 4 September.

The Hon. ANNE LEVY: It was prepared quite some time ago at the time that her Question on Notice first appeared in the Notice Paper. It may be dated today as being the day on which it was provided to her, but it was prepared quite some time ago before the—

The Hon. Diana Laidlaw: You didn't seek to withdraw it, because it's false.

The Hon. ANNE LEVY: It was prepared quite some time ago, I repeat, Mr President, at the time that the honourable member's Question on Notice first appeared on the Notice Paper, and since then it has been wending its way through the paper work and procedures to reach her today. Subsequent to that answer being prepared, I understand that the selection panel made a report and that this was considered by the Commissioner for Public Employment. In relation to this position, there was, of course, further rumour and innuendo, which appeared in the *Advertiser*, and I may say parenthetically that I think it was most unfortunate and unfair on the individuals concerned that their names appeared in the press as being applicants for a particular position.

As I understand it, of the many applicants for the position, none of them knew who else had applied. That applies equally to those who were on the short list and who were interviewed; none of them knew who else applied. I believe that it is most unfair to the three individuals concerned to have their names picked out and splashed across the newspaper. The Commissioner for Public Employment made the decision to readvertise the position, hence the advertisement which appeared last Saturday, and it is his decision.

The Hon. L.H. Davis: How does he know who is or who is not suitable in the Arts Department?

The PRESIDENT: Order!

The Hon. L.H. Davis: That is a remarkable admission.

The PRESIDENT: Order! The honourable Minister is answering the question. The honourable Minister.

The Hon. L.H. Davis: Does he get advice?

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: Thank you, Mr President.

The Hon. L.H. Davis: She needs plenty of protection.

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: The level of the position which is advertised is under the rules of the GME Act—one who is appointed by the Commissioner for Public Employment. He made the decision that he would readvertise the position.

The Hon. L.H. Davis: On whose advice?

The PRESIDENT: Order! The honourable Minister is trying to answer the question.

The Hon. ANNE LEVY: I do not know on whose advice. He informed me after he had made his decision that he was to undertake this course of action, as he felt it was in the best interests of all concerned. I do know that he and I were both very perturbed that the names of people who had applied for a position were being splashed around a newspaper, and felt that this was most unfair to three of the numerous applicants who applied for the position. The position has been readvertised, and I certainly hope that it can be filled very soon. I realise that applications will remain open for another 12 days. I certainly hope that a short list can be prepared and the interviews conducted as quickly as

possible so that the position can be filled and the department returned to full strength.

The Hon. DIANA LAIDLAW: As a supplementary question, Mr President: will the Minister confirm that—

The Hon. Anne Levy: You are making a statement; it is not a question. A supplementary question can only be a question.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I am simply asking: will the Minister confirm that the only basis for the Commissioner for Public Employment's (Mr Strickland) seeking to readvertise the position was his concern about speculation in the media, and that there were no other grounds for that decision? Will she confirm or deny that the advice from the Director of the Department for the Arts, when sought, was that the position not be readvertised?

The Hon. ANNE LEVY: I cannot confirm such a thing because I do not know on what grounds the Commissioner for Public Employment decided to readvertise the position. I mentioned that he was concerned, but whether that was a reason, or the reason, for readvertising the position was not conveyed to me. It was not my business to ask him, and I did not so inquire. It was his decision to make and he made it.

I do not know what advice the Director of the department may have given to the Commissioner for Public Employment. If he did give such advice it would have been given to the Commissioner for Public Employment. It was not conveyed to me, and it was not necessary, or indeed proper, for him to so convey it.

PORT ADELAIDE COUNCIL

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister of Local Government a question about the Port Adelaide council.

Leave granted.

The Hon. J.C. IRWIN: Late last week I was approached by members of the Port Adelaide Residents and Ratepayers Association who were concerned about a proposal that the Mayor and Chief Executive Officer of the City of Port Adelaide were to go overseas on a promotional and investigative tour on behalf of the Port Adelaide Flower Farm. They were concerned that the Manager of the Flower Farm, Dr Freeman, who has sole responsibility for sales, has just returned from an extensive trip to Japan.

The Hon. T.G. Roberts: The whole thing is a mausoleum trip; it's no bed of roses.

The Hon. J.C. IRWIN: There we go. Perhaps they are going to amalgamate. The members of the association were concerned about wasting ratepayers' funds. They were concerned that certain council procedures and decisions were being disregarded. To me they appeared to be concerns that we could not ignore. At a finance and general purpose committee meeting on 6 August this year, which comprised all members of the council, a series of motions was discussed. The first is as follows:

> That the minutes, budget and other information provided in respect of the Port Adelaide Flower Farm be noted and that the Mayor and Chief Executive Officer be authorised to attend the Asian Pacific Local Government Conference Infrastructure '90 in conjunction with their visit to Japan on behalf of IHM and the Port Adelaide Flower Farm and, wherever feasible, undertake studies of other items of interest and potential benefit to the council, such as the multifunction polis.

This motion was lost 8-5. The second motion stated:

> That council approves the Mayor and Chief Executive Officer undertaking a tour of Japan during the coming season to promote the interests of the Port Adelaide Flower Farm within the cut flower industry provided the cost is met by the Port Adelaide Flower Farm.

That motion was lost 7-6. The third motion stated:

> That council disapproves of the proposition that the Chief Executive Officer and/or the Mayor undertaking an investigation/promotion tour relative to flower farm sales.

That motion was carried 7-6. A pretty clear message was contained in that motion. The motion was taken to council the same night and passed without dissent. I understand that the Mayor chaired the meeting despite having an interest in the outcome. On 27 August at a council meeting, a notice of motion to rescind the motion was withdrawn. At that same meeting the following motion was moved and supported:

> That the council is unable to contribute to the promotion visit to Japan by the Chief Executive Officer and Mayor, and the matter be referred back to the board for reconsideration and decision and that the council affirm that it will not interfere with the board in the pursuit of its charter from the council.

This motion spells out that council is unable to contribute to the visit and passes the buck to the flower farm board for its decision. The flower farm has, in the words of the council's solicitor, 'a prime duty to serve the interests of the council' and 'the board is appointed to serve the interests of the council and can be regarded as an agent of the council'.

This motion is contrary to the motion passed by council on 6 August where council stated quite clearly that it disapproves of the visit by the Mayor and CEO. It is an unquestioned fact that the council picks up the costs of the flower farm and will do so even when it gets to a profit situation. It must also be understood that if there is ever any conflict over promotional trips by councillors and council officers, the management of the flower farm could easily take action against the council. As the contract for this venture reaches a very tenuous position in its short history, the council should be very careful.

The flower farm was, at 30 June 1990, sitting on a debt of $1.5 million and at this stage it is costing at least $700 per day to service from council revenue. When the budget estimates and budget for 1990-91 were adopted by council on 4 June 1990, it was done without a comprehensive budget for the flower farm. What was adopted was:

> That Schedule 10A—Economic Services (Flower Farm) be incorporated into Schedule 23—proposed annual expenditure for year ended 30 June 1991, when the Port Adelaide Flower Farm budget has been adopted.

Further, the Local Government Act section 41 (2) 'Delegation of powers of council' states:

> A council may not delegate *(c)* power to approve expenditure of money on the works, services or operations of the council not set out in a budget approved by the council.

There was at least two months when there was no budget. Section 41 (2) continues:

> *(d)* power to approve the payment of expenses or allowances or account of expenses incurred or to be incurred by members of the council.

The Mayor or any other councillor must come into that category. Subsection (2) *(f)* (6) provides that a council must not make a delegation under this section to an advisory committee.

The flower farm budget turned up at a meeting on 6 August 1990, two months after the council estimates and budget was adopted. Interestingly, it shows an amount for travel of $6 000. Is this the $6 000 being quoted as the cost of the trip to Japan? When was it added to the flower farm budget? The budget shows a simple net profit of $36 939 and capital costs of $43 786 for the coming year. An income of $1.19 million and expenditure of $1.16 million. The

Advertiser of Saturday reported the CEO as referring to the expected sales of $1.8 million for the financial year 1990-91, and this has been confirmed today by a message from the council.

The budget shows quite a different picture: sales of cut flowers from those grown on the farm at $769 000, contact commission at $162 000, consulting at $40 000. I am not sure what that is or who gets the consultation income, and contract processing at $228 000, being work done for outside growers of cut flowers for export. So the project sales of $769 000 is a far cry from the new figure of $1.8 million that is now being bandied around. This $1.8 million is much more than the $1.1 million in the budget adopted just recently by the council. No wonder some councillors and residents of Port Adelaide are confused.

I understand that the Port Adelaide Residents and Ratepayers Association has tried to present certain facts to the Minister's department, including giving a petition signed by over 5 000 people. This fact has never been acknowledged by the department. They have made a considerable amount of relevant material available to the Ombudsman. In frustration they have briefed me on the matters I raise in this explanation. My questions to the Minister are:

1. Will the Minister seek advice to verify or otherwise the accuracy of the assertions I make, namely:
   - *(a)* Proper council decisions were being disregarded.
   - *(b)* The Mayor chairing a council meeting in which she has an interest about the outcome of a motion.
   - *(c)* The proper use of the delegation powers under section 41 of the Local Government Act.
   - *(d)* Budget estimates and budget being adopted without full details of the flower farm being available, contrary to accounting regulations and the Local Government Act.
   - *(e)* Any other matters the Residents and Ratepayers Association believes are of serious concern?

2. Will the Minister consult with the Ombudsman to ascertain whether it is his intention to investigate the matters raised with him?

3. Will the Minister bring back a considered answer following anything she may have to say now?

The Hon. ANNE LEVY: A great deal of what the honourable member has said may be of great interest to members of the Port Adelaide council, to the Port Adelaide Flower Farm and to the residents of Port Adelaide, but I do not really see that a large part of those matters concern me or the Government. The Port Adelaide council is an autonomous council.

The Hon. Barbara Wiese: They are supposed to be in favour of autonomy of the councils.

The Hon. ANNE LEVY: Yes. The flower farm is completely owned by and the responsibility of the Port Adelaide council. I am quite sure that the honourable member would not approve of my making inquiries into what is council's business unless the matter impinges in any way on my role as Minister of Local Government. As to the particular questions that he has raised relating to the conduct of council meetings, I will be happy to seek a report on those matters. They have certainly not been drawn to my attention previously.

While I am surprised that the honourable member did not choose to bring these matters to our attention in any other fashion, if they have been continuing for some time, I am certainly happy to make the necessary inquiries and inform him of whether or not the responsibilities of council as set out in the Act have been followed. With regard to the Ombudsman, I will not make inquiries of him. It would be quite improper for me to do so. The office of Ombudsman is a completely autonomous body. If representations are made to him, he makes his own inquiries and decisions as to what he will or will not do.

The Hon. J.C. Irwin: I am simply asking whether he will investigate the material that he has been given. That is all I am asking.

The Hon. ANNE LEVY: I am quite sure that the Ombudsman is well aware of his responsibilities under the Ombudsman Act and that he does not require me or anyone else to remind him of those responsibilities. No-one has ever suggested he has not carried out his responsibilities under the Act at any time whatsoever, and I fail to see why the honourable member should in some way be suggesting that he would not carry out his responsibilities under the Act in this particular case.

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: If a complaint has been made to the Ombudsman, I am sure everyone in South Australia has confidence that the Ombudsman will investigate matters that are brought to him and carry out whatever inquiries he believes are proper and correct in the circumstances, and take whatever action he considers appropriate in the circumstances. He does not need me, and he certainly does not need the Hon. Mr Irwin, to remind him of his responsibilities. On his behalf, I feel it is a slur on his capabilities for the Hon. Mr Irwin to suggest that he needs reminding of what are his responsibilities.

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: I certainly appreciate the interest of the honourable member in the Port Adelaide Flower Farm. It is well known that there is more than one member of the Opposition who has interests in flower farms, and I am glad to see that the Hon. Mr Irwin is extending his interest to include flower farms. I will certainly seek a report on the matters mentioned and bring back that information to the Hon. Mr Irwin on the matters which I have not dealt with so far in my reply.

CONSUMER PRIVACY

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Acting Leader of the Council, representing the Attorney-General, who in turn represents the Premier and Treasurer in another place, a question about data on debtors.

Leave granted.

The Hon. M.S. FELEPPA: As part of my explanation I wish to read from the article entitled 'Data on debtors', which appeared in the *News* of 22 August 1990, as follows:

> Debt collectors believe there soon will be total knowledge about all individuals. They also envisage the Government allowing financiers to build enormous data banks which would include confidential tax file number information. In fact they believe banks and other lenders will have so much information debt collectors will be made redundant. The Orwellian vision is contained in an article 'Back to the future for commercial agents', published in the Institute of Mercantile Agents' journal, *The Mercantile Agent*.
>
> Its author, Norman Owens, a former president of the institute and owner of a debt collecting agency, said Governments would one day see it as 'desirable' to link together and make public all the enormous data bases containing highly sensitive personal information. 'Tomorrow's credit grantor will be extending credit in a perfect market with total knowledge of the debtor,' Mr Owens asserted. 'This will be made available through linked data bases in the manner of George Orwell's *1984*.'

If that be the case, I believe it reeks of invasion of privacy. While intended fraud should not be condoned, borrowers with honest intentions to borrow and repay should not have

their privacy invaded in such a total way, as suggested in this article. Primarily my questions are intended to protect the honest, ordinary citizen from invasion of privacy. They are not intended to perpetuate debt collecting, nor to be of comfort to people intending to defraud. Is the Government of South Australia participating in any such proposal? Is it known whether the Federal Government is participating in such a proposal? Will the accuracy of what is said in this report be investigated and action taken to ensure that honest people in the community can have their privacy protected and preserved?

The Hon. BARBARA WIESE: The honourable member has asked me to refer this question to my colleague the Treasurer in another place but, as Minister of Consumer Affairs, I also have some interest in the protection of privacy of borrowers in respect of the provision of credit. In fact, there have been considerable discussions in recent times in Australia about the question of protection of consumers in these situations. For example, there was some concern that some of the amendments proposed by the Federal Government in amending the Privacy Act, which is a Federal Government piece of legislation, may have interfered with the rights of borrowers in this lending situation and, indeed, the South Australian Government has made representations to the Federal Government with a view to having those inappropriate sections of that proposed legislation amended in a way that would protect the rights of borrowers in these circumstances.

The legislation which has operated in South Australia for a number of years and which has the general support of those people operating in the credit provision industry as well as consumer organisations provides, I think, a good model for the sort of legislation that should exist in other parts of Australia. In fact, it does strike the right sort of balance between providing appropriate information to the providers of credit in order to protect a decision that they might make whilst, at the same time, not interfering in an unreasonable way with the rights of privacy of individuals who are in those circumstances.

So, the submissions that we have made to the Commonwealth Government on this matter have suggested that the Federal Government should look to the South Australian legislation as something of a model in drawing up the provisions of its own legislation as it relates to this matter. We have yet to hear from the Federal Government on this question, but I hope that very soon there will be appropriate consultation with us, and we will be able to impress upon them the importance of protecting the rights of consumers in this area of business transaction.

MID NORTH RAIL SERVICES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Local Government, representing the Minister of Transport, a question relating to Australian National and rail lines in the Mid North.

Leave granted.

The Hon. I. GILFILLAN: It has been confirmed to me today by Australian National that it is pulling out the best sleepers from a railway line that runs from Blyth, Brinkworth and Snowtown, a line which has been an essential grain-carrying line and a rail line which, I understand, is under the transfer agreement involving the State Government and Australian National. AN undertook to retain that line for a period of five years. Local government representatives in the area have put to me that this action is a flagrant violation of an agreement made by Australian National with the State Government under the transfer agreement. The AN management has consistently denied that its intention has been to downgrade the State's rail system—

The Hon. M.J. Elliott: Rubbish!

The Hon. I. GILFILLAN: Correct. My colleague interjects 'Rubbish'. The Federal Transport Minister, Bob Brown, admitted, as reported in the Federal Parliament *Hansard*, that he had received a submission from Australian National to close all its passenger services in South Australia. Apparently that has not yet been categorically opposed by the Federal Government. Many people in South Australia feel, as we do, that rail passenger and freight intrastate is under very serious threat of demolition right across the State. AN has continually downgraded our rail system by cutting the services, closing lines, dismantling locomotives, cutting jobs and not replacing ageing rolling stock.

With regard to the latest event, which has only just commenced—the demolition and removal of sleepers from this particular line—I ask the Minister: Is it true that Australian National gave an undertaking to leave this particular line intact for a period of five years from the arrangement made with the State Government, which I understand to have been approximately two months ago? Does the Minister agree that pulling the good sleepers is in contravention of that undertaking and of the transfer agreement? Will the Minister intervene immediately to halt the sabotage by Australian National of this vital South Australian asset?

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

PRIVATISATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Acting Leader of the Government in the Council a question about privatisation or commercialisation.

Leave granted.

The Hon. L.H. DAVIS: The *Advertiser* today carried a report which stated that the United Trades and Labor Council, at a recent meeting, had voted to condemn the Federal Government's plans to place 30 per cent of the equity in the Commonwealth Bank with the private sector. Can the Minister, as Acting Leader of the Government in the Legislative Council, say whether the Bannon Government agrees with the view of the United Trades and Labor Council in South Australia; if so, why; and, if not, why not?

The Hon. BARBARA WIESE: To my knowledge, Cabinet has not considered this matter.

The Hon. L.H. DAVIS: As a supplementary question, what is the Minister's view on the stand taken by the United Trades and Labor Council?

The Hon. BARBARA WIESE: It is not a matter for me to have a view or otherwise; it does not relate to any of the areas of my ministerial responsibility. It is not a matter for the South Australian Government to have a view on, and, as I have indicated, the Government has not considered the matter.

The Hon. L.H. DAVIS: As a further supplementary question to the Acting Leader of the Government in the Council, does the Bannon Government support the stand taken by the United Trades and Labor Council on this matter, given that it has been asked to express a view on it?

The Hon. BARBARA WIESE: I have indicated to the honourable member and to the Council that the Government has not considered this matter, so it has not expressed a view one way or another on the issue. Therefore, I am

unable to give the honourable member the benefit of Cabinet's wisdom on the question. I have indicated that it is not a matter for the South Australian Government, and for that reason we have not discussed it.

RADIO STATION 5 TRIPLE M FM

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for the Arts a question concerning the difficulties faced by the public radio station 5 Triple M FM.

Leave granted.

The Hon. T.G. ROBERTS: I am sure that the Hon. Mr Davis and all members opposite were grateful when Radio Triple J arrived in Adelaide, and I am sure that the Hon. Mr Burdett was rapping along with the rest of the State when listening to it. We are all grateful for 5 Triple J's reaching Adelaide's airwaves, but a local station, 5 Triple M FM, is facing difficulties, not because Triple J has arrived, but because it is restructuring its management and looking at its programming. The station is also looking at other aspects of its operations to enable it collectively to make sure that 5 Triple M FM is a station to which people can listen in larger numbers.

According to an article in the *Eastern Suburbs Messenger Press*, of 15 August 1990, 5 Triple M FM may have to axe programs and relocate its premises because of its financial difficulties and not being able to purchase its current premises from the South Australian Housing Trust. I understand that the 5 Triple M FM management committee is grateful to the Arts Minister for allocating $30 000 for the appointment of a full-time manager for 1990-91. The station management also appreciates the understanding demonstrated by the South Australian Housing Trust concerning 5 Triple M FM's financial difficulties.

The Department for Family and Community Service grants of approximately $14 000 per annum to fund a volunteer coordinator have been terminated due to interdepartmental regulation changes, and this has been a blow to the functioning of the radio station. Triple M FM is trying hard to raise funds for its continued survival and to overcome maintenance and the depreciation of its expensive equipment. The radio station does not receive annual Federal Government funding, as do ethnic-based public radio stations. Radio 5EBI enjoys good community support and has a good base to work from, making it quite a successful FM station in this State.

The predicament for the Government and Triple M FM is that the radio station is situated on expensive real estate in Norwood, owned by the South Australian Housing Trust. That property, under the present situation, cannot be redeveloped and is incurring financial losses. On the other hand, Triple M FM cannot afford the upkeep of the building; neither has it the funds to purchase the building at market rates.

Triple M FM has an approximate listening audience of between 39 000 and 75 000 per week. The radio station has 1 000 loyal listeners and 900 members and subscribers. Unfortunately, only 1 per cent of its listening audience subscribes to the station. Therein lies a bit of a problem. There are probably many pirates, probably like myself and others, who listen to Triple M FM but who have not paid their subscriptions. I apologise to Triple M FM for that.

Members interjecting:

The Hon. T.G. ROBERTS: Do I see any other honourable members putting up their hands as being pirates to the airwaves? The management and day-to-day programming operates by and large through dedicated public radio volunteers. The radio station has provided a valuable training ground for volunteers, some of whom have gained employment with permanent broadcasting authorities. It also provides a social function, enabling young people to come into the station and learn not just broadcasting but social skills as well.

The question that I ask as a matter of urgency is: what further assistance can the Government give to assist 5 Triple M FM to maintain its operations and relocate to a suitable venue of mutual convenience? Finally, I urge all those who are pirating the airwaves, like myself, to pay their subscriptions. I await with interest the Minister's answer.

The Hon. ANNE LEVY: In response to the honourable member, I certainly echo his commendation for the public radio station 5 Triple M FM. One of numerous community radio stations around the State, it is a very active participant in the whole public radio scene. Only last weekend, the public radio stations of South Australia and the Northern Territory had their annual conference, and very enthusiastic, energetic and creative people attended that conference.

Radio 5 Triple M FM has had problems with its present location, in that it is an expensive location, as the honourable member has indicated. The South Australian Housing Trust would have been very happy to sell the property to 5 Triple M FM, but the station was unable to purchase it.

Some time ago 5 Triple M was offered the opportunity to purchase the property in which it is currently housed, but it is a prime location in a near city suburb and has, consequently, a high price. The Department for the Arts offered 5 Triple M a challenge grant to encourage it to raise money to service a deposit to buy the property, but unfortunately 5 Triple M was not able to meet that challenge and did not raise the amount necessary to which the challenge grant could be added.

In any case, this would have been for the deposit only and, with the current interest rate situation, the management of 5 Triple M felt that it would have had great difficulty in meeting the repayments, which would have been greater than the rent that, in any case, they were having great difficulty meeting. We were concerned about some of the problems with which 5 Triple M was faced. Late last year we commissioned a consultant to look at 5 Triple M and make recommendations as to how it could best reorganise itself and go about putting its finances on a sound footing. The consultant's report indicated that a major requirement for 5 Triple M was the employment of a station manager who would be able to bring administrative and financial skills to the position.

The Department for the Arts has provided a one-off grant to enable a new station manager to be employed this year, and, hopefully this will get the station back on track. The new manager arrived in Adelaide I think about a week ago, and within three days created quite a revolution with, I may say, the complete support of the new board of management of 5 Triple M. In my conversations with him last week I felt that 5 Triple M was in very capable hands. I certainly look forward to his numerous plans maturing and making a world of difference to 5 Triple M.

Of course, there remains the question of the relocation. I understand that 5 Triple M accepts that it will not be able to purchase the property in which it is currently operating and that it is looking at alternative locations. As I understand it, at this stage no definite location has been decided, but the relative merits of price, location, ease of access, and so on, for several sites are being considered. I hope that a suitable location will be determined in the very near future.

The Government has verbally promised to give financial assistance to 5 Triple M for any relocation, as relocating a radio station is not easy or cheap. The Government has previously done this when public radio stations have had to move to new locations, as happened, for instance, last year when the public radio station at Mount Gambier found that its premises were no longer available to it and it had to move to new premises. In that situation a one-off grant was given to assist in relocating the radio station.

I am quite sure that, when 5 Triple M makes arrangements for new premises and proceeds to move, in the same manner assistance will be given towards the necessary costs of relocating a station which is not as simple as for an individual moving house.

BUDGET PAPERS

The Hon. Barbara Wiese, for the **Hon. C.J. SUMNER (Attorney-General):** I move:

That the Council take note of the papers relating to the Estimates of Payments and Receipts 1990-91.

I move this motion in accordance with our usual practice each year of allowing members of the Council to make a contribution on the provisions of the budget prior to its actually arriving in this Chamber.

The Hon. R.I. LUCAS secured the adjournment of the debate.

LANDLORD AND TENANT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 August. Page 303.)

The Hon. K.T. GRIFFIN: This Bill originally came before the Legislative Council prior to the last election. The then Minister of Consumer Affairs rushed it into this Council just before we rose for the election, obviously endeavouring to curry favour with the small business community which had expressed considerable concern about the retail tenancy environment. The matter was not discussed because there was inadequate time to do that before Parliament was dissolved.

The Bill was then introduced in the latter part of the last session and, because there was a mass of legislation which we were required to deal with, some of which was introduced at very short notice, we on this side of the Chamber took the view that it was impossible to give it full consideration and to debate it adequately. As a result, the Bill lapsed when Parliament was dissolved. Some benefit has come from the delay because the Government has picked up several of the amendments proposed by the Building Owners and Managers Association and other groups in bringing forward this Bill. However, it does not address a number of issues which, in my view, it ought to.

First, let me deal with the general principle of the commercial tenancies legislation. One recognises that small business people, as tenants, have some faith in this legislation to give them what they would regard as an equitable right and interest in the premises in which they conduct their business. There is no doubt that some landlords are unscrupulous. Whilst they are in the minority, they have, nevertheless, coloured the commercial leasing environment such that the sort of legislation which we have before us and the principal Act becomes necessary, because not only must the unscrupulous be regulated but also the expectation of tenants is that they will be properly protected from those unscrupulous landlords.

The difficulty is that it catches all landlords and all tenants, even though, in the majority of cases, there is a reasonable relationship between the two, the landlord being recognised as the person or body that provides the capital development for shopping centres and office accommodation, and the tenant providing the day-to-day activity that is conducted on the premises and, in fact, providing some financial substance to the ongoing operation of those premises. The landlords recognise that they need tenants; the tenants recognise that they need landlords; and, generally speaking, there are good relations between the two. As I say, there are problems with a handful, and they are the reason for some regulatory legislation in the form of commercial tenancies legislation here and in some other States.

The other difficulty is that, once a form of regulation is introduced, everyone expects it to continue and, from time to time, to be tightened or loopholes closed. That is really the object of this Bill before us now.

Another difficulty is that, in an economic environment where operating costs are high, where customer numbers are down, where Governments are constantly increasing taxes and charges, and where there is constantly a flow-on of, say, increases in petrol prices and other Federal Government charges, tenants become more and more vulnerable and their businesses frequently become more and more borderline. In those circumstances, they seek out someone to carry part of the burden which is being transferred to them and also someone to protect them in circumstances where their profits are diminishing and, in fact, in some cases, have disappeared completely.

Of course, there has to be some balance between the rights of landlords and the rights of tenants. If the balance falls completely in favour of the tenants, it will stifle development, which is important for South Australia. On the other hand, in the current environment, if it all goes the way of the landlords, then more and more tenants will look towards insolvency. It is a fact of life that, when landlords are required to bear costs, ultimately those costs flow through in the rent and that will be one of the difficulties that will have to be addressed when we consider a second Landlord and Tenant Act Amendment Bill that seeks to prevent landlords passing on land tax to tenants.

That is a quite neat way for the Government to avoid its responsibility for land tax, which is dramatically increasing year by year, but the fact of the matter is that, even though that legislation will be considered and even if it is passed, the tenants, and ultimately the consumers, will pay that in one form or another—probably through increased rents. So, there is a distortion in the market which is likely to occur as a result of those costs being passed on. I do not think there is any way in which one can prevent those costs in one form or another being passed onto tenants and, then, ultimately to consumers.

I want to deal with a number of issues in this Bill. In due course the Minister should respond to a number of matters, and a number of matters could well be the subject of amendment. It would be helpful if I were to identify most of those matters to which I want to address some questions in the Committee stage of the Bill, so that, before replying, the Minister has an opportunity to consider those matters.

Naturally enough, the Bill is controversial. It seeks to limit existing rights of landlords and confer new rights on

tenants. It seeks also to widen significantly the scope of current legislation relating to commercial tenancies. The principal Act covers tenancies of business premises at which goods are sold to the public by retail, or to which the public is invited with a view to negotiating for the supply of services where the annual rent, excluding administrative and management costs, does not exceed $60 000.

This Bill seeks to do a number of things. First, it seeks to provide for tenants covered by the Bill to obtain a lease for a minimum five-year term. Secondly, it seeks to provide exemptions from the five-year obligation for some family arrangements and short-term tenancies of not more than two months where independent legal advice has been sought.

Thirdly, it seeks to extend the cover for tenants to leases where the rent is not more than $200 000 per year, excluding administrative and management costs, but the Bill seeks to exclude from the operation of the Act public companies and subsidiaries of public companies that are tenants. Fourthly, it seeks to include premises at which services are supplied to the public.

Fifthly, it seeks to provide for improved disclosure statements to tenants. Sixthly, it seeks to provide for any condition of a lease preventing registration to be void and to require landlords to prepare leases in registrable form and bear costs in some circumstances. Seventhly, it seeks to change significantly the jurisdiction and the power of the Commercial Tribunal.

A number of other matters are addressed in the Bill, and I will deal with some of them, but the major issues are thus identified. I suggest that the most controversial provisions of the Bill relate to the minimum five-year term, or an original term plus a renewal which in total is not less than five years. In addition, it seeks to extend the rent level from $60 000 to $200 000 per annum.

I deal first with the criteria for application of commercial tenancies legislation. The $60 000 annual rental limit was fixed in 1986. In 1987, rent was redefined and the extensive operating expenses were excluded from the definition of rent for the purpose of calculating the threshold. That amendment resulted in a significant real increase in the threshold. There has been a number of representations to me about what is the level of the threshold. There is a view that the increase to $200 000 is quite dramatic—certainly not in line with inflation, and most probably not in line with the escalation in rentals. Last year the Real Estate Institute proposed that an $80 000 rental limit would have been an appropriate figure.

The Building, Owners and Managers Association takes the view that an extension to $200 000 would catch not only small retail premises but also ordinary business and professional space where up to 40 to 60 people may work. Of course, that would be space where services are provided to the public.

A majority of the Government working party, which was established to consider commercial tenancies, recommended that the criterion should be where businesses employ up to 30 people and, if they employed more, they would be outside the ambit of the legislation. There is an acknowledged difficulty with that. Would that be 20 people on a full-time equivalent basis? What happens if they have more than 20 people at the time the lease is entered into but fewer than 20 after the lease is entered into? Should they be of a particular level of employment, adult or minors? A whole range of objections can be raised in relation to this matter.

I can appreciate the desirability of linking it into small business, which was the original basis on which the Government proposed that commercial tenancy legislation should apply, but I see that linking it to the number of people employed is not likely to be a particularly workable solution. On the other hand, encompassing businesses and professional operations which employ up to 40 to 60 people is taking the issue much too far. In legislation in Victoria, Western Australia and Queensland, the criterion for determining the application of retail tenancy legislation, is 1 000 m^2. Of course, that is certain; it applies across the particular jurisdiction and is not subject to any manipulation.

Whilst in those States that applies in relation to retail tenancies of a more limited nature than those in our legislation, I am of the view that we ought not to depart from that criterion—as comfortable as that might be. We have actually relied on rent as the criterion for the past four and nearly five years, and the whole system is geared to that. It would be unfortunate to move to something other than rent as a basis. Notwithstanding that the $200 000 seems to be quite extraordinarily high it is a matter of debate as to what the proper figure should be. Suggestions have been made to me that it should be $100 000; and, of course, the Real Estate Institute figure is $80 000. Some have suggested that rents in good shopping districts have increased by about a factor of three which would bring the figure up to $180 000. I do not believe it is worth wasting time arguing about $30 000 or $50 000. Of course it depends on a number of other issues, such as the power of the Commercial Tribunal and the consequences which flow from bringing tenancies into the ambit of this legislation.

Many business and professional bodies, where the rent is very much less than $200 000 per year, are competent and capable enough of looking after themselves. They read the lease and negotiate, and believe it is unreasonable that they should gain the benefit of the provision. Of course, there are national chains of businesses, such as the Sportsgirl-type of operation—which is not a public company as I understand it—that are perfectly capable of negotiating with landlords for tenancies for retail premises. As I do not see any easy way of dealing with those sorts of situations, we probably have to resign ourselves to accepting a $200 000 annual rental limit across the board, and endeavour to moderate some of the other more extreme provisions of the Bill.

In relation to the $200 000, I should say that the Liberal Party is opposed to that figure being increased by regulation. That is a convenient way of hiding an increase from time to time. With the sorts of ramifications which apply for landlords in particular but also for tenants, I believe that as a matter of principle we ought to be making any changes to the threshold by statute and making a positive decision about it rather than doing it by regulation. Regulations come before the Parliament only in a reverse context in that they can be disallowed if there are the numbers to support such a motion. As I say, this is such a significant issue, and the Act itself, with the Bill in whatever form it passes, makes such substantial inroads into the rights of landlords and tenants, that any amendments to the threshold ought to be made by statute and not by regulation.

A submission was made to me that all hotel premises ought to be excluded from the operation of the legislation, and there is some good sense in that. I notice that a regulation was passed which exempts all the South Australian Brewing Company leases to its own operating tenancies, but not where those leases are to unrelated individuals. However, the argument presented to me by the hotel broker who put that point of view was that, generally speaking, the hotel leases are subject to scrutiny by the Licensing Court not so much as to the minute detail but as to the suitability of the

prospective tenant who becomes the manager, and the appropriateness of the lease. To give the sorts of rights that are provided for in this legislation and allow the Commercial Tribunal to become involved, whilst the Licensing Court is also involved in dealing with the licensing of premises and thus involved with leases, is unnecessary duplication. I would like the Minister to consider whether in those circumstances it is appropriate to have two systems overlapping in the regulation of hotel premises.

The principal Act binds the Crown where it is a landlord and so a body such as the South Australian Housing Trust in its letting of retail premises is bound. But the Crown—at both State and Federal levels—also gets the benefit of legislations where it is a tenant. There would be many tenancies which would be less than $200 000 where a Government agency is the tenant, and it would thus have the benefit of this legislation.

My view is if it is good enough to exclude from the operation of this legislation, public companies and subsidiaries of public companies where they are tenants, it is good enough also to exclude State and Federal Government departments and agencies, and I will certainly propose that that occur. They are big enough and carry enough clout to be able to look after themselves. Also in the same context, it is appropriate to exclude local government because, again, it is another level of government quite capable of looking after itself.

The only other area in relation to the criteria relates to bodies corporate which are akin to public companies. In the definition that the Government seeks to include, there are bodies which are akin to public companies but which are not technically such under the Companies (South Australia) Code, nor are they subsidiaries of such a company. I propose that bodies like mutual societies, building societies, cooperatives and credit unions ought also be excluded from the operation of this legislation where they are tenants. One example of a mutual society is the AMP, which is a substantial landlord, but it could also be a tenant and there is no reason at all why it should be treated any differently from any companies of a public nature which are to be exempted.

The same can apply to building societies, and they are out in the marketplace generally competing against banks and other financial institutions, well able to look after themselves. Again, I do not see any reason why they should be treated any differently from public companies. Credit unions are generally of a size where they can look after themselves, as are cooperatives. It is interesting that, in Queensland, there is a schedule which provides for the nature of businesses carried on to be covered or not covered by the retail tenancy legislation. I am not suggesting that we ought to go down that path but I do think that, if we go along with the idea of excluding from the operation of this legislation public companies and subsidiaries of public companies, we ought to take that a step further with the other bodies to which I have referred.

I want now to turn to the question of the minimum five-year term. The concept in the Bill is to provide effectively a guarantee of a minimum five-year term. If a tenant and a landlord wish to negotiate some shorter period, they are entitled to do that, but that negotiation is not binding on the tenant because, within 90 days of the end of the period shorter than five years which might have been negotiated, the tenant is able to insist upon an extension of the term for the full period of five years from the date of commencement of the tenancy. That means the landlord is in a very difficult position, particularly where the landlord might have other plans for the tenancy.

On the basis that the tenant has two years, the landlord may have decided that he, she or it will demolish or renovate the premises, or even let the premises to some other sort of business which perhaps provides a different mix for that shopping centre. So, the ability of the tenant to insist upon a longer period after having sampled the initial negotiated period of, say, two years provides very real instability so far as the landlord is concerned.

I acknowledge that tenants do wish to have some security of tenure, and five years would give them an opportunity to do that. Three years would be adequate for that purpose, and I certainly intend to propose three years rather than five years. However, whatever term we fix upon, we still have the same problem of a lack of flexibility. One must remember that for tenants it is something of a two-edged sword. Tenants can benefit from a short-term lease, particularly in difficult economic circumstances, and they can get out of the lease in, say, two years. If, say, they run into financial difficulties after one year, they know then that they have only one year to go and can possibly struggle through for the balance of that term.

However, there is a difficulty if it is a five-year term that they have negotiated up front rather than a short-term two-year-type lease, with a view to looking for an extension later. If they negotiated a five-year term, they are at risk, if the business does not go well and they have to get out, of finding that they are liable for the rent and all expenses relating to the tenancy until an alternative tenant can be found. In difficult economic circumstances, that will not be easy. So, it may be that the tenant will end up bankrupt if the tenant is unable to either find another tenant to take over the tenancy or to continue the business for so long as is necessary to meet the obligations under the tenancy agreement. So, in that respect, it is a two-edged sword.

In relation to commercial or professional-type premises, it is my understanding that most of the office block landlords seek to negotiate longer term leases—at least five years and more likely ten or more years—with a review of rent on an annual or some other periodic basis. So, they are not the main concern. It is the retail shopping tenancies which are at issue and, as I understand it, most of those are three years with a right to renew for a further three years, with the tenant having the option at the end of the first three-year term to decide whether or not to exercise the option to renew.

Those who propose the five-year term argue that it will give to tenants a reasonable lease term over which to write off expenditure on fixtures and fittings and the opportunity to sell goodwill in the business early in the five-year lease term. I am not sure why they would want to sell the goodwill early in the term. If the business is going reasonably well, presumably they would want to stay in the business. Those who argue against the five-year term assert that, at the end of a five-year term, there will be the same difficulty with goodwill as there is at the present time and, in any event, early in a five-year term, the goodwill may not have been established sufficiently to give it any value of substance.

Landlords argue in a shopping centre context that the five-year fixed terms will prevent landlords and managers from having the flexibility to vary the centre's tenancy mix to ensure the success of the centre, that it will prevent the assessment of a tenant's potential at the start of a lease, and then they will be stuck with that person for five years, even if the performance is inadequate.

There is also the argument that shopping centre operators put against the proposal for fixed terms, that is, the need for major refurbishment. If that is necessary, that could be prejudiced where a landlord would no longer be able to

coordinate the expiry of leases to ensure that that could be undertaken. One recognises that in Victoria, Queensland and Western Australia there is legislation for minimum five-year terms, but it is for a much more limited range of tenancies than is encompassed by our legislation.

The Bill excludes from this five-year provision the landlord's spouse, parent, grandparent, step-parent, child, grandchild, stepchild, brother or sister, or the spouse of the landlord's child who may be a tenant. It also excludes tenancies of two months or less where the tenant has received independent legal advice. It also excludes tenancies between certain related corporations who may be landlord and tenant. I do not think that this provision adequately considers the different needs of tenants, on the one hand, and the fact that landlords provide the facilities that are tenanted, on the other hand.

It ignores the vacant shops or offices that might be best let on a short-term basis. For example, if a long-term tenant is not to occupy for, say, three, four or six months and the premises would otherwise be vacant for the period leading up to that tenancy, in those circumstances the landlord has to say, 'It is worth the risk because, if I grant a six-month, three-month or four-month tenancy, it could result in my having to give a five-year tenancy, and then the premises would be shut off from any other use.'

I suppose that landlords are likely to decide just to keep the premises vacant until the major long-term tenant enters, and that is ultimately going to lead to an increase in rent. Also, the minimum five-year term ignores the fact that some shops are awaiting demolition or renovation. They might be used by some person on a short-term basis. I refer to some of the regional shopping centres such as Jetty Road, Glenelg, and Unley Road, where frequently we see that those who have a variety of small goods to sell occupy premises for a short time and then move on. They make a habit of taking short-term tenancies in premises that are likely to be let later for longer terms. 'Cheap as Chips' is such an operation. If leases are limited, as the Bill does, to a two-month tenancy, in my view we still will not deal adequately with the short-term vacancy problem.

There is the other situation, and one needs only to talk to agents dealing with commercial property in the city in respect of a business which may take a long-term lease, perhaps a 10-year lease of a floor in an office building. It may already lease one or two floors in the building and want to secure its long-term expansion opportunities. If it takes another one, two or more floors for a longer term, rather than carrying that cost and absorbing it in its business or passing it onto customers or clients, it wants to get tenants who may take the area for two or three years. This legislation will prevent that because, if a tenant seeks to sublease for two or three years premises taken on the basis of providing for their long-term needs but which are not needed immediately (but they assess they may be needed in two or three years), the tenant will have the right to require a five-year tenancy. That is not fair and reasonable, and we have to do something to ensure that that situation can be avoided.

A number of issues need to be addressed concerning five-year minimum terms. As I said, I tend to take the view that three years is more appropriate than five years. We need to exclude from the operation of the minimum term those premises where the landlord is proposing a major refurbishment within a period of, say, three years. We need to exclude short-term tenancies for a longer term than two months, as reflected in the Bill. I suggest that six months is reasonable.

I also suggest that, in addition to excluding a number of persons who may be tenants and related to the landlord and the spouse of the landlord, and the spouse of the landlord's child, it would be reasonable to consider also the exclusion from the provision of this five-year term provision people who are the spouses of others, such as step-parents, grandchildren, brothers and sisters and perhaps even partners. I would like the Minister to consider that.

I would want us to exclude from the operation of this provision the office-type accommodation that is leased on a long-term basis to a tenant who wants to sublet for a period until those premises are needed for that tenant's business. We need to offer some mechanism by which the parties at arm's length, who are comfortable with a negotiated term, are able to bind themselves to a term less than either three years or five years—however it comes out from counsel. I suggest that the way to do that is to provide that, where a tenant agrees to a term shorter than the fixed term that is ultimately provided in the Bill, such shorter term should prevail. Then the provisions of the minimum term may be circumvented, but only if the tenant obtains independent legal advice and there is a certificate by the lawyer that the tenant understands the terms and the conditions of the lease, and has executed it of his or her own free will and accord.

There is a precedent for that under the consumer credit legislation in respect of guarantees; there is a provision for a guarantor to obtain independent legal advice on a guarantee and, once that advice has been obtained, and a certificate from the solicitor giving that advice is provided, the guarantee is binding. I therefore invite the Minister to give further consideration to that matter.

I turn now to the powers of the Commercial Tribunal. Under this Bill the powers of the Commercial Tribunal have been extended quite considerably. Under the Bill, the tribunal may grant relief from the operation of any provision of a tenancy agreement and order reinstatement of rights of occupation which have been forfeited, as well as make such other order as it thinks fit. There are a number of places where that sort of provision applies. One finds it in relation to clause 7, the new section 62 (10). It is also there in relation to disclosure statements, and it is there in relation to clause 10, the new section 66a. One finds it also in relation to clause 12 dealing with amendments to section 68. It seems to me that those provisions are extraordinarily wide and give to the tribunal a jurisdiction which it should not have.

Whilst the Landlord and Tenant Act deals with specific matters as between landlord and tenant, the Commercial Tribunal is given power to become involved in any other term of the lease which might not be the subject of specific legislative enactment, and I think that is wrong. It is for that reason that I propose that we amend the powers of the Commercial Tribunal and limit them to those matters which are specifically regulated by the Landlord and Tenant Act rather than give the Commercial Tribunal what is, in effect, a power at large to do virtually what it will with the lease when a matter comes before it.

Also, in the context of this legislation, we ought to consider appeals from decisions of the Commercial Tribunal. The Commercial Tribunal Act provides that, on a question of law, there is an appeal as of right. On any other matters there is an appeal by leave of the Supreme Court or the tribunal. I think that, with the broadening of this legislation, the powers which are given to the tribunal and the dramatic consequences that decisions of the tribunal can have on both landlords and tenants, it is important to provide an

appeal as of right on both law and fact, and I will propose an amendment to that effect.

One has to look at that in the context of the Local and District Courts. In relation to any matter over $20 000 in the District Court there is a right of appeal. The issues upon which the Commercial Tribunal will be deliberating are equally as important as the jurisdiction of the District Court. Therefore, I do not believe that in the circumstances of this legislation we ought to be limiting the right of appeal.

There are a number of other matters to which I want to refer briefly. The first is the question of costs. This is a vexed question, because the practice at the moment is that the landlord and tenant negotiate on who should pay the costs. Generally speaking, it is the tenant. The Bill provides for a rather complex system where in some cases the tenant pays the costs where the tenant requires the lease to be in registrable form, and the landlord pays the costs in circumstances where the landlord requires a written tenancy agreement. I think that is quite confusing. There is doubt as to when the request for a lease in registrable form should be made, and the timing of that determines the person who pays the costs.

We ought to start from the point where all leases over, say, one year should be in registrable form. I think it is in the interests of landlords, and particularly of tenants, to have written tenancy agreements or leases. More disputes arise where there are no written tenancy agreements than in relation to just about any other matter. In those circumstances, I take the view that we ought to cut through all that confusion. We ought to say that any lease for more than one year must be in registrable form.

We should leave it to the landlord and tenant, either together or separately, to determine whether or not the lease is to be registered. If the lease is to be registered, then the costs of registration, stamp duty, registration fees and the consent of the mortgagee will be payable by the tenant. The landlord and tenant will share the costs of the preparation of the lease, which will normally be done by the landlord for the sake of consistency, particularly where there are a number of premises in the one complex or block of shops. It is important that there be that consistency.

That is a compromise on what happens now; it is a compromise of what is in the Bill. I think that it will overcome many of the problems which might be experienced presently by tenants. I know that it places an additional burden on landlords, but it is not as great a burden as is being placed upon landlords by this Bill.

The Bill provides that certain associated attendances on the tenant are payable by the landlord. I think that we should remove any reference to associated attendances on the tenant. We ought to make it a simple matter of the lease being in registrable form if the term is for more than one year, the costs to be shared equally between the landlord and the tenant; that is, the landlord's costs of preparing the lease should be shared equally between the landlord and the tenant; and the tenant should pay stamp duty, registration fees and the costs of obtaining any consents.

The costs of deposit of a plan would be payable by the landlord, because they are likely to be of an ongoing nature and benefit to the landlord. The only difficulty is that in some of these shopping complexes the internal configuration is changed on a fairly regular basis, and that may mean a variation in the plan which is deposited at the general registry office, but at this stage I cannot see any way around that.

In relation to proceedings under the Act, the Bill seeks to increase from one year to two years the period within which proceedings may be issued. I support the maintenance of one year on the basis that if there are to be prosecutions they ought to be made expeditiously. I cannot agree that there is any real benefit in delaying the day of reckoning for landlords, and I do not think that an argument that the department is short staffed will carry any weight in determining whether or not a prosecution should be launched and whether or not a body which is charged should have to wait two years to learn whether or not the prosecution will be taken.

The Bill also sets out a code for dealing with abandoned goods. It does override any agreement between the landlord and tenant, as I interpret the provision in the Bill. I think that is unwise. I do not deny that there may be a need for a code for dealing with abandoned goods—I am told by landlords that that has rarely been a problem so far—but I suggest that the code apply only in the absence of any agreement between the landlord and the tenant.

Frequently, there is an agreement between them as to the way in which these abandoned goods should be dealt with, and that agreement is either in the lease or in some supplementary documentation. I think that, if provision is to be made in the Bill for abandoned goods, then if the goods are to be stored and are subsequently advertised for sale but the former tenant seeks to recover them before they are actually sold, any costs and expenses up to the point of sale should be required to be paid by the tenant in addition to the costs of removal and storage.

Provisions are included for a greater level of disclosure by a landlord to a prospective tenant prior to executing a lease. If there is a failure to comply, even in a minor respect, and if, for example, documents are not delivered within a fairly limited period of time after registration or stamping, the matter can be referred to the Commercial Tribunal, which can do anything it thinks reasonable in the circumstances, and that can include forfeiture of the lease. I wonder if that is not a bit harsh. Interstate legislation provides for a notice of objection by the tenant to the landlord, and that can ultimately lead to termination by the tenant. It seems to me that that course of action is preferable to having the Commercial Tribunal come in and virtually rewrite the arrangement between landlord and tenant.

The investment of the Commercial Tenancies Fund is proposed to be made by the Minister. The present Act provides that it may be made after consultation with the tribunal, and it is proposed to remove that consultation with the tribunal. I want the Minister to give some information about the guidelines which are to be applied in relation to investment. I am concerned that, with the increased coverage of the legislation, there will be significantly more bond money available for investment through the Commercial Tenancies Fund. I would like to know from the Minister what sort of projection has been made about funds which might be available, how they will be invested, what guidelines will apply to the investment and how the funds will be used.

I have already dealt with the limitations on the power of a landlord to move a tenant to another location in a shopping centre. The Bill gives the Commercial Tribunal very wide power, particularly to intervene where there is some detriment to the tenant. Proposed section 66ab provides that the Tribunal may annul the requirement, move to other premises, or make any adjustment of rights between the landlord and tenant that may be just in view of the requirement (and for that purpose may vary the terms of the commercial tenancy agreement or any proposed commercial tenancy agreement that is to take effect in substitution). However, under proposed new subsection (5), the tribunal cannot annul the requirement unless satisfied that the pro-

posed move would have a seriously adverse, and enduring, effect on the tenant's business. That is a very wide and very serious power, and I have concerns about its breadth.

I think we must find some more reasonable basis upon which the tribunal can intervene, if it can intervene at all, and the rights of the landlord to move the tenants around, particularly in a shopping complex, can be recognised.

A number of other matters are of a relatively minor or technical nature, and I will deal with them during the Committee stage. One matter that immediately comes to mind is that there is no provision in the Bill for the minimum five-year term not to apply where, for example, a tenant subleases and the subtenancy term would extend beyond the period of the head lease. That is recognised in interstate legislation but, on my reading of this Bill, does not appear to have been addressed here.

There are also questions in proposed section 62 (7) as to when documents are to be available to the tenant. I think there are problems there because the Bill does not recognise delays which occur in the Stamp Duties Office, but more particularly in the Lands Titles Office, where it takes something like six weeks now to have a document registered. Interstate legislation, as I recollect, does provide for a photocopy of the executed lease to be made available to the tenant, and for the other documentation, after stamping and registration, to be provided at a later date, without the consequences of possible termination applying.

Proposed section 62 (4) provides that a copy of a lease be given immediately to the tenant, and subsection (6) provides that the landlord must comply with a requirement to execute the document himself or herself as soon as it has been executed by the tenant or as expeditiously as possible. I think a number of areas in this legislation place an undue and onerous burden on landlords which do not really take into account the reality of the commercial leasing market.

Clause 5 contains a question of the distribution of jurisdiction between the Commercial Tribunal and ordinary courts. I have a concern about the way in which that might operate: to confer jurisdiction primarily on the Commercial Tribunal, when in fact the jurisdiction ought to be exercised by courts where the rules of evidence apply and where there are more extensive rights of appeal. I intend to deal with those and other issues during the Committee stage.

Having elaborated extensively on some of the concerns I have about this Bill, and identified some of the issues which I believe need to be addressed and for which I will propose amendments, I hope that the Minister may be in a better position to respond before the second reading debate closes and thus facilitate the consideration of the Committee stage of the Bill. To enable us to get that far, I indicate support for the second reading.

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

MARINE ENVIRONMENT PROTECTION BILL

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

The Hon. BARBARA WIESE (Minister of Tourism): I move:

That this Bill be now read a second time.

This legislation will complete the Government's package to manage water quality in South Australia. This started with the Environment Protection (Sea Dumping) Act 1984, and includes the Pollution of Waters by Oil and Noxious Substances Act 1987, and the extensive amendments to the Water Resources Act which were passed in the last session of Parliament. The need now is for legislation to bridge the gap between the requirements of the London Convention and the management of the freshwater resources of the State. It would be inappropriate to bring in the rigorous provisions of the Sea Dumping Act without stringent controls on discharges to the inshore waters.

When the previous Bill lapsed in April of this year, the Government pledged itself to continue several initiatives, including adapting the draft National Water Quality Guidelines for use in South Australia. A major consideration was to keep faith with those industries in this State which were attempting to be environmentally responsible. Several of these companies have released proposals, the result of years of testing and planning, to reduce their discharges to natural waters. They had proceeded, in all good faith, to develop programs to comply with the criteria set out in the White Paper of June 1989. The company which has been a target for protests, Pasminco—BHAS at Port Pirie—has announced major environmental improvement programs, costing at least $12 million, since the previous Bill lapsed. The problem for BHAS is that they still have no legislated standards against which their performance can be assessed. They are pouring the foundations for a new thickener, and will continue with their program to improve waste water quality as a demonstration of the company's commitment.

The Government has also received a proposal from Apcel at Millicent to change its manufacturing process and eliminate chlorine bleaching and, with it, the source of most of the environmental concerns about this plant. In that case, the proposal follows several years of undramatic, often tedious, negotiation and planning. In debate on the previous Bill, there were attempts to cast doubt on the good faith of this company. The company has now set out its proposals for redevelopment, with the required environmental impact statement, which is open to anyone to comment. That proposal is going through full, proper assessment, but it is there, before the public, as evidence of the intentions of this company.

The Government, as collector of the waste waters of most South Australians, is also committed to cease discharging sewage sludge to the marine environment off Adelaide. There has been good acceptance of the 'user pays' principle from the public, who will pay more in their sewerage rates so that the negative impacts of this sludge may be converted to more positive uses.

One matter on which the Government was accused of being intransigent in the previous Bill was in not setting this commitment to legislation. Members in another place seemed quite prepared to ignore the requirements of the Public Works Standing Committee Act 1986, in demanding immediate commitment to expenditure—on their estimate, $2.5 million. This Bill again contains no such provision. The Government has made the clearest possible commitment to ceasing discharge of sewage sludge by the end of 1993; but it also recognises that it is not proper to introduce a Bill authorising works of a value equivalent to $2 million in 1986 dollars unless the work has first been inquired into by the committee. That action requires no further explanation nor justification.

The present Bill also leaves the period for general compliance, by existing discharges, at eight years. It is expected that most operators could comply with the national guidelines within a lesser time. But laws do not apply to 'most'—they apply to all. The problem arises with those who are not able to say when they will be able to comply, often because the technology is still being developed. Neither does

it promote longer-term environmental management to force an existing industry to use a particular kind of technology just to meet some arbitrary deadline, if there is more effective technology being developed.

This Bill now includes a provision that would allow the Minister to place a bond for compliance on any licence. In its simplest form, the legislation would require that a bond be posted. If the company complies with its conditions, the bond is discharged; if it fails to meet those conditions, the bond is forfeited. To provide an incentive for a licensee to comply with conditions quicker than the eight year period, provision can be made to stage the posting of a bond. Potential loss of the bond could provide an incentive for a licensee to introduce the necessary technology to comply with the conditions of a licence as quickly as possible. Bonds which have been forfeited may be available to compensate for impacts caused by lack of compliance.

When the previous Bill lapsed, the Government needed to maintain impetus on the national water quality guidelines. The task of coordinating local technical input, and wider consultation, was taken up by the Environmental Protection Council. That Council commissioned a subcommittee, including persons with eminent qualifications in the marine environment, which meets each month, and has made commendable progress in guiding State input to the national document, and adapting the national guidelines to the practical needs of this State. This Bill continues to nominate the Environmental Protection Council to advise the Minister on regulations and general administration of the Act.

Apart from these changes, the Bill differs from that introduced in February of this year mainly in setting penalties reaching $150 000 for individuals, and $1 million for companies, who are responsible for discharges which could damage the marine environment. This Bill includes definitions of 'pollutant', 'criteria' and 'standards'. It no longer includes powers for the Minister to issue individual exemptions. It provides a trust fund to be used for a wide range of investigations into protection of the marine environment and for public education.

This Bill mirrors the style of the amended Water Resources Act in setting out objects of the Act and functions for the Minister. The objects are positive statements for which performance indicators can be devised. They also establish the 'user pays' principle, and indicate priorities for action. The functions strengthen ties with the other Acts which constitute the package to manage all of the State's water resources. It is the package which is important. The need now is to be able to control the many small impacts that collectively cause much of the loss of amenity around our coastal towns and cities.

The method chosen is to prohibit discharges to the coastal waters, except by licence. Licences would be available for all existing discharges. There can be economic incentives to promote compliance in the shortest possible time. The people of South Australia support this. They have accepted their share of the costs of treating sewage sludge. There is widespread support for the levy on sewerage rates. National water quality guidelines are being adapted for practical application under this Bill. We have had extensive consultation over the 14 months since the White Paper was released. The Bill recognises the Environmental Protection Council as the body constituted under legislation to advise the Minister on administration of this Act and which has made substantial progress on documenting its technical advice.

The only danger from this Bill is if members do not give it constructive support. It does not stand alone. Delay in its passage is making life difficult for those companies and individuals who want to ameliorate those impacts that humans have made on the marine environment. The only persons who gain from further delay are those who are inclined to continue with behaviour that simply is no longer acceptable to the general community. This Bill contains every provision that could reasonably be included from debate on the previous Bill. There is no disagreement on the need to protect the marine environment. This Bill presents practical means of achieving that outcome. The Government looks forward to a positive response to the Bill in this form.

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

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 is an interpretation provision. The following definitions are central to the measure:

'pollutant' means any wastes or other matter, whether in solid, liquid or gaseous form but does not include stormwater or specified kinds of matter excluded by regulation from the application of the Act:

'coastal waters' means any part of the sea that is within the limits of the State or that is coastal waters of the State within the meaning of the Commonwealth Coastal Waters (State Powers) Act 1980 and includes any estuary or other tidal waters:

'declared inland waters' means waters constituting the whole or part of a watercourse or lake, underground waters or waste waters or other waters, and declared by the Minister (with the concurrence of the Minister of Water Resources), by notice in the *Gazette* to be inland waters to which the measure applies:

'land that constitutes part of the coast' is land that is—

(a) within the mean high water mark and the mean low water mark on the seashore at spring tides;

(b) beneath coastal waters;

(c) beneath or within any estuary, watercourse or lake or section of watercourse or lake and subject to the ebb and flow of the tide;

or

(d) declared by the Minister, by notice in the *Gazette,* to be coastal land to which the measure applies.

Clause 4 provides that the measure binds the Crown.

Clause 5 provides that the measure is in addition to and does not take away from any other Act. It expressly provides that the measure does not apply in relation to any activity controlled by the Environment Protection (Sea Dumping) Act 1984, or the Pollution of Waters by Oil and Noxious Substances Act 1987 and that it is subject to the Pulp and Paper Mills Agreement Act 1958, the Pulp and Paper Mill (Hundred of Gambier) Indenture Act 1961, and the Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964.

The clause enables regulations to be made excluding activities of a specified kind from the application of the measure or part of the measure.

Part II (clauses 6 and 7) sets out general objects and functions under the measure.

Clause 6 provides that the objects of the measure are—

(a) to protect the marine environment and preserve or enhance its quality for beneficial use by the com-

munity by preventing or controlling, and mitigating the effects of, pollution;

(b) to ensure that persons engaging in activities that might adversely affect the marine environment monitor and report the effects of those activities and bear the cost of any necessary ameliorative action;

(c) to promote the minimisation and treatment of waste and, where appropriate, disposal of waste to land to reduce the impact of pollutants on the marine environment.

The clause requires the Minister, the Environmental Protection Council, a committee or any other body or person involved in the administration of the measure to act consistently with, and seek to further, the objects of this Act.

Clause 7 sets out general functions of the Minister under the measure. These are—

(a) to keep under review the condition of the marine environment;

(b) to conduct or promote investigations, research, public education and other programs and projects in relation to the marine environment and its protection;

(c) to promote and coordinate action by public authorities to control the drainage of surface waters and reduce their contaminant loads to the marine environment;

(d) to promote public awareness of the beneficial uses of the marine environment and public commitment to achieving the objects of the measure;

(e) to integrate and coordinate Government policies that affect the marine environment and, for that purpose, to consult where necessary with other Ministers and public authorities with responsibilities in relation to land or water management, management of fisheries and other living natural resources, management of boating and shipping or the planning laws of the State;

and

(f) such other functions as are assigned to the Minister.

Part III (clauses 8 to 13) makes provision for advice with respect to the administration of the measure to be provided by the Environmental Protection Council.

Clause 8 provides that the Environmental Protection Council is to have, in addition to its functions under any other Act, the following functions:

(a) to advise the Minister in respect of the formulation of regulations and other statutory instruments for the purposes of the measure;

(b) to provide general advice to the Minister in respect of the granting of licences under the measure;

(c) to investigate and report on matters relevant to the administration of the measure at the request of the Minister or of its own motion.

Clause 9 provides that the Environmental Protection Council may, with the approval of the Minister, or must, if so required by the Minister, co-opt as an additional member or as additional members of the council a person or persons with knowledge or experience that may be required by the council for the better performance of its functions under the measure.

Clause 10 requires the Environmental Protection Council to establish a special committee of the council to be known as the Marine Environmental Protection Committee. This committee is to consist of—

(a) the Chairman of the council;

(b) the member of the council appointed as a person with expertise in matters relating to the marine environment and its protection;

(c) the member of the council appointed as the nominee of the Conservation Council of South Australia Incorporated;

(d) the member of the council appointed as a person with knowledge of and experience in manufacturing or mining industry;

(e) the member of the council appointed as a person with knowledge of and experience in fisheries;

(f) the member of the council appointed as an officer of the Public Service of the State with knowledge of and experience in public health; and

(g) such other ordinary or co-opted members of the council as the council may, from time to time, with the approval of the Minister, appoint to the committee.

Clause 11 provides that the Environmental Protection Council may, with the approval of the Minister, or must, if so required by the Minister, by writing over the council's seal, delegate to the Marine Environmental Protection Committee all or part of its functions under this Act together with any of the other powers or functions of the council.

Clause 12 provides for the procedure at meetings of the committee and for public access to the minutes of meetings of the committee and minutes of meetings of the Environmental Protection Council at which matters relating to the measure are dealt with.

Clause 13 requires the Minister to ensure that the Environmental Protection Council and the Marine Environmental Protection Committee are provided with such staff, facilities, information and assistance as they may reasonably require for the effective performance of their functions under the measure.

Part IV (clauses 14 to 27) contains provisions for the purposes of controlling discharges into the marine environment.

Clause 14 makes it an offence to discharge any pollutant into declared inland waters or coastal waters or on land that constitutes part of the coast except as authorised by a licence under the measure. The clause expressly provides that lawful discharge into a sewer will not result in the commission of an offence.

Clause 15 makes it an offence to carry on an activity of a kind prescribed by regulation in the course of which any pollutant is produced in declared inland waters or coastal waters, or any pollutant that is already in such waters is disturbed, except as authorised by a licence under the measure.

Clause 16 makes it an offence to install or commence construction of any equipment, structure or works designed or intended for discharging any pollutant or carrying out any activity of a kind referred to in clause 15 except pursuant to a licence. The clause also contains an administrative provision facilitating the issuing of licences for more than one purpose.

The maximum penalty provided for any offence against clauses 14, 15 or 16 is, in the case of a natural person, a fine of $150 000 or division 3 imprisonment (seven years) and, in the case of a body corporate, a fine of $1 million.

Clauses 17 to 25 are general licensing provisions.

Clause 17 provides that an application for a licence must be made to the Minister and enables the Minister to require further information from the applicant.

Clause 18 gives the Minister discretion as to the granting of licences but requires the Minister to make a decision within 3 months of an application for a licence.

Clause 19 provides that a licence is subject to any conditions prescribed by regulation and any conditions imposed by the Minister. The clause empowers the Minister to impose, vary or revoke conditions during the period of the licence.

Clause 20 sets the term of a licence at one year and makes provision for all licences to expire on a common day.

Clause 21 is a machinery provision relating to applications for renewal of a licence.

Clause 22 gives the Minister discretion as to the renewal of licences but requires the Minister to make a decision before the date of expiry of the licence.

Clause 23 requires the Minister, in determining whether to grant or refuse a licence or renewal of a licence and what conditions should attach to a licence, to give effect to or apply such standards or criteria as are prescribed by regulation and applicable. Before granting a licence the Minister must be satisfied that the applicant is a fit and proper person to hold the licence. A licence cannot be granted authorising the discharge of any matter of a kind prescribed by regulation.

Clause 24 makes provision for the continuance of a licensee's business for a limited period after the death of the licensee.

Clause 25 enables the Minister to suspend or cancel a licence if satisfied that—

(a) the licence was obtained improperly;

(b) the licensee has contravened a condition of the licence;

(c) the licensee has otherwise contravened the Act;

(d) the licensee has, in carrying on an activity to which the measure relates, been guilty of negligence or improper conduct;

or

(e) the activity authorised by the licence is having a significantly greater adverse effect on the environment than that anticipated.

Clause 26 requires the Minister to give public notice of any application for a licence or exemption, the granting or refusing of a licence or exemption, the variation or revocation of a condition of a licence or the imposition of a further condition of a licence.

Clause 27 provides for a public register of information relating to licences.

Part V (clauses 28 to 32) contains enforcement provisions.

Clause 28 provides for the appointment of inspectors by the Minister. The instrument of appointment may provide that an inspector may only exercise powers within a limited area. An inspector is required to produce his or her identity card on request.

Clause 29 sets out inspector's powers. An inspector may enter and inspect any land, premises, vehicle, vessel or place in order to determine whether the Act is being complied with and may, where reasonably necessary for that purpose and on the authority of a warrant, break into the land, premises, vehicle, vessel or place. An inspector may exercise such powers without the authority of a warrant if the inspector believes, on reasonable grounds, that the circumstances require immediate action to be taken.

Among the other powers given to inspectors are the following—

(a) to direct the driver of a vehicle or vessel to dispose of any pollutant in or on the vehicle or vessel at a specified place or to store or treat the pollutant in a specified manner;

(b) to take samples for analysis and to test equipment;

(c) to require a person who the inspector reasonably suspects has knowledge concerning any matter relating to the administration of the measure to answer questions in relation to those matters (although the privilege against self incrimination is preserved).

The clause makes it an offence to hinder or obstruct an inspector or to do other like acts. Special provisions are included for dealing with anything seized by an inspector under the clause and for court orders for forfeiture in certain circumstances.

Clause 30 empowers the Minister to require a licensee to test or monitor the effects of the activities carried on pursuant to the licence and to report the results or to require any person to furnish specified information relating to such activities.

Clause 31 requires the Minister to take any necessary or appropriate action to mitigate the effects of any breach of the measure. The Minister may direct an offender to refrain from specified activity or to take specified action to ameliorate conditions resulting from the breach. The Minister may take any urgent action required and may recover costs and expenses incurred in doing so from the offender. The clause makes it an offence to contravene or fail to comply with a direction under the clause with a maximum penalty of, in the case of a natural person, a fine of $150 000 or division 3 imprisonment and, in the case of a body corporate, a fine of $1 million. A person who hinders or obstructs a person taking such action or complying with such a direction is also to be guilty of an offence and liable to a maximum penalty of a division 1 fine ($60 000).

Clause 32 provides that the Minister may, by a condition of a licence, require a licensee to lodge with the Minister a bond (supported by a guarantee or other security approved by the Minister), or a specified pecuniary sum, the discharge or repayment of which is conditional on the licensee—

(a) not contravening or failing to comply with a specified condition of the licence or a specified provision of the measure;

(b) satisfying a liability of a specified kind that might arise under the measure.

A pecuniary sum lodged with the Minister in accordance with such a licence condition is to be paid into the Marine Environment Protection Fund and, on satisfaction of the conditions of repayment, is to be repaid to the licensee together with interest at the prescribed rate. Where the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Minister are not satisfied, the amount of the bond or the pecuniary sum is forfeited to the Crown and must, if not already paid into the fund, be paid into the Marine Environment Protection Fund. Under the clause, money held in the fund as a result of forfeiture of the amount of any bond or a pecuniary sum lodged by a licensee may be applied in payment into the Consolidated Account or to a public authority or other person for or towards costs, expenses, loss or damage incurred or suffered by the Crown or the public authority or other person as a result of any contravention of, or non-compliance with, the measure on the part of the licensee or for any other purposes of the fund, as the Minister thinks fit.

Part VI provides for review of decisions of the Minister under the measure.

Clause 33 provides for a review by the District Court of a decision of the Minister made in relation to a licence or an application for a licence or of a requirement or direction of the Minister made in the enforcement of the measure. Any person aggrieved may apply for review. The application must be made within three months of the making of the decision, requirement or direction or, where the effect of the decision is recorded in the public register, within three months of that entry being made.

Part VII provides for the establishment of a Marine Environment Protection Fund.

Clause 34 provides for the establishment of the fund and requires that it be kept at the Treasury. Under the clause the fund is to consist of—

(a) the prescribed percentage of licence fees paid under the measure;

(b) the prescribed percentage of penalties recovered in respect of offences against the measure;

(c) any money required to be paid into the fund pursuant to clause 32;

(d) any money appropriated by Parliament for the purposes of the fund;

(e) any money received by way of grant, gift or bequest for the purposes of the fund;

and

(f) any income from investment of money belonging to the fund.

The fund may be applied by the Minister (without further appropriation)—

(a) in making any payment pursuant to clause 32;

(b) for the purposes of any investigations, research, pilot programs or projects or for public education programs relating to the marine environment or its protection.

The Minister must before applying money from the fund obtain and have regard to the advice of the Environmental Protection Council.

Part VIII (clauses 35 to 48) contains miscellaneous provisions.

Clause 35 requires that the department's annual report must contain a summary of—

(a) every allegation or report (whether of an inspector or otherwise) of any contravention of, or failure to comply with, the measure;

(b) the investigative or enforcement action (if any) taken in response to each such allegation or report and the results of that action;

(c) if no such action was taken in any particular case—the reasons why no such action was taken.

Clause 36 makes it an offence to furnish false or misleading information. The maximum penalty provided is a division 5 fine ($8 000).

Clause 37 enables the Minister to delegate powers or functions to a public service employee.

Clause 38 makes it an offence to divulge confidential information relating to trade processes obtained in the administration of the measure except in limited circumstances. The maximum penalty provided is a division 5 fine ($8 000).

Clause 39 provides immunity from liability to persons engaged in the administration of the measure.

Clause 40 sets out the manner in which notices or documents may be given or served under the measure.

Clause 41 is an evidentiary provision.

Clause 42 makes an employer or principal responsible for his or her employee's or agent's acts or omissions unless it is proved that the employee or agent was not acting in the ordinary course of his or her employment or agency.

Clause 43 provides that, where a body corporate is guilty of an offence against the measure, the manager and members of the governing body are each guilty of an offence.

Clause 44 imposes penalties for an offence committed by reason of a continuing act or omission. The offender is liable to an additional penalty of not more than 1/5th of the maximum penalty for the offence and a similar amount for each day that the offence continues after conviction.

Clause 45 provides that offences against the measure for which the maximum fine prescribed equals or exceeds $150 000 are minor indictable offences and that all other offences against the measure are summary offences. A prosecution may be commenced by an inspector or by any other person authorised by the Minister. The time limit for instituting a prosecution is five years after the date on which the offence is alleged to have been committed. Where a prosecution is taken by an inspector who is an officer or employee of a council, any fine imposed is payable to the council.

Clause 46 enables a court, in addition to imposing any penalty, to order an offender to take specified action to ameliorate conditions resulting from the breach of the measure, to reimburse any public authority for expenses incurred in taking action to ameliorate such conditions or to pay an amount by way of compensation to any person who has suffered loss or damage to property as a result of the breach or who has incurred expenses in preventing or mitigating such loss or damage.

The maximum penalty for non-compliance with such an order is, in the case of a natural person, a fine of $150 000 or division 3 imprisonment and, in the case of a body corporate, a $1 million fine.

Clause 47 provides a general defence to any offence against the measure if the defendant proves that the offence did not result from any deliberate or negligent act or omission on the part of the defendant or was reasonably justified by the need to protect life or property in a situation of emergency that did not result from any deliberate or negligent act or omission on the part of the defendant. The defendant must prove in addition, in the case of an offence involving the discharge, emission, depositing, production or disturbance of any pollutant, that the defendant reported the matter to the Minister in accordance with the regulations. Such a person can still be required to take action to ameliorate the situation or can be required to pay compensation.

Clause 48 provides general regulation making power. In particular, the regulations may provide for different classes of licences and may authorise the release or publication of information of a specified kind obtained in the administration of the measure.

Schedule 1 contains transitional provisions. The Minister is required to grant a licence in respect of an activity that was lawfully carried on by the applicant on a continuous or regular basis during any period up to the passing of the measure. The Minister may impose conditions on the licence requiring the licensee to modify or discontinue the activity within a specified time but not exceeding eight years.

Schedule 2 makes consequential amendments to the Fisheries Act 1982. The schedule also amends the Environmental Protection Council Act 1972, to allow for two further members to be appointed to the Council—one being a person with expertise in matters relating to the marine environment and its protection and the other being a person with knowledge of and experience in fisheries.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

ADJOURNMENT

At 4.35 p.m. the Council adjourned until Wednesday 5 September at 2.15 p.m.