LEGISLATIVE COUNCIL

Thursday 11 October 1990

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

MEMBERS' INTERESTS

The PRESIDENT laid on the table the Registrar's statement of members' interests for June 1990.

Ordered that statement be printed.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney General (Hon. C.J. Sumner)—

Commissioner for Public Employment and Department of Personnel and Industrial Relations—Report, 1989-90.

South Australian Approved Code of Practice for Manual Handling—September 1990.

By the Minister of Tourism (Hon. Barbara Wiese)—

Samcor Triennial Review—1986-87 to 1988-89.

MINISTERIAL STATEMENT: NATIONAL CRIME AUTHORITY

The Hon. C.J. SUMNER (Attorney General): I seek leave to make a statement on the subject of the National Crime Authority and allegations by the Hon. Ian Gilfillan re Mr Carl Mengler.

Leave granted.

The Hon. C.J. SUMNER: Mr President, Mr Mengler has released a press statement following the allegations made in this Chamber yesterday by the Hon. Mr Gilfillan. I wish to read the content of that statement to the Council, as follows:

The Criminal Justice Commission's Director of Operations, Commander Carl Mengler, said today he was 700 kilometres from the scene of a bombing in Adelaide in which he was alleged to be involved.

Commander Mengler today responded vigorously to the allegations made before the South Australian Parliament yesterday by Australian Democrats parliamentary leader, Mr Gilfillan.

Mr Gilfillan told Parliament he had been told that the head of the National Crime Authority of South Australia Mr Gerald Dempsey and others had alleged that Commander Mengler had damaged Mr Dempsey's car in the driveway of his Adelaide home on 24 April. Further, that Commander Mengler had resigned from his position in South Australia the day after Mr Dempsey's car was bombed.

Commander Mengler said that the allegations referred to by Mr Gilfillan were utterly and completely without foundation.

Commander Mengler said that, lest any doubt remain, on the night of 23/24 April at the time he was allegedly bombing Mr Dempsey's car he was in fact 700 kilometres distant in Melbourne attending a testimonial dinner at the Police College at Airlie in South Yarra.

The function was attended by the Commissioner of the Victoria Police and many of that force's senior command. Commander Mengler said that these facts surely laid this monstrous allegation to rest once and for all.

Further, the allegation that he had resigned the day after the bombing is also false. He in fact had advised the National Crime Authority of his intention to take up a position with the Criminal Justice Commission in Queensland the day before and had been on leave at the time attending to personal business in Melbourne. Negotiations with the Criminal Justice Commission had been ongoing for several weeks prior to this event.

Commander Mengler reiterated that he was absolutely shocked that such an allegation should be repeated under the cloak of parliamentary privilege without first seeking his response.

'The irresponsibility of such utterances is breathtaking,' said Commander Mengler 'and bring not only the individual but the whole institution of Parliament into disrepute.' He urged the South Australian Parliament to censure Mr Gilfillan.

'I only hope that people will note the objective facts, thus restoring the reputation which I have tirelessly worked to build over 34 years of policing, a reputation which has been so wilfully and gratuitously vandalised.'

That is the conclusion of the press statement issued by Commander Mengler. As to whether the Parliament wishes to take any action on Mr Mengler's request to deal with this matter of abuse of parliamentary privilege by the Hon. Mr Gilfillan is a matter for the Council and the Parliament. However, from my point of view I can say that I completely sympathise with the concerns expressed by Commander Mengler and fully sympathise with the position in which he has found himself.

PERSONAL EXPLANATION: NATIONAL CRIME AUTHORITY

The Hon. I. GILFILLAN: I seek leave to make a personal explanation.

Leave granted.

The Hon. I. GILFILLAN: I wish to inform the Council that this morning I issued a media statement which I sent to Mr Mengler and the Chairman of the Criminal Justice Commission in Queensland, and I quote:

I am not personally making any allegations against Mr Mengler.

I wish to make plain that I do not, and did not, believe the allegations that Carl Mengler had been involved in the bombing of Mr Dempsey's car were in any way true.

I have a strong admiration for Mr Mengler and regret that he is no longer involved in the South Australian office of the NCA.

The reason for bringing the matters forward is to have them cleared up, so that the reputation of Mr Mengler is not subject to invented allegations and the true record of what transpired in the South Australian office of the NCA can be revealed.

The matters were too serious to leave unresolved and should be investigated by the Chairman of the NCA and reported to the Federal joint parliamentary committee and the public.

I also faxed a letter direct to Mr Mengler which stated:

Dear Mr Mengler,

I am sorry for any distress caused to you and your family over my raising incidents, that is the bombing—

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: The letter continues:

and safe-opening in Parliament yesterday. I believed the allegations of your involvement so ludicrous that it would not have been taken as other than a malicious rumour.

The media . . . managed to distort the text which gave a false impression of my comments.

I believe it is in the best interests of the NCA's operation in South Australia and in your best interests for the matters to be investigated and reported to Parliament.

The letter is signed by me. In conclusion, I indicate to the Council that, in fact, I heard Mr Mengler interviewed on the *World Today* on the ABC just prior to this sitting. It is unfortunate that I do not have the text, but it was confirmed in the remarks that he made that he had previously heard the allegations that were raised yesterday by me in this place. In addition, he has legal advice operating in South Australia relating to the matters which I raised yesterday in the Council. He also commented that he had the impression that he and Mr Dempsey had worked well, but subsequent events had obviously proved him wrong.

My personal explanation is that I believe that I raised the matters in the best interests of getting the proper situation resolved in South Australia for the NCA and for stimulating a proper investigation by the Chairman of the Federal authority to find out what actually transpired in South Australia: why did we lose one of the best police officers in

the country from the South Australian authority and what, if any, was the background for the allegations of the safe-breaking and the car bombing?

QUESTIONS

NATIONAL CRIME AUTHORITY

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the National Crime Authority's accountability.

Leave granted.

The Hon. K.T. GRIFFIN: From the outset, I should say that this question does not relate specifically to the allegation made by the Hon. Mr Gilfillan. However, it does relate to the opinion from the Commonwealth Solicitor-General reported earlier this week which I understand the Federal Government has accepted, and which severely limits the accountability of the National Crime Authority to Parliament. The joint Commonwealth parliamentary committee has the responsibility to ensure that the NCA is accountable and complies with its Act and an inter-governmental committee comprising State and Federal Ministers also has a level of oversight.

According to the report, the Solicitor-General has said that the NCA members are bound by the secrecy provisions of the NCA Act in relation to its operations when giving evidence to the parliamentary watchdog committee and are not protected by parliamentary privilege. This means that a wide range of information about operational matters cannot now be made available to that parliamentary watchdog committee.

The Solicitor-General's advice has wide-ranging ramifications not only for Federal parliamentary committees generally but also for the relationship of the NCA with the Parliament. In the NCA's 1988-89 report the authority said that at two intergovernmental meetings in that year 'discussions covered a wide range of topics, including . . . reports on operations'. That report also said that the authority 'now provides regular quarterly operational reports to the committee'.

There have been criticisms from time to time about the nature of the NCA's accountability, but the Solicitor-General's advice brings it into the spotlight so far as the parliamentary committee is concerned and also, I suggest, the intergovernmental committee. My questions are as follows:

1. Does the Commonwealth Solicitor-General's advice on the limitations on information that the NCA can provide to the parliamentary committee extend also to the intergovernmental committee? If it does, does the Attorney-General agree that this places severe restrictions on the accountability of the National Crime Authority?

2. Does the advice of the Solicitor-General mean that full reporting by the NCA to the States on current operations is now severely restricted?

3. As a member of the intergovernmental committee responsible for the NCA, what action does the Attorney-General propose to take as part of that committee to ensure that the NCA in its operations is properly accountable and can continue to report fully to the two committees and to the States?

The Hon. C.J. SUMNER: I have not studied the Solicitor-General's advice, so I cannot answer the question whether the advice extended to the intergovernmental committee. As I understand it, the advice related to the issue of Party privilege, so it probably did not extend to the situation relating to the intergovernmental committee.

The intergovernmental committee and the responsible Ministers have specific responsibilities under the legislation and to date, as I understand it, the NCA has been reporting to the intergovernmental committee in accordance with its statutory obligations. Of course, that includes the statutory responsibility of the intergovernmental committee to receive those reports. I think it is fair to say that the reporting procedures for the NCA are somewhat complex and perhaps need to be examined. That is certainly something that I am prepared to do in conjunction with my colleagues on the intergovernmental committee. Obviously, before doing that the precise legal position will need to be resolved and I imagine that this issue will be discussed at the next meeting. I would certainly be happy to, in any event, take up the matter to ensure that it is discussed at the next meeting.

However, I do not believe that the Solicitor-General's opinion would have impinged on the intergovernmental committee's responsibilities or the responsibility of the National Crime Authority to report to the intergovernmental committee, because the reporting requirements are set out in the legislation. What the Solicitor-General was talking about was a conflict between the provisions of the National Crime Authority Act and the issue of parliamentary privilege, which, of course, would not be relevant in the case of the intergovernmental committee. However, it may be that the opinion does have some implications for the intergovernmental committee reporting, and I will certainly examine whether that is the case, but I would suggest that it is not.

As far as the Solicitor-General is concerned, that is, whether the reporting requirements are adequate, I assume that the joint parliamentary committee believes that the reporting requirements are not adequate, as in so far as it is concerned. It has the NCA generally under review at the present time as part of its brief, and it announced that it was looking at the operations of the NCA and its future. I assume that, in doing that, it will consider whether or not the legislation should be amended to deal with the reporting obligations as between the National Crime Authority and the joint parliamentary committee.

I should say, however, that one of the problems which I have no doubt the NCA experiences in reporting to the joint parliamentary committee is that the information which the committee gets will be used in a manner which is not in the best interests of law enforcement in this country. Unfortunately, I believe that that has occurred in the past. I believe that members of the joint parliamentary committee have used in an inappropriate manner the information that is being given to them by the NCA, and I do not believe that the appropriate level of confidentiality which I would expect members of Parliament to follow has been followed properly in all cases with respect to the information given by the NCA to the parliamentary committee.

In this area, if parliamentarians do the right thing—respect confidentiality—I think it is reasonable for the NCA to be as open as it possibly can. Regrettably, as we know, members of Parliament have an enthusiasm for publicity and, of course, there is no better example of that than the Hon. Mr Gilfillan. With respect to the honourable member, I believe that he has been corrupted by the need to get publicity for himself. I do not make that accusation lightly. It is regrettable that Mr Gilfillan will use publicity whenever he possibly can—that he will use issues to gain publicity for himself wherever he possibly can—without thinking of the implications of what he has to say in Parliament for the individuals he attacks or, indeed, for the general cause of the enforcement of the law in this country.

So, unfortunately, that is one thing with which we must live. Because of their desire to get publicity and make political capital out of this high profile issue, politicians will not, in my view, always respect the confidentiality of information that is given to them. I believe that in the past that has undermined the general operation of law enforcement agencies in this country. So, that is an obvious issue that would have to be looked at, I believe, in this general question of reporting by the NCA to the joint parliamentary committee.

Obviously, it is an issue that is on the public agenda. The matter is being looked at by the joint parliamentary committee, and I have no doubt that it will examine the issue and make some recommendations about amendments to the Act. I imagine that the intergovernmental committee will also examine the question, because, apart from the problems of reporting to the joint parliamentary committee, I think there are in any event some problems in the reporting mechanisms that were set up under the NCA Act, as far as responsible Ministers and the intergovernmental committee are concerned.

It is a fine balance to have to make—between the availability of operational information, which the NCA might have, and the problem that if it makes that information available to an intergovernmental committee or, more particularly, to a joint parliamentary committee, that confidentiality will not be respected and that law enforcement measures taken by the NCA will thereby be prejudiced. For instance, the South Australian Government does not demand detailed briefings from the South Australian Police Commissioner about operational matters. It would be inappropriate to do so; they are matters that need to be handled by the Commissioner with his statutory and other responsibilities. Of course, if an issue arises, the Minister is entitled to seek a report, would get a full report and is entitled then to respond to the Parliament about it.

However, I think that if there is a report from the Police Commissioner, for instance, to one Minister or, indeed, if it is a matter raised by Cabinet, the Cabinet and the Executive are governed by their oath of secrecy, and there is less chance of that information being treated irresponsibly than in a situation where, unfortunately, if it is just a broad joint parliamentary committee that includes members of the Opposition Party—of whatever political persuasion—there will be the temptation to use that information in a manner that undermines the effectiveness of the law enforcement agency. I make those general comments but, in response specifically to the honourable member's question, I think that the question of reporting will obviously be looked at in the future, and I will certainly be prepared to raise the matter at the intergovernmental committee.

The Hon. I. GILFILLAN: A supplementary question, Mr President.

The PRESIDENT: A supplementary. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: Do the Attorney's comments in relation to my questioning mean that he does not believe there should be any public questioning or accountability of the NCA?

The Hon. ANNE LEVY: On a point of order, Mr President, I had always understood that a supplementary question could be asked only by the individual who asked the original question.

The PRESIDENT: I am inclined to uphold that point of order.

The Hon. C.J. SUMNER: Except, Mr President, that the honourable member now has his implied criticism on the record and I have not had a chance to respond.

The PRESIDENT: Yes, I find that rather regrettable.

The Hon. C.J. SUMNER: It is not only regrettable, I think I also ought to be given the option to respond. If the honourable member ought not to have raised a supplementary question, then as soon as he got up and sought leave to ask it he should have been put in his place.

The Hon. K.T. Griffin: He didn't seek leave.

The Hon. C.J. SUMNER: Whatever he did, he asked a supplementary question. If he is not entitled to ask a supplementary question, he should have been sat down immediately. If he is entitled to ask it then I am entitled to respond.

The PRESIDENT: Yes, I do not think that he should have asked the supplementary question. He has the right to ask a question later regarding this subject. I think the supplementary question is in response to a question raised by Mr Lucas.

The Hon. R.I. LUCAS: Point of order, Mr President. Under Standing Order 108, whenever a question is answered it shall be open to any member to put further questions arising out of and relevant to the answer given.

The PRESIDENT: I take that as questions, not supplementary questions. There is no reason why the Hon. Mr Gilfillan cannot rise later and ask a question relating to the question that you have asked.

The Hon. R.I. LUCAS: A further question is a supplementary question, I suggest, Mr President. This has been a matter of some debate in this Chamber for some time. Former President, the Hon. Arthur Whyte, on a number of occasions allowed supplementary questions or further questions by members other than the person asking the question. He ruled them in order. Former President, Ms Levy, ruled them out of order and it was a matter with which I strongly disagreed on those occasions. However, that certainly was her ruling. I believe that Standing Order 108, former President Arthur Whyte's rulings and the rulings of other Presidents are such that supplementary questions can be asked by any member in the Chamber and that it would be within order, obviously, for the Hon. Mr Gilfillan, or anyone else, to ask a supplementary question.

The PRESIDENT: I am prepared to rule at this stage that I am not prepared to let a member other than the member who asked the original question to ask a supplementary question. I interpret Standing Order 108 as meaning that another member can ask a question later relating to that subject. As I have let the Hon. Mr Gilfillan proceed as far as he has, I think that, in absolute fairness, the Attorney-General is entitled to respond to that supplementary. My future rulings will be that supplementary questions can be asked only by the member asking the original question.

The Hon. I. Gilfillan: It seems that the Attorney-General can malign me without my being given a chance to respond.

The PRESIDENT: The Hon. Mr Gilfillan can ask a question after that. The honourable Attorney-General.

The Hon. C.J. SUMNER: I do not believe that the NCA should be unaccountable in terms of its functions. Obviously, it ought to be. In fact, the National Crime Authority Act and the National Crime Authority, when it was established, involved a very elaborate—some might say too elaborate—procedure for accountability through the intergovernmental committee by references having to be given for the use of its coercive powers and for the establishment of a joint parliamentary committee. There is no question but that in general terms the NCA has to be accountable for its actions, just as the South Australian Police Commissioner and the Police Department have to be accountable for their actions.

What I am trying to suggest to the Council, and to the Hon. Mr Gilfillan in particular, is that some reasonable commonsense balance has to be introduced into this area. If we are continually to have allegations of the kind raised in the Parliament by the Hon. Mr Gilfillan, and if the law enforcement agencies are going to be herbing off, as they have been doing—and there is no doubt about this—chasing furphies raised by the Hon. Mr Gilfillan and by various media representatives, we can rest assured that the only people who will be laughing about that will be the criminal elements in this community. There is absolutely no doubt about that. Regrettably, that is what has been happening over the past 12 or 18 months, or, indeed, longer, with respect to these matters in South Australia in particular. All I can say is that a bit of common sense ought to be introduced into the situation—a bit of balance—between getting up in the Parliament and releasing the latest rumour that one has heard—

The Hon. I. Gilfillan: It is six months old.

The Hon. C.J. SUMNER: The honourable member is now saying that the matters that he raised yesterday are six months old. That makes it even worse. The honourable member has apparently heard this rumour going around for the past six months. Six months later he decides that he has not had a decent go in the media in the past day or two and wants a front page story, and he knows that he is guaranteed to get it if he comes in with the sort of allegation that he has made. He slurs a senior police officer all over the front page of the morning paper in Adelaide—the *Advertiser*—and then tries to say that it was all right to raise the matter.

The Hon. I. GILFILLAN: On a point of order, Mr President, you indulged both me and the Attorney-General to deal with a supplementary question. I ask you to rule that the Attorney's comments currently have nothing to do with the supplementary question at all; they are maligning me personally.

The PRESIDENT: Order! I ask the Attorney-General to confine his remarks to the supplementary question.

The Hon. C.J. SUMNER: I certainly am confining my remarks to the supplementary question. The question is accountability.

The Hon. I. Gilfillan: And public questions.

The Hon. C.J. SUMNER: And public questions. I accept that the honourable member is entitled to ask questions in the Council, just as any member is entitled to ask questions about a whole range of issues. What I am also saying to the honourable member (which is where I believe it is completely relevant to his question), is that some common sense and judgment have to be used by members of Parliament when using privilege in dealing with these important issues.

All I am saying is that the use of privilege on a number of occasions in this particular area over the past two years has done nothing to assist law enforcement agencies in going about their job in this State. The only people who are laughing when issues like this are raised are the criminal elements. When the NCA, the police or whoever they are, have to go off and chase issues, which are just rumours around the town, it means that they are not doing their job. All I am suggesting to the honourable member is that on this occasion and on future occasions if he has issues to raise, he should not, six months after he has heard the rumour, wander into the Council and ask a question off the top of his head.

All I am saying is—as Mr Mengler said—it is irresponsible. Whether the House wants to censure the Hon. Mr Gilfillan for what Mr Mengler has described in no uncertain terms as the 'irresponsibility of such utterances' is, of course, a matter for the Parliament. But in the use of parliamentary privilege, in the honourable member's own accountability, I suggest to the general good of this community, he ought to make some kind of judgment about whether it is appropriate to raise issues in the manner that he raised that issue yesterday, with obviously grave consequences to Mr Mengler and potentially grave consequences to his reputation.

GOVERNMENT CARS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation prior to addressing a question to the Minister of State Services on the matter of private use of Government cars.

Leave granted.

The Hon. DIANA LAIDLAW: I refer to one of many letters, faxes and telephone calls I have received in recent times about the private use of Government cars. It is signed, and I have checked most of the information in it in respect of the officer concerned (the officer's name is also provided and I can give this to the Minister later). It states:

> I am delighted to see you are investigating the private use of Government vehicles and petrol credit cards for personal use.
>
> I was horrified . . . that an SGIC employee changed his Holden Commodore—

that was with a Government plate—

> for a Nissan Patrol ('company') vehicle and then proceeded on long service leave to northern Australia using his credit card for petrol. Who on earth requires a 4WD as an auditor in the metropolitan area?
>
> At this time when economic pressures are on the family unit I find it totally unacceptable to see this practice of blatant misuse of 'our' vehicles and wish you every success in pursuing this matter.

With respect to private plates, I note that the Premier in the other place on 4 April last year advised that the Government had decided that a 'small number of vehicles have private plates and they are supplied to chief executive officers or are used on duties when a Government identification would prejudice that work, for example, fisheries surveillance'.

I also note that during the Estimates Committees a couple of weeks ago the Minister of Labour, Mr Gregory, said in relation to an allotted car—and I am not sure if he meant private plates or an allotted Government vehicle, but perhaps this could be clarified—that, if a departmental officer was on leave, the officer or any member of his or her family could use an allotted vehicle for family use to travel wherever they wished with the cost of that travel, including fuel and servicing, being met by the Government. That was Minister Gregory's statement in the Estimates Committee two weeks ago.

In relation to the private use of Government vehicles, I ask the Minister: what is the Government's policy in respect of public servants and/or his or her family members using a Government vehicle for private use when that departmental officer is on leave? If the policy entitles officers on leave plus their family members to unrestricted mileage and no limit on the amount of fuel they can book up to their department, will the Minister review this aspect of the policy to curb such practices, particularly in the time of this period of Government restraint on so many Government services and functions? Further, how many Government vehicles in total now have private number plates? Finally, will the Minister investigate the claims that I have referred to earlier relating to the Nissan Patrol vehicle used by an SGIC employee when recently on long service leave in the Northern Territory? As I have indicated, I have that officer's name for the Minister.

The Hon. ANNE LEVY: Mr President, this matter was raised not only in the Estimates Committee with Mr Gregory but also in the Estimates Committee dealing with the State Services portfolio. I am sure if the honourable member would care to read *Hansard* she would discover what the Government's policy is in this respect. There are officers in the Public Service—

The Hon. Diana Laidlaw: Did what you said relate to what Mr Gregory said?

The PRESIDENT: Order! The Minister has the floor.

The Hon. ANNE LEVY: Thank you, Mr President. There are officers who are entitled to private-plated Government vehicles as part of their contract of employment. The particular contract and the conditions for that vehicle are a matter for the contract of employment between that particular officer and the Government. I should stress, however, that these private-plated vehicles, while allocated to certain senior public servants, are always to be available for general departmental use should they be required. Every officer who has such a vehicle is made fully aware of this policy and does in fact make the vehicle available when it is required.

Apart from that situation, there are numerous Government vehicles with Government plates, and I presume that the particular case to which the honourable member is referring is a Government-plated vehicle, or a vehicle with a number plate which can be recognised as a Government vehicle. I am not aware of the situation to which she is referring. I will certainly look into the matter, as indeed we look into numerous reports which are sent either to the Minister of Transport's office, erroneously, or to my office every year. We receive a considerable number of suggestions that a particular vehicle, with number given, has been improperly used and these instances in every case are followed up most meticulously, provided of course that we are aware of the time and the place where the vehicle was seen. Vague generalisations cannot, of course, be followed up.

I should indicate to the Council, as I indicated to the Estimates Committee, that in over 95 per cent of cases the use of the vehicle at a given time was found to be completely justified, that the officer was on Government business or had every valid reason for being at a certain place at a particular time in the Government-plated vehicle. In a very small minority of instances it is found that a Government vehicle has been improperly used for private purposes and appropriate action against the officer is then taken. I can assure you, Mr President, that that is the situation.

I must point out that Government-plated vehicles often may appear to be used improperly by a member of the public when that situation does not obtain at all. A typical example is where a community welfare officer has been taking children, who needed to be taken into care or taken from one particular place to another on a Saturday afternoon, and where some observer has felt that the officer was having a private outing with the family. Upon investigation it is usually found that this was not the case at all and that the officer concerned was in fact undertaking his or her responsible duties. With regard to the private-plated vehicles—

The Hon. Diana Laidlaw: The number.

The Hon. ANNE LEVY: I do not have with me the number of private-plated vehicles. I will be happy to ascertain that information. However, I think it was covered to a large extent by the questions which were asked of every Minister in the Estimates Committees.

The Hon. Diana Laidlaw: The answers haven't come yet.

The Hon. ANNE LEVY: The answers may not have come yet, but they certainly are coming and, when the answer requires a great deal of work, repeating a question will not speed up the provision of the answer. I have indicated that I will determine the number of private-plated vehicles that are legitimately part of the contract for the employees involved and I will bring back an answer. I am very happy to have investigated any case that the honourable member wishes to bring to my attention. However, it would seem to me that it is quite possible to investigate particular cases without bringing them to the attention of the Parliament. Other individuals in the public and other members of Parliament bring these particular cases to my attention without taking up the time of Parliament.

INTEREST RATES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about the important subject of interest rates.

Leave granted.

The Hon. L.H. DAVIS: The Chairman of BHP, Australia's largest company, Sir Arvi Parbo, yesterday was reported as saying that Australia is unlikely to emerge from its current recession early next year. In particular, he attacked high interest rates, saying that investment means interest rates which are conducive to new investments. Sir Arvi's remarks in fact supported the remarks made by the Federal Labor Government Minister for Industry, Technology and Commerce, Senator Button, who earlier this week said that high interest rates could send many companies broke and that Australia's manufacturing base might be severely damaged. However, only yesterday the Prime Minister held the line and defended the high interest rate policy of the Federal Government.

I am sure that the Minister would be aware of the state of the South Australian economy and, in particular, the position of small business in South Australia, because a recent Australian Small Business Association (ASBA) survey showed quite clearly that small business in South Australia has the staggers and that currently, on average, the revenue from small business in South Australia is down some 15 per cent. Of course, that figure would be much higher in real terms after taking into account the impact of inflation. That is a figure from a very recent September survey taken in both metropolitan and rural areas.

My questions to the Minister are as follows: first, as the Minister of Small Business, will she say what is her view on interest rates? Does she agree with Sir Arvi Parbo and John Button that high interest rates are damaging the economy and, in particular, small business in South Australia, or does she agree with Mr Hawke and support his high interest rate policy which, for many companies, means even now interest rates of over 20 per cent? Secondly, does she have any information about the damage that high interest rates are wreaking on small business in South Australia? Finally, has she, the Premier, or the South Australian Government made representations to the Federal Government about its current high interest rate policies?

The Hon. BARBARA WIESE: I think it is a reasonably well-known fact that very often small businesses tend to be highly geared; they do not have large amounts of equity and capital to put into a business at start up and, therefore, they are usually exposed to a rather high level of debt and, very often, they buy money at a relatively higher rate than many big businesses. It is therefore pretty obvious that high interest rates would impact on small businesses in Australia

to a much greater extent than they do on larger businesses which, in many cases, are able to gain access to finance at a much cheaper rate.

The surveys conducted by organisations such as the Australian Small Business Association and various others indicate that the high interest rates that are currently being paid by many small businesses, coupled with the fact that there has been a downturn in trade in some sectors of the economy, are certainly placing quite severe pressure on a good proportion of the small businesses in Australia. This is of extreme concern to us.

The Hon. Peter Dunn: Why is the trade down?

The Hon BARBARA WIESE: The Hon. Mr Dunn interjects and asks why trade is down. When talking about trade, I am referring primarily to the retail sector, since such a very high proportion of businesses, particularly in this State, are in the retail sector. It is likely that a high interest rate regime will place a considerable extra burden on family households as well as small businesses and one can expect that amount of disposable income also to decline, which in turn has an impact on people's spending. Those factors, quite apart from any of the factors relating to commodities' prices and overseas trading matters, all have an impact on the success or otherwise of businesses in Australia.

It is certainly to be regretted that this is occurring and I do not think that there is any shortage of organisations in Australia that, over a period of some time now, have been drawing to the attention of the Federal Government the impact of high interest rates on the business community in Australia. The Federal Treasurer has referred to this recently in statements that he has made about the policies being adopted by Australian banks to keep interest rates high. The honourable member would be aware that just in the past few weeks the Federal Treasurer has called on banks to respond more quickly and to consider their interest rates decisions.

So, it would seem that the message regarding the impact on Australian small businesses of a continuing regime of high interest rates is beginning to be heard and acted upon by the Federal Government. I certainly hope that the Australian banks will respond to the calls that are being made and will, in fact, make some decisions that will assist in bringing interest rates down and, therefore, ease the burden on small businesses in Australia.

JOHN SHEARER LIMITED

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Industry, Trade and Technology, a question about John Shearer Limited.

Leave granted.

The Hon. T.G. ROBERTS: Articles in the *News* of 9 October 1990 and the *Advertiser* of 10 October 1990 referring to the restructuring of the John Shearer site make for difficult understanding. The article in the *News* by Peter Rice states:

> Troubled agricultural machinery manufacturer John Shearer Ltd is putting its two manufacturing plants at Kilkenny up for sale.
>
> However, the company, which despite recent layoffs still employs more than 100 staff, will continue to manufacture in South Australia.
>
> Managing Director of John Shearer Ltd, Mr Mike White, said the company had seen 1990 and 1991 would be 'extremely tough' for some time and began a consolidation of the company early this year.
>
> That consolidation had meant retrenchments of staff in April this year which sparked strikes, pickets and the charging of four union officials over a sit-in at the site. The charges were eventually dropped.

The article goes on to say:

> Shearer has two plants at Kilkenny separated by a railway line. Both will be put up for sale.
>
> The south plant is the heavy engineering division while the north is mainly welding and assembly.
>
> 'There is no question we are here to stay but like dozens of other businesses facing the downturn in the economy we need to consolidate, and that is why we are taking this action,' Mr White said.

So, according to the first explanation contained in the article in the *News* of 9 October, the company indicated that it intended to sell the north and south sites and that it wanted to relocate its operations to a third site, one would imagine. An article in the *Advertiser* of 10 October by the Finance Editor, Ian Porter, states:

> The John Shearer agricultural equipment group is trying to sell some or all of its landholdings at Kilkenny as part of a move to consolidate its operations.
>
> The company is offering separately the two halves of its extensive site and would be prepared to relocate to a new site around Adelaide if both halves were sold, the Managing Director, Mr Mike White, said yesterday.

A third scenario is now being put forward, namely, to sell both sites to a third party and lease back the whole site so that the operations continue on either the whole or part of the site. As I understand it, these options are being put forward by the John Shearer management via public statements in the press.

In April, there was large-scale disputation on the site due not just to the fact that the site was being relocated and restructured but to the fact that the employees had been kept in the dark. This made for bad industrial relations to the point where, in the final analysis, four union officials were gaoled. This was unprecedented in South Australia's industrial history, and here again statements are being made in the press without due consultation with the officials who are responsible through elections to their members on this site. They have a right to this information so that they can ensure that their future as well as that of the company is catered for. There is a two-way responsibility between those two groups.

My question to the Minister is: is John Shearer Limited interested generally in the interests of its workers in this State and competing internationally with a product demanded by the market and worthy of support, or is the company operating under the disguise of a local company maintaining tariff levels and pressurising both State and Federal Governments for public assistance and bounties?

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

LAMB CARCASSES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Agriculture, a question about the branding of lamb carcasses.

Leave granted.

The Hon. M.J. ELLIOTT: At a meeting I had with lamb producers recently, a member of the State Lamb Committee alleged to me that a large chain of butchers in Adelaide has been buying hogget carcasses and reselling them to consumers as lamb at lamb prices. In the current rural crisis, hogget is extraordinarily cheap so that the profit margin for a butcher willing to unscrupulously relabel meat is quite large, as prime lamb is not a cheap meat.

Some arguments may be put forward as to when a lamb is no longer a lamb, and sometimes the meat can be difficult to distinguish because of seasonal effects, size differences in lambs, etc. However, these allegations come from lamb producers who should be able to tell the difference. Any allegation about farmers and consumers being ripped off for profit, I would imagine would be of concern to the Government given the current economic situation.

In New South Wales and Victoria, all lamb carcasses are legally required to be strip branded; that is, marked with a dye to guarantee that the meat being sold as lamb is in fact lamb. In South Australia, strip branding is not required, although some abattoirs do brand lamb carcasses and in fact some butchers demand it. I have been told that strip branding is the only method by which consumers can be 100 per cent sure that the meat they buy is in fact lamb and not hogget being sold at lamb prices.

My question to the Minister is: given the allegations of such practices occurring in Adelaide, does the Government have any plans to make strip branding compulsory in South Australia, as it is in other States, so that consumers can be sure that they are paying for lamb and receiving it and that primary producers can sell the more valuable lambs rather than hogget?

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

STATE CLOTHING CORPORATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister of State Services a question about the State Clothing Corporation.

Leave granted.

The Hon. J.F. STEFANI: In March 1990, the Bannon Cabinet approved the transfer of the management of the State Clothing Corporation to the State Services Department. According to the published audited statements, the Bannon Government has subsidised the Clothing Corporation, which has continuously declared operating losses amounting to more than $3.8 million by running a defunct business operation since 1984.

For the period ended 30 June 1990 the corporation posted its fifth consecutive loss of $252 000. My questions to the Minister are: does the State Clothing Corporation have a separate accounting system within the Department of State Services; what steps have been taken to eliminate the operating losses for the current financial period; and what amount of Government grants has been allocated to the operation since 1 July 1990?

The Hon. ANNE LEVY: The answer to the first question is 'Yes'. The answer to the second question is that the State Clothing Corporation is being run as a separate business unit within the State Services Department. All possible measures are being undertaken to reduce the deficit through business practices.

I indicate that State Clothing was asked by the Police Department to run the police clothing store, which has been set up in Adelaide and is running very well indeed, profitably for State Clothing and to the great satisfaction of the Police Department. However, business approaches are being used for State Clothing to reduce its losses. I point out that, although State Clothing posted a loss at the end of the 1989-90 financial year, it was very much less than that for the previous year.

So, the situation in State Clothing was certainly improving, and a considerable turn for the better had been taken. I point out that State Clothing became integrated into State Services only a couple of months before the end of the financial year. It is not expected with any great confidence that State Clothing will manage to turn around and make a profit this financial year, although its financial position is expected to improve due to its incorporation into State Services. However, any consequent changes in its management practices and reorganisation cannot be achieved overnight. I do not have to hand the actual sum which has been allocated to State Clothing. However, I will obtain that information for the honourable member.

REPLIES TO QUESTIONS

The Hon. C.J. SUMNER: I seek leave to have the following replies to questions inserted in *Hansard.*

Leave granted.

MULTIFUNCTION POLIS

In reply to the **Hon. I. GILFILLAN** (2 August).

The Hon. C.J. SUMNER: The Premier has provided me with the following response to the honourable member's question.

The Gillman site was assessed for global warming and water rise effects during 1989. Those effects have been reviewed since that assessment. Accordingly, during the next phase of the MFP project an assessment will be completed in respect of the total area suggested as a site for MFP activities to ensure that account is taken of those effects.

URANIUM DEMONSTRATION

In reply to the **Hon. I. GILFILLAN** (23 August).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided me with the following response to the honourable member's question.

This matter has been registered as a complaint pursuant to the provisions of the Police (Complaints and Disciplinary Proceedings) Act 1985 and the Police Complaints Authority notified.

Consequently, this matter will be fully investigated and the Minister of Emergency Services will ensure that the findings are made available to the Parliament as soon as the investigation has been completed.

DELAYS IN COURT PROCESSES

In reply to the **Hon. K.T. GRIFFIN** (9 and 15 August).

The Hon. C.J. SUMNER: Clearly the delays that have been experienced in the processing of documents have been unsatisfactory. A reasonable delay in the processing of secondary processes would be four to five days. I have made inquiries into the matters raised by the honourable member and have established that to some extent the delays are attributable to technical problems associated with the introduction of computerised systems.

However, the major contributing factor in most cases has been the actual conversion from the old manual systems to the new computerised systems.

The introduction of the new systems is in part aimed at improving services to litigants and solicitors, and in fact these systems are already providing enhanced levels of serv-

ice notwithstanding the temporary, short-term problems to which the honourable member has referred.

It should be noted however that the situation cited in the honourable member's explanation on 9 August, where a request to issue a Warrant of Execution was not attended for 20 weeks, was an isolated incident involving a complex matter requiring extended negotiations between the court and the solicitor.

With regard to the problem of processing delays in the Adelaide Local Court, several initiatives have been taken to improve the situation. Experienced staff have been brought in from other courts that are up to date; data input work is being shared with other courts; shift work has been introduced to increase data input; software enhancements are being developed to speed up data input; a planned computer upgrade will occur in November, and local court procedures are being critically reviewed with the object of improving efficiency and effectiveness.

Finally, the details of staff and other savings which have been achieved from computerisation has been dealt with in my response to the honourable member's Question on Notice regarding this and related matters.

AIDS

In reply to the **Hon. J.C. IRWIN** (14 August).

The Hon. C.J. SUMNER: The Minister of Correctional Services has provided me with the following response to the honourable member's question.

The Department of Correctional Services employs numerous security practices in an effort to reduce the presence of all contraband. It uses all possible resources, human and electronic, as a method to reduce the introduction of syringes into institutions.

On a day-to-day basis prisoners within institutions are searched. The search may be a stripsearch or a body pat down search. Prisoners' personal belongings are also searched. These practices are complementary to electronic security measures used.

As an attempt to intercept the introduction of any contraband, prisoners within high security institutions are searched before and after visits, whilst those prisoners accommodated within lower security classification prisons are searched on a random basis.

Institutional searches are conducted on a regular basis; these involve the searching of cells and common areas. The Department Dog Squad is utilised to conduct searches of all institutions.

FEDERAL-STATE FUNDING

In reply to the **Hon. R.I. LUCAS** (22 August).

The Hon. C.J. SUMNER: I refer to the honourable member to the answer given by the Premier in another place to a similar question asked by the Deputy Leader of the Opposition on 22 August 1990.

NATIONAL CRIME AUTHORITY

In reply to the **Hon. R.I. LUCAS** (9 August).

The Hon. C.J. SUMNER: The reply is as follows:

1. I have received from the NCA a complete list of all persons charged in South Australia as a result of any NCA operation at all.

This list comprises of three documents. The first marked 'A' is a printout of all the charges brought by the Sydney Office of the NCA since the inception of its operations in South Australia, and which charges have been laid in South Australia.

The second, marked 'B', shows the summary of charges laid by the Adelaide Office as at 2 March 1990.

Finally, document 'C' is an update of the Adelaide Office Charge Register taking the Charge Register up to date as at 9 September 1990.

I seek leave to table these documents.

2. I respond to this part of the honourable member's question on 16 August 1990.

The Hon. BARBARA WIESE: I seek leave to have the following replies to questions inserted in *Hansard.*

Leave granted.

TELEPHONE BOOK

In reply to the **Hon. L.H. DAVIS** (16 August).

The Hon. BARBARA WIESE: In response to the honourable member's question, the Government supports the proposal for an information page for older people to be incorporated in the 1991 Telephone Directory. The Minister for the Ageing will take the matter up with Telecom on behalf of both the Government and the Opposition.

CHLOROFLUOROCARBONS

In reply to the **Hon. M.J. ELLIOTT** (2 August).

The Hon. BARBARA WIESE: In response to the honourable member's question, the Minister of Agriculture has advised that the South Australian Dairy Farmers Association has given the Department of Environment and Planning a list of all its members and those of the South East Dairy Farmers Association. It was agreed that the association would co-ordinate exemptions and pay the fees on behalf of its members.

There is a levy of 10c/kg on all CFC imported into South Australia and the Commonwealth Government also imposes a levy. The objective of the State's strategy for minimising the loss of CFC is to improve those practices which result in the loss of CFC, and this cannot be achieved through the simple imposition of levies. As a condition of exemption, owners of cooling plants must have equipment regularly maintained by accredited tradespersons.

TRYPTOPHAN

In reply to the **Hon. M.S. FELEPPA** (18 August).

The Hon. ANNE LEVY: Further to the honourable member's questions, the Minister of Health has advised that he is aware of the problem with L-Tryptophan. In mid-November 1989 United States health authorities established a link between Eosinophilia-Myalgia Syndrome (EMS) and the ingestion of oral preparations of L-Tryptophan. EMS is characterised by eosinophilia, muscle pain and weakness and joint pain. Fever and rash have also been associated.

Several hundred people in the US were hospitalised as a result of the EMS—L-Tryptophan link and a retail level recall was implemented in late November 1989.

Although initially confined to the US, the probem was later detected in some European countries where recalls and other restrictions on L-Tryptophan have since been placed.

Australian health authorities have been monitoring the situation in the US, however, the detection of the problem outside the US led to the decision to initiate an Australia-wide recall of L-Tryptophan products until the nature of the problem and the cause of EMS is identified. The recall of L-Tryptophan in Australia is safety related.

Our latest information is that the US Food and Drug Administration has not yet established the true nature of the problem and because of this Australian health authorities will not alter the recall status of this substance.

It should be noted that products containing L-Tryptophan for the treatment of patients under the care of a registered medical practitioner have been excluded from this recall.

Until the nature of the problem and the cause of the syndrome linked to ingestion of L-Tryptophan is established the recall status of the substance will remain.

PREMIER'S SAFETY

In reply to the **Hon. I. GILFILLAN** (21 August).

The Hon. BARBARA WIESE: In response to the honourable member's question, the Minister of Housing and Construction and Minister of Public Works has provided the following information.

A building audit is being undertaken by consultants to establish a long-term program for the refurbishment of the State Administration Centre. This audit will identify the needs to bring the building to contemporary office accommodation standards and the estimated cost to achieve this. Also identified will be the long term maintenance requirements and separately any future Occupational Health and Safety items that may need addressing. The Government has allocated funds in this financial year's capital works budget to carry out any work identified in the building audit and to improve lift and air conditioning services.

Although not to present day standards, the fire safety requirements of the State Administration Centre are deemed to be adequate. The building has fire isolated escape stairs, smock detection system and internal intercom system. Occupants of the building have been educated in evacuation procedures with wardens appointed to each floor.

With regard to asbestos, consultant reports indicate that no asbestos is present in the building.

As for the electric wiring, the main supply cables to building are in good condition and adequate to take any foreseeable load. The general purpose outlets and subcircuit wiring is acceptable and flexible enough to accommodate any changes or expansion.

The present lifts are functional and meet acceptable safety requirements. Investigation into the waiting time is being done and future upgrading is programmed to overcome delays.

LEGIONNAIRE'S DISEASE

In reply to the **Hon. I. GILFILLAN** (15 August).

The Hon. BARBARA WIESE: In response to the honourable member's questions, the Minister of Health has provided the following information:

1. The process of determining what maintenance procedures may reasonably be expected to improve the control of microbial growth in cooling towers reaching an important stage in 1989. Then the National Health and Medical Research Council published 'Australian guidelines for the control of Legionella and Legionnaire's Disease', and the Standards Association published AS 3666 'Air-handling and water systems of buildings—Microbial control'.

Recognising that if inspections of cooling towers were to be done, the responsibility would probably fall upon local councils, the South Australian Health Commission has been involved in a series of educational sessions with Environmental Health Officers. Some local councils have in fact proceeded to survey their areas of jurisdiction and to compile registers of all cooling towers that they can identify. Councils which have been so involved include: Adelaide, Port Adelaide, Enfield, Marion, Noarlunga and Glenelg.

As a rule, the owners of the largest shopping centres in the State have well established maintenance protocols overseen by experienced staff and are quick to intervene in the event of any unfavourable bacterial growth being detected.

2. Management of Legionnaire's Disease has been well defined and guidelines on the subject are contained in 'Legionella Alert' directed to doctors published by the NH & MRC in 1989.

3. Education of building owners has been concurrent with the education of Environmental Health Officers. Of particular note was the meeting conducted by Standards Australia in Adelaide in September 1989. This was directed especially to building owners and stressed their obligations under the Occupational Health, Safety and Welfare Act to provide for a safe working environment. Australian Standard AS 3666 would be taken as a minimum standard of maintenance for cooling towers in the event of any legionella-associated legal action.

4. There are no specific signs of Legionnaire's Disease that the public could reasonably be expected to recognise. The essence of treatment is early consideration of the possibility of the diagnosis and its appropriate management. This is outlined in the Legionella Alert publication mentioned above and in an article authored by South Australian Health Commission officers currently in press with a national medical journal.

MOUNT LOFTY TOURISM DEVELOPMENT

In reply to the **Hon. DIANA LAIDLAW** (22 August).

The Hon. BARBARA WIESE: In response to the honourable member's question, the Minister for Environment and Planning has provided the following information:

1. The feasibility study was received on 4 May 1990.

2. The Government does not intend to release the full feasibility study report for public interest. The report contains extensive financial analysis and information which is considered to be of a commercial nature. Whilst the Government contributed towards the cost of the feasibility study, substantial other work on the financial viability has also been undertaken by the private sector consortium. It is not appropriate for this commercial information to be released.

However, information contained within the report on the revised development concepts for the site will be publicly released. The private sector consortium for this development has been advised that a new Environmental Impact Statement will need to be prepared and publicly displayed for this development—hence the public will have the opportunity to both see and comment on the revised proposals.

3. This is not a Government project. The Government does not intend to develop the site, we have advised the private sector consortium that we will make a serviced site available as our contribution to a joint venture. It is now up to the private sector to respond and the consortium is now examining whether the necessary financial support is available from that sector.

NO-FAULT MEDICAL COMPENSATION

In reply to the **Hon. R.J. RITSON** (21 August).

The Hon. BARBARA WIESE: The Minister of Health has advised that in 1989 the Australian Health Ministers' Conference received a report of the Task Force on Patients' Rights which outlined a model of what a no-fault compensation scheme for health care could look like. This followed similar interest in, and consideration of, the issue in the United Kingdom and Canada.

At their 1990 conference, the Australian Health Ministers noted that the concept of a no-fault compensation scheme for health care remains one needing further debate, discussion and analysis and, in particular, detailed costing. The Australian Health Ministers asked the South Australian Public Actuary to undertake this costing and to provide a further report to their conference in 1991.

The honourable member will appreciate therefore that considerable work still needs to be undertaken on this matter and as such the Government has no plans to introduce such a scheme at the present time.

HOUSING TRUST

In reply to the **Hon. J.F. STEFANI** (7 August).

The Hon. BARBARA WIESE: In response to the honourable member's question, the Minister of Housing and Construction has provided the following information.

In June 1989, the Housing Trust entered into a contract for the sale of the Angas Street administrative complex. At that time the other party paid a deposit of $40 000 and lodged a bank guarantee of $860 000 with the trust. During 1989-90 the other party was placed in liquidation; the bank guarantee was honoured in payment of $860 000 to the Housing Trust in July 1990.

The Housing Trust has not incurred a cash shortfall as a result of the other party being placed in liquidation. It retains the title to the property, which is still likely to be developed. The trust has gained the receipt of $900 000 in deposit and bank guarantee forfeited by the other party. Proceeds from the now defunct sale were payable to the Housing Trust on 16 January 1992 and were therefore not built into the estimates for either 1989-90 or 1990-91.

The Housing Trust disclosed in 1988-89 as an extraordinary item, a surplus of $5.771 million on the sale of its Angas Street administrative complex. This has been revised in 1989-90 as the contract did not proceed. No credit was taken for the envisaged development participation profit.

The Housing Trust is now continuing negotiations with other developers who wish to put in place proposals based on the use of the Angas Street site. Provision of further information cannot be revealed at this stage as this would breach commercial confidentiality.

The Housing Trust has leased five levels of the Riverside premises from ASER Nominees Pty Ltd on a 10-year lease with some space sublet to other Government agencies. The financing of lease payments were not contingent upon the application of profits from the sale of the Angas Street administrative complex.

The report by Price Waterhouse Urwick on the triennial review of the Housing Trust is in its final stages but has not yet been received.

TRUSTEE COMPANIES ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Trustee Companies Act 1988. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

The Trustee Companies Act Amendment Act 1990 amends schedule 1 to the Trustee Companies Act 1988 by including in schedule 1 National Australia Trustees Limited and Perpetual Trustees South Australia Limited as trustee companies for the purposes of the Trustee Companies Act 1988.

National Australia Trustees Limited is an entirely new trustee company to enter into South Australia, whilst Perpetual Trustees South Australia Limited is the subsidiary of Perpetual Trustees Australia Ltd, a company already included as a trustee company in schedule 1. The inclusion of these two companies in schedule 1 will expand in number and range the trustee companies available to the public of South Australia. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for commencement on a day to be fixed by proclamation.

Clause 3 amends schedule 1 to the principal Act by the addition of National Australia Trustees Limited and Perpetual Trustees South Australia Limited to the list of companies which are trustee companies for the purpose of the Act.

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

MARINE ENVIRONMENT PROTECTION BILL

In Committee.

(Continued from 10 October. Page 873.)

Clause 10—'Council to establish Marine Environment Protection Committee'—recommitted.

The Hon. DIANA LAIDLAW: In addition to the amendment that I moved yesterday evening with respect to appointments to the committee, I further move:

Page 4, after line 38 insert paragraph as follows:

(fa) a person appointed by the council on the nomination of Local Government Association;.

The reason for this amendment is that the Liberal Party accepts the arguments that the Minister presented last night when moving her own amendment to the composition of the Marine Environment Protection Committee. At that time, she indicated that the Government felt it was important that the Local Government Association have a representative on this committee. The Liberal Party accepts those arguments, but we take exception to the explanation of the Government's motivation for representation from the Local Government Association. As the Hon. Mr Elliott mentioned last night, there is no reason for the Local Government Association to be represented on this committee because of its interest in stormwater issues; these are diffuse, not a point source of pollution.

We accept the rationale for the appointment of a person from the Local Government Association, but not the Minister's explanation for that appointment. So, my amendment differs from that moved earlier by the Minister, where, in

relation to the Local Government Association, she sought such an appointment by the council from a panel of three persons nominated by the Local Government Association. The Liberal Party does not believe that this is desirable or necessary. In fact, we do not believe it is desirable or necessary with respect to any of the other people to be appointed by the council to this committee. Certainly, on 6 September, when accepting amendments from the Australian Democrats, the Government indicated that it was quite happy for the council to appoint the person nominated by the Conservation Council and by the Fishing Industry Advisory Council.

On 6 September, in relation to those two councils, there was no need for a panel of three persons and it is only now when the Government is seeking to expand the committee with respect to the Local Government Association, the Chamber of Commerce and Industry and the Chamber of Mines and Energy that it now sees the need for a panel of three persons. The Liberal Party does not understand the logic of that, considering that the Minister and the Government were happy with just the one person nominated by those bodies, being the council's appointment to the committee as of 6 September, and we believe that those same arguments should apply at this time.

The Hon. M.J. ELLIOTT: As I indicated last night, the Democrats are not happy with the amendments of the Opposition or those of the Government. They have some things in common, which we find unacceptable, namely, the expansion of the size of the committee. I would argue that this is an unnecessary expansion in two ways: first, since this legislation does not cover diffuse sources, there is no reason why local government should have any special interest at this time and I also argue that we need only one person with industry experience and, in fact, what we are doing at this stage is getting two—one from the Chamber of Commerce and one from the Chamber of Mines and Energy.

I do not believe that those two different people will bring extra knowledge to bear that will be of great import to what I understand to be the real role of this committee, which is the oversight of the marine environment and, in particular, looking at setting standards for receival waters and the like. It is certainly useful to have a person from industry on the committee so that industry has a window to what is happening, but I believe that having an extra person adds nothing to the role of the committee and, in fact, will tend to dilute it away from its original intent.

I am quite disturbed that this committee has grown like topsy over the past four weeks. I would like to test the Minister on this matter before things go too far. One of the major arguments put forward by the Chamber of Mines and Energy at the time was that there were two fishing representatives, so why not two industry representatives? I am quite happy to see reference to the Department of Fisheries dropped so that there is just one fisheries representative on the committee and that person would be from SAFIC, because that seemed to be the major argument put forward by the Chamber of Mines and Energy. Quite frankly, I do not accept that but, if that is the argument that persuaded the Government, for the sake of the committee not becoming too large, I would be happy to have the Department of Fisheries representative removed. I would like a response from the Minister on that matter.

While I am on my feet, I will raise another matter that I suppose is unrelated to the point that we are discussing, but since we are in Committee this is the last chance that I have to raise it. Earlier in the debate I raised the issue of the problem of companies protected by indentures. I expressed some concern that companies, such as BHP, might be able to do things that we quite clearly would not allow other companies to do. I am seeking from the Minister confirmation of that fact that, regardless of the indenture, BHP will be seeking a licence. I would like the Minister to confirm whether or not that is the case and, also, what are the legal ramifications if, on the one hand, the company is licensed under the Act, yet its indenture Act appears to protect it in any event? Does licensing in those circumstances have any real meaning?

The Hon. ANNE LEVY: I do not think that the last question has anything whatsoever to do with clause 10, but I am informed that BHP has an indenture and this Act does not override indentures. However, BHP has agreed that it will bind itself as if the Act applied to it. Even though it is not bound to follow the Act, it will do so.

Turning to other matters that have been raised in relation to clause 10 and the panel of three persons, I can only reiterate what I stated last night: there is a whole package of environmental Bills that have been passed by this Parliament in the past couple of years and in all a council, board, committee or advisory body has been set up, with wide representation. In every case the legislation provides that a panel of three persons be nominated by a particular organisation, one of whom is appointed by the Minister.

That applies for the Water Resources Act, which was the most recent relevant legislation; the Pastoral Land Management and Conservation Act again provided for a panel of three from which a selection of one member was made; and the Soil Conservation and Land Care Act also provided for a panel of three from which one person was appointed. The coast protection and native vegetation management legislation, which dates back to 1988, provided for a panel of four persons from whom one was to be nominated. However, if members desire it, I will certainly take up with the Minister the fact that that should be amended to provide for three people so that there is complete consistency across environmental protection legislation. I also point out that in clause 10 the individuals are to be appointed by the Environmental Protection Council, not the Minister.

The council is supposed to be independent, and the council is given some flexibility to show its independence if it can choose from a panel of three people from nominations of the Conservation Council, the Chamber of Commerce and Industry, SAFIC or the LGA. It gives some flexibility to the Environmental Protection Council if it can choose from a panel of three. That independence will be reduced if it has no flexibility and can select only one person nominated by a particular organisation.

I turn now to the amendment moved this afternoon by the Hon. Ms Laidlaw to add to her previous amendment of a representative of the LGA. It has been pointed out that this will lead to some confusion regarding what is to be in my amendment, given the fact that both the honourable member's list of amendments and my list of amendments are drafted to delete paragraph (1) of schedule 2. As I am given to understand it, the deletion is to ensure the ability to go back to the definition of the position as set out in the Environmental Protection Council Act.

In that situation, membership of the Environmental Protection Council includes a member appointed as a person with knowledge of biological conservation and a member appointed as a person engaged at a university in teaching or research in a field relating to environmental protection. That is the wording of the Environmental Protection Council Act. The consequential amendment will remove from the Environmental Protection Council a person with expertise in the marine area. I understand that both the Hon. Ms

Laidlaw and the Government wish to delete that provision so the person with marine expertise had to be included in clause 10.

Under my proposal, in clause 10 (2) *(b)* the exact wording is used. It is either/or, but it uses the words of the Environmental Protection Council Act. I fear that with the Hon. Ms Laidlaw's amendment to clause 10, as opposed to mine, there will be utter confusion if the schedule 2 amendment goes ahead. I understand that there had been complete agreement between the Government and the Opposition that the amendment to schedule 2 should take place. I do not know whether that is clear.

The Hon. M.J. ELLIOTT: The Minister needs to be aware that I find unacceptable the amendments where reference is made to panels of three. I understand that the Opposition has said the same thing. I do not like either of the amendments, but, if it comes to the crunch, at this stage I shall be accepting the Opposition's amendments because they are the least worst of the amendments before us. If that creates other difficulties, the Minister had better think about it. If it means reporting progress for 10 minutes whilst further drafting occurs, that might be the most sensible thing to do. The Minister needs to be aware that I shall not be supporting the Government's amendments. If other problems are created, which is what she seems to be alluding to now, then I suggest that a break of 10 minutes now to sort it out would be extremely useful.

The Hon. ANNE LEVY: The Hon. Mr Elliott says that he is not accepting panels of three. I am not happy with that, but I cannot change his mind. I have argued it and I cannot argue it again.

The Hon. M.J. ELLIOTT: I am not quite sure whether the Minister has grasped what I was saying. The Minister suggested that the Opposition's amendments, if accepted, as they are, will create a problem (although I am not sure that I picked up what it was). The Opposition's amendments are not as bad as the Government's—they are the least worst—and for that reason I shall be supporting them. If that creates some consequential problem that needs rectification, I suggest that it might be worth taking a little time to sort it out. It would probably be easier to sort it out outside the Chamber than try to work across the floor because I think it might involve some drafting.

The Hon. ANNE LEVY: Perhaps I could move that progress be reported so that discussions can take place with Parliamentary Counsel and members of the Opposition and the Democrats.

Progress reported; Committee to sit again.

The Hon. ANNE LEVY: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

LANDLORD AND TENANT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 September. Page 610.)

The Hon. L.H. DAVIS: My colleague the Hon. Trevor Griffin has discussed in some detail the implications of the amendments to the Landlord and Tenant Act. This indeed has been stop-start legislation which initially was rushed in without due consideration. Certainly, the Bill we have before us now is in much more acceptable form than was initially the case. The purport of the Bill is to revise and improve commercial leases with respect to premises where retail business is conducted and also with respect to premises where services are offered to the public—in other words, covering a range of professions.

It seeks also to improve the disclosure requirements which currently exist. It has, as its main thrust, the protection of the tenant, but, as my colleague the Hon. Trevor Griffin quite clearly and correctly emphasised, it is important in discussing legislation of this nature to balance off the rights and obligations of both the landlord and the tenant.

The Consumer Affairs Commission established a working party in 1988 to examine the question of retail business leases and discovered, not surprisingly, that many tenants were ignorant of the often quite complex and difficult provisions of commercial leases, and many tenants discovered to their cost that ignorance is not bliss. The findings of the working party established in 1988 are, in many respects incorporated in the legislation now before us.

I want to touch briefly on the essential elements of the Bill. First, it seeks to introduce a minimum five year term for all leases which are subject to the provisions of this legislation. It will be a term of five years or an original term plus a right to renew if that total period is for not less than five years. Secondly, it sets a limit for the operation of this legislation of $200 000 rental per annum or less. In other words, the protection afforded by this legislation will only be given to tenants who are paying a rental of $200 000 per annum or less, and that excludes administration and other management costs.

It is worth noting that the Statutes Amendment (Commercial Tenancies) Act 1985 initially set a limit of $60 000 per annum or less and rights were created for tenants who paid less than that amount of $60 000 per annum. They had an ability, for example, to refer disputes to the Commercial Tenancies Tribunal and there were limits placed on the bond moneys which were payable by them. Now, five years later, the Government is seeking to increase this ceiling limit of $60 000 to $200 000. It is interesting to reflect on whether that is the correct amount. Over a five year period, inflation would have raised that limit to some $110 000 to $120 000.

There are landlords who could well argue that, in fact, commercial rentals, which are the subject of this legislation, namely, retail businesses and professional offices, have increased at a much greater rate over that period of time. Some would argue that it has been at a rate of, say, one and a half times the rate of inflation over that five year period—which would lift the appropriate figure to $150 000 or $160 000. Certainly, over the past 12 months there has been a softening in rentals, not only in real terms but in some cases also in money terms.

The exemption from the five year provision does exist for family arrangements, and short-term tenancies of two months where independent legal advice has been sought. It is also claimed that registration of a lease is desirable, and provision has been made for this in the Bill, to give tenants greater protection. There is the argument in the second reading that tenants lack ability to enforce a lease against an unscrupulous landlord without registration of a lease, and so the Bill seeks to render void any lease provision which precludes registration. Finally, another element of the Bill is that public companies and subsidiaries of public companies are exempted from the provisions of the legislation.

Some of these elements already exist in other States. There are some differences in the way in which other States have approached this important matter. For instance, the five year term which is proposed in this legislation is a power that is already set down in legislation in Victoria and

Western Australia, and it is also proposed in New South Wales.

In terms of putting a value on any tenancy under which value the tenant will receive protection of legislation, South Australia has taken a route different from other States. In Victoria, Western Australia and Queensland, for example, the criteria for retail tenancies is set on the amount of space which is occupied. In those three States if there is 1 000 square metres or less in an individual tenancy arrangement, then the tenants will receive the benefit of the legislation. Here we have chosen a different method, namely, looking at the value of the annual rental payable. I agree with my colleague the Hon. Trevor Griffin in arguing that, on balance, it is preferable to stay with what we know rather than change the basis on which protection is afforded.

The working party did consider another option, and that is to look at the number of people employed in the business. The working party, for example, considered the possibility of adopting the criterion of the number of persons employed by the tenant, whether it was 20 or 30.

Members would be well aware that a common method of measuring the number of small businesses is to set a cut-off point or an upper limit, for example, the number of 20 in defining small business, and 100 in the case of manufacturing. Again, it is very difficult to use that method as a definite determinate for protection under the Landlord and Tenant Act. For example, are we looking at the number of people employed on a full-time or a part-time basis? Many retail operations, such as supermarkets, would employ very many casual staff. I would submit that, if one wished to use employment numbers as a criterion for protection under the Landlord and Tenant Act, it would be a fairly complex calculation to determine the number of full-time equivalents.

On balance, I think that we should agree with the nature of the proposals set down in this Bill and that we should look at a money figure in terms of determining whether or not a tenant will be protected for a commercial lease, whether it be retail, business or professional offices. That money figure on an annual rental basis is to be preferred to the number of people employed, or the amount of office space or retail premises actually leased, by that particular business.

The economic reality that faces us as we debate this issue is a stark one. Both landlords and tenants face difficult times. Whilst I accept that tenants need protection from unscrupulous landlords, it is equally true that sometimes landlords need protection from unscrupulous tenants. Let us look at the rights of the landlord. The landlord has outlaid large capital sums, often taking a risk in developing property, whether it be retail property or professional office space, and in the current regime of high interest rates many landlords have been placed in very difficult financial circumstances. It does not require much imagination to contemplate the prospect of a landlord, who has erected a building on the best advice possible from his banks, from his real estate advisers, from his own judgment, and perhaps even from written expressions of interest, only to find that the cool winds of economic change have made the investment a distinctly chilling one by the time the project is completed, given that sometimes there is a two-year lead time between commencing a project, even a modest project, from planning approval through to the building stages and the fitting out of the building. So, in 1990 the prospect of the landlord with empty shops and offices in South Australia is a very daunting one.

On the other hand, tenants in professional offices who are locked into a lease, whether it be a two-year, three-year or five-year lease, face the prospect of perhaps a contracting work force in tough economic times. If they are in a retail situation, they may well face falling sales, squeezed margins and perhaps excess space. In both cases, whether it is professional offices or retail space, tenants ultimately face the real impost of land tax, financial institutions duty and the other burdens that have been imposed so savagely on small businesses by Federal and State Governments that are seemingly indifferent to the fact that ultimately small business is the engine house of growth in Australia.

To compound the economic problem, the Government has lacked reality. Although it is not included in the legislation that we now have before us, I recoil in disbelief that Governments in both Victoria and South Australia are so inept, so inane and so unmindful of business practice that they can actually propose legislation which will require landlords to pick up the cost of land tax rather than passing it on to the tenant.

Any investment ultimately has to have an economic return. It is a nonsense to try to legislate to prevent landlords passing on the real costs of an investment. I cannot believe that the South Australian Labor Government is so out of touch that it is proposing legislation of this nature. Again, it underlines the fact that no member of the Bannon Cabinet—a team of 13 people—has had any small business experience whatsoever—not one. They are all union officials, sometime lawyers and teachers, but not one member has really understood what it is like to operate in the real world. It obviously shows, because we have legislation, which will shortly be before us, that seeks to make a nonsense out of common business practice.

The Hon. I. Gilfillan: You are not criticising this Bill?

The Hon. L.H. DAVIS: No, I am just adverting.

An honourable member: Foreshadowing.

The Hon. L.H. DAVIS: Yes, I am foreshadowing my hostility to another measure which will shortly be before us.

The Hon. I. Gilfillan interjecting:

The Hon. L.H. DAVIS: No, not at all.

The Hon. I. Gilfillan: Not now, but later?

The Hon. L.H. DAVIS: Yes, later.

The Hon. T. Crothers: You are a pale shadow of your former self; there is no doubt about that.

The Hon. L.H. DAVIS: Trevor, I would not even begin to talk about shadows if I begin to talk about you, and I would not do that to my friend and colleague, the Hon. Trevor Crothers.

The PRESIDENT: Order! The honourable member will come back to the debate.

The Hon. I. Gilfillan: You should not be so easily distracted.

The Hon. L.H. DAVIS: When the Hon. Trevor Crothers blinks he distracts me. Let me turn to the issues. I have already discussed what is a reasonable criterion for determining how tenants should best be protected by the provisions of the Act, and I have agreed with the principle that has been adopted in this legislation that we should adopt the criterion of annual rental. It is useful to reflect on who will be brought under the umbrella of protection, because if we do set an annual limit of $200 000 per annum for commercial offices or professional offices, excluding the administration and other management costs, in Adelaide (not in the heart of the central business district but in the so-called frame area, for example, Hindmarsh Square), a typical net rental would be about $200 per square metre. So, an annual rental of $200 000 would equate to 1 000 square metres.

Now, 1 000 square metres is a rather large office building. I think I am right in saying that, for example, the State

Bank building has a floor area of about 1 000 square metres for each level. It is a rather large area, and 1 000 square metres would be typically a little more than an average level in a city building. So, we are talking about protection for rather large organisations. I would have thought typically that 1 000 square metres would accommodate 30 or 40 people very comfortably. I have not had an opportunity to discuss this matter, but I would have thought that 30 to 40, depending upon the configuration of the property, would be a very modest figure indeed. It could well be more than that. We are saying that, typically, accounting firms, legal firms and other professional offices with rather large staff will be protected under this legislation.

In relation to retail, which is traditionally on a more intensive basis, in popular districts such as the city, Rundle Mall, and so on, $200 000 rental per annum would not go very far at all. One might argue that there could be a different level between retail and commercial other than the common figure of $200 000, but I accept that that would be altogether too difficult. I quibble with the figure of $200 000 and suggest that it is a little too high. The Hon. Trevor Griffin has already made this point but, for the sake of debate, I will accede to the suggestion contained in the Bill. However, I support my colleague and would like to think that any adjustment to this amount should not be made by regulation. In fact, the Hon. Trevor Griffin has foreshadowed some amendments, but if there is to be an adjustment my personal view is that it would be far better to index it to inflation.

Public companies and their subsidiaries will be exempt from the provisions of the Bill—that is the intention of the legislation—but I find it incongruous that local, State and Federal Government departments and agencies will not be exempt also. Governments cannot have it all ways. If, for example, the Department of Woods and Forests does not pay rates to the local council on the basis that it is an instrumentality of the Crown, it should not be able to claim protection under the Act as is provided under this legislation. I find this to be quite incongruous.

My colleague, the Hon. Trevor Griffin, has quite correctly drawn attention to the fact that, whilst public companies and their subsidiaries have been exempted, other bodies corporate which have similar status, such as mutual societies and cooperative building societies, for some odd reason have not been exempted. Why should the Hindmarsh Building Society, the Cooperative Building Society, credit unions and mutual societies such as the AMP and National Mutual not also be exempted from the operation of this legislation?

The arguments for and against the five-year term are very complex. Quite clearly, from the tenant's point of view, heavy upfront costs are associated particularly with the development of retail premises, and this is true also of professional offices. Fit-out costs can easily run into hundreds of thousands of dollars. So, there is the need for the tenant to have the opportunity to amortise those costs over a period of time. Many tenants would prefer a longer lease period to get value from these high upfront costs. In many instances, of course, high upfront costs are also associated with the establishment of a business with respect to advertising, and not just with fixtures and fittings.

It is very much a two-edged sword. In tough economic times a tenant may prefer a two-year term. Obviously, a tenant with a two-year term, whether it be of professional offices or in a retail situation, would be much more desirable because of the very grave economic uncertainty of the times in which we live. A five-year term could be a real burden. There is a legal and contractual obligation which binds a tenant to a five-year term, and a situation may arise where a tenant in a professional office or retail environment wishes to contract his business and sublet. In the soft economy of today, a tenant may be unable to sublet. So, tenants find themselves with a financial millstone around their neck for many years. As I said, there is very much a two-edged sword argument whether this should be a three or five-year fixed minimum lease term.

Another aspect that has been covered in this debate is the fact that with a five-year term there is a greater opportunity to on-sell the business with a goodwill component. I was associated with a business called the Kite Shop. It was Australia's first kite shop, and it had a fairly rugged landlord who increased the rent by an extraordinary amount. The only way in which we could counter this was to try to extend the lease in the belief that we would be able to increase the goodwill component should we decide to sell. It was a nice theory but, in practice, it did not work quite like that; but it is an important factor.

What is the practice in the leasing area? I must say that I have rather more familiarity with the typical lease for a professional office than I do with that in the retail situation. It is true to say that, certainly in Adelaide, generally a five-year lease plus a five-year option seems to be the most common approach to leasing, according to the annual or two-yearly reviews of rental based on the consumer price index or the market. Again, in these difficult times there has been pressure on landlords to accept a CPI adjustment rather than a market adjustment because it gives them the certainty of some rental increase. In recent months there have been examples of landlords being forced to accept a lower rental or, on many occasions, particularly in relation to a new lease, to offer free rental for a period of time of up to two years for larger leases, as an inducement to tenants to accept a contract for rental of professional offices, and this may run also to a free refit.

In the office situation, one has generally more sophisticated tenants. This is not necessarily true, but it is generally true, and usually there are arrangements for arbitration in the event of dispute. It is true to say that the problem does not lie necessarily in this area, but there can be difficulties. One example which has already been mentioned and which is a very practical one is the not uncommon practice of a legal or an accounting firm leasing three or four floors of a building in anticipation of growth in future years and perhaps using two of them immediately and subletting the other two.

Quite clearly, the problem arises in expansionary times. For example, if this was 1987-88 and the economy was booming, they may want to move into their third and fourth floors within, say, one or two years, but a minimum lease of five years, as proposed in this legislation could create very real and practical difficulties. I can understand why not all landlords are happy about the five-year term in the retail sector and, sometimes, in the commercial sector. That has particular application with respect to major shopping centres where some flexibility is required by the landlord in terms of the mix of the business, the quality of the business operation, and so on.

I accept that the far-ranging speech of my colleague, the Hon. Trevor Griffin, covered other points and that this is essentially a Committee Bill. I welcome the opportunity to canvass some of these issues that I have touched upon in the Committee stage but, as the Hon. Mr Griffin has indicated, the Liberal Party has amendments to this legislation. I support the second reading.

The Hon. BARBARA WIESE secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 6 September. Page 755.)

The Hon. K.T. GRIFFIN: I first spoke on this Bill on 6 September. At that time I outlined a number of difficulties in relation to the Bill which had been drawn to my attention. I then sought leave to conclude to enable me to further consider those issues and to pursue some aspects of the Bill with other legal practitioners. On that occasion I quoted extensively from a paper that had been prepared by a legal practitioner who had been involved in the preparation of the Law Society's submission last year regarding the first edition of the Evidence Act Amendment Bill. Although amendments had been made as a result of that initial submission, there are still issues which cause concern.

I will not repeat the matters which I raised on that occasion except to say that there were concerns about the proposed section 35, in particular the definition of 'legislative instrument' and the problem of its drafting, particularly of subsection (2) *(d)* and subsection (2) *(c)*. It is not necessary to repeat those comments now. There were some difficulties with proposed section 37, particularly where the mere publication in the *Gazette* or a corresponding official publication of some other State or Territory of the Commonwealth of a legislative, judicial or administrative act notified the status of evidence.

There were also concerns about new section 45 *(c)*, which sought to modify a rule of evidence called the best evidence rule. Again, although some changes have been made by the Government since the Bill was first before the Parliament, nevertheless there are issues of concern still evident on the new section. The section is proposed to deal with optical character reading by SGIC of its documents and files, essentially for storage purposes, and I have made the point that I do not believe it appropriate to make legislation of general application on the basis of the needs of one particular oganisation. When we consider the best evidence rule and any modifications to it, one ought to expect that, not only will the expectations of SGIC be met, but also the law will meet the circumstances of other organisations which have similar needs to SGIC.

Because it will be of widespread application, it is important to get it right and not to leave a lot of it to legal interpretation. There is a problem, for example, with subsection (2) *(a)*, where the court may rely on its own knowledge of the nature and reliability of the process by which a reproduction of a document was made, but there is no requirement for the court to inform the parties of what its knowledge may be, even though it must give reasons for making a decision whether or not to refuse to admit a document. There is a difficulty with the qualification of the person who may give a certificate as to the process by which a reproduction of a document has been made. There is also a difficulty with subsection (2) *(c)*, where the court may make findings based on the certificate of a person who has compared the contents of both documents and found them to be identical, particularly in relation to the qualifications of that person, and when that comparison has been made.

There are other difficulties, but one in particular is that the original document may in fact be destroyed and, if the original document is destroyed, the reproduction may be relied upon, even though it may not contain all the markings which appear on the original documentation. In addition to that, there is a concern about the process which is to be approved by the Attorney-General by a notice in the *Gazette*, an approval which is not subject in any way to the scrutiny of Parliament and for which the Attorney-General is not accountable in any way. Of course, in this matter, he will undoubtedly rely on advice which is given, but it is appropriate for that advice to be tested, particularly because of the significant ramifications of approving a particular process by which a reproduction of a document may be made and, ultimately, that reproduction used for evidentiary purposes.

I referred to a number of other issues when I first spoke on this issue and I will raise others in the course of the consideration of the clauses in Committee. However, I would hope that, prior to this Bill being considered in Committee, the Attorney-General will be able to provide a response to the two contributions I have made, to enable the Council to consider what sort of amendments may be necessary to solve the problems to which I have referred and which have caused concern among members of the legal profession who have had a lot of experience with modifications to the best evidence rule and who are regularly required to deal with reproductions of documents rather than the originals, which might have been missing or disposed of. So, I support the second reading of the Bill and expect that a number of matters will require attention during the course of the Committee stage of the Bill.

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

LAND AGENTS, BROKERS AND VALUERS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 6 September. Page 750.)

The Hon. K.T. GRIFFIN: Essentially, this is a Committee Bill but, notwithstanding that, I want to identify during the course of the second reading debate a number of issues which I would like the Minister to consider. I have sent the Bill out to a number of organisations and individuals for advice, because of the complexity of the Bill and the practical and cost implications of its enactment. The Bill seeks to make a number of changes with respect to cooling-off periods for the sales of land and small businesses and to prescribed information which is required to be given by a vendor to a purchaser, prior to the settlement of the sale of the land or a small business. The regulations which are to be promulgated are very important because they will identify information which is to be provided to a purchaser prior to settlement. Some of that information is identified in the second reading speech and I will make some reference to it later in the course of this contribution. Because the regulations are neither tabled with the Bill nor otherwise readily available, it is not possible to reach a considered judgment on the matters which are to be included in those regulations according to the statements made in the second reading contribution.

In 1986 one of the forms which the Government prescribed by regulation was hastily withdrawn after there were protests from real estate agents, land brokers and lawyers because of its complexity and the significant additional cost which would have been incurred in obtaining and providing all the information. Since 1986 the Government says that a significant amount of information from Government departments and agencies will be placed on the land ownership and tenure system administered by the Lands Department.

If that is the case, and if vendors are entitled to rely on that information, certainly that will reduce the cost. Although,

I ask the Minister to identify which of the items proposed to be required to be disclosed on the prescribed statement will be on the LOTS system and what information will not. That information will help to identify the extent of inquiries that will have to be made by agents and vendors, and the extent of the cost that is likely to be incurred by the requirement for additional information to be provided to a purchaser.

One cannot ignore the fact that there will be additional cost and any additional cost has to be measured against the prospective advantage of having that information and, of course, that additional cost will be an increased burden to any purchaser because, ultimately, it will be passed on in one form or another.

Amongst the additional information that the Government is proposing to require to be disclosed is the following:

1. Prohibitions or restrictions under the Aboriginal Heritage Act.
2. Mining tenements and private mines under the Mining Act.
3. The past use of land as a waste depot.
4. Restrictions on the height of buildings under civil aviation or defence legislation.
5. Information relevant to farmers and graziers which concerns clearance of native vegetation; destruction or control of animals or plants; transportation of animals, plants or soil; fruit and plant protection; agricultural chemicals and stock diseases.
6. Directions under the Food Act relating to the use of unclean or unsanitary premises or equipment.
7. Certain financial information in relation to the operation of small businesses.

The Bill is proposing to do a number of things and they include: first, to require financial information relevant to a small business to be verified by a qualified accountant; secondly, to allow the service of cooling off notices by fax; thirdly, to define encumbrance as any easement other than a statutory easement for the supply of electricity, gas, water, sewerage or telephone; fourthly, to require a vendor of land or a small business to serve a statement in the prescribed form in relation to encumbrances and to make it an offence not to do so; fifthly, to give more flexibility for a purchaser of land or a small business to proceed quickly by waiving cooling off rights and the rights to a statement of prescribed interest within a particular period of time, if a legal practitioner has given independent advice and certain other formalities are followed; sixthly, to require councils and statutory authorities to provide information within seven clear business days of receiving an application for the information and in providing for an offence if that is not complied with; and, seventhly, to give the courts wider powers in relation to orders that can be made in the settlement of disputes arising out of the statement made by vendors.

There are a number of concerns about the Bill. I will deal with the major ones now and perhaps a few of the minor ones, too. I will perhaps raise a number of other issues in Committee. I think a number of amendments will need to be considered in order to clarify aspects of the Bill and to make it more practical. I suppose at the outset one should ask why is it proposed to repeal sections 88, 90, 91 and 91a of the Act? Maybe some amendment would be desirable, but it is not clear from the second reading explanation why the Government feels it necessary to repeal those sections and to enact new sections which, to a very large extent, do the same thing. It is not clear from the second reading explanation what problems have arisen with the existing sections and consequently why such wholesale redrafting should occur. This needs to be clarified.

One of the difficulties is that, if one works with something in the law for some years, one becomes familiar with the legislative requirements—the various professional bodies and individuals who use the legislation become familiar with it. If there is any dispute in relation to particular matters, generally speaking there is some clarification during the course of the administration. Changing that opens up new questions, new areas of doubt and new opportunities for some dispute as to the way in which the legislation ought to be applied. I have a philosophy that one should amend or repeal and replace legislation only when there is a substantial reason for doing so. If the law is working adequately—apart, perhaps, from some fine tuning—then we ought to leave it alone.

One of the first issues that has been drawn to my attention is the definition of small business. Presently that is determined by an assessment of the total consideration that is to be paid for the small business. Currently that is $70 000 and I think it has been at that level for a number of years. The Bill seeks to make that figure $150 000, or some other amount that may be prescribed. The Small Retailers Association has made a request that we consider increasing that figure of $150 000 to $200 000 to keep pace with inflation. Personally, I have no difficulty with that request and it seems to me that the figure is largely arbitrary and, therefore, I am proposing to amend the figure up to $200 000, total consideration, excluding land.

In the same respect, I am also proposing that we delete the provision which allows that figure to be juggled by a regulation. It seems to me that, if Parliament applies the law to a particular range of businesses, then it is Parliament that ought to make the decision by amendment to the Act to broaden or narrow that field of application. Therefore, I will seek to remove the provision allowing the amount which categorises a small business to which the Act applies to be varied by regulation.

The definition of 'encumbrance' excludes statutory easement and encumbrance is defined for the purpose of requiring a statement to be given by a vendor or an agent of a vendor to a purchaser to draw the purchaser's attention to any particular impediments on the title. An encumbrance must be disclosed. Among other things, it includes any easement other than a statutory easement relating to the provision of electricity, gas, water, sewerage or telephone.

An easement, as I think most people would recognise, might be a right for somebody to lay a drain over the adjoining property to drain stormwater from one's property. There may be an easement to run power lines, to run a gas or water main, or for some other purpose.

A statutory easement is not defined. So, it is unclear exactly what is intended to be covered. It may mean some easement or charge granted by other legislation in relation to, say, electricity or telephone to service the land and buildings. It may only refer to a power to enter land to service pipes and wires. If it is only to enter land to service pipes and wires, I have no difficulty with that, but, if it proposes easements created by, for example, section 223ln of the Real Property Act, it should not, in my view, be supported.

A number of groups have raised this issue with me. A lawyer, who has been giving some advice to the Law Society, says:

> The definition of 'encumbrance' in clause 87a (1) excludes electricity, gas, water, sewerage or telephone easements. Why? Electricity easements include the erection of high tension electricity towers. Why would a purchaser not be interested in knowing that such an easement exists? Similar with mains water, gas and sewerage services which may be placed through a property.

The Land Brokers Society makes a similar point. In relation to section 87a (i), it says, in relation to the definition:

My reading of this is that the common easement in favour of the Minister of Works for sewerage or drainage which restricts a purchaser from being able to build a shed of solid construction or a carport or any other improvement will in fact not be disclosed. In the normal course of real estate transactions it is these easements which concern purchasers the most and if, in fact, this is no longer disclosed to the purchasers it is my opinion that one of the most important disclosures will have been avoided. I am puzzled also at the reason for the removal of such an important disclosure.

Mr Charles Brebner, who is Chairman of the Law Society Property Committee but is at this stage writing in his private capacity, also draws attention to the problem. He says:

I have no objection to the provision if it refers only to any power the authorities may have to enter land to service pipes and wires servicing the land and buildings on the land. If it has any broader meaning or effect, I consider that the easement should be disclosed to the purchaser. Easements created by section 223ln of the Real Property Act could be described as statutory easements. They should be disclosed. It is important that buyers of land be aware of easements for services so they can avoid making inappropriate use of the land that is subject to the easement.

So, there are a number of concerns in relation to that particular provision, and it may be as a result of that that some amendments are required.

Presently, a body corporate can exercise a right to cool off in respect of the purchase of a small business. That is now to be removed. The Land Brokers Society has raised a question as to why this should be so. Bodies corporate who are purchasers have never been allowed to exercise any cooling off rights in relation to land, but the cooling off rights in relation to small businesses are, in my view, important because, if there is a problem with a small business, it is not likely to be as obvious as any particular difficulty with land. Unless there is some compelling reason why the cooling off period in relation to small businesses should not any longer be available to bodies corporate, I would want to see the right remain.

Proposed sections 88 (4) and 88 (5) draw distinctions between a deposit which may be required on a contract for sale of land. It is $50 maximum deposit on a contract for the sale of land before the expiration of the cooling off period, and then an additional deposit can be required after that. But, for a small business the deposit which can be required up front, even before the cooling off period expires, is 10 per cent.

I know that that has been the position for a long time but, as we are reviewing the operation of the Act, it would be appropriate to reconsider this question of a deposit and to bring the permissible deposit in relation to the sale of land into line with that in relation to the sale of a small business.

I see no reason at all why a maximum 10 per cent deposit should not be permitted for either sale of land or sale of a small business before the cooling off period expires, but again I am open to persuasion by the Minister that there is some other good reason why the distinction should remain. However, on present advice and on the basis of experience, it seems to me that no harm is done with the maximum 10 per cent deposit for both land and small business.

Proposed section 88 (7) deals with those situations in which the cooling off period does not apply. It seems to me that there is a bit of a drafting problem with that, because it now applies to a contract for the sale of land and a contract for the sale of a small business. I have already mentioned the reference to the purchaser being a body corporate. Mr Brebner, in his letter to me, says:

Paragraphs *(d)* and *(e)* are satisfactory when applied to land. When applied to a small business, however, the effect is to deprive the purchaser of three of the five days he would ordinarily have to cool off. The purchaser of a business should have five days to consider and get advice on the vendor's statement and the financial details contained in it.

Subject to my next comment, I would submit that these paragraphs should apply to sales of land only. The position regarding sales of businesses is covered by paragraph *(g)*.

I see no objection to paragraph *(g)* but submit that a similar provision should apply to the sale of land if the vendor's statement is served on the intending purchaser at least two clear business days before the making of the contract.

He also goes on to make another point, which, hopefully, the Minister will consider, and that is:

The purchaser of land is entitled to cool off regardless of the price of the land. Why should he lose this right if he buys a business with the land?

In relation to new sections 90 and 91, which deal with the particulars to be served before settlement on a purchaser of land or small business, generally speaking, they must be served within a period before the date of settlement. The date of settlement is not defined but, as I understand, it is normally taken to be the date fixed by the contract for settlement. In the past this has not been a matter of major concern, because parties have deferred settlement to allow the appropriate period to expire before actually settling. Now, if there is a failure to comply, an offence is committed.

It seems to me that the current practice and flexibility ought to be allowed. In that event, where one refers to the date of settlement, it is the date of actual settlement rather than the date of settlement referred to in the contract, so that the parties can make arrangements to postpone the settlement to enable the minimum time to expire after service of the statement or, alternatively, allow the waiver of compliance with the requirement in the circumstances envisaged by the Bill.

New section 91 *(a)* does require the agent for the vendor to certify the statement of prescribed particulars. That is particularly onerous and is likely to add significantly to the costs of the transaction. I do not propose that we weaken it, but related to the comments I made earlier about the information on the land ownership and tenure system (the LOTS system), I think it is important that, first, we have an indication of what information will be on the LOTS system and, secondly, we recognise that, if information is on, or meant to be on, the LOTS system, a printout from the LOTS system may be a basis upon which an agent or a vendor may rely without having to undertake any further inquiries.

My recollection of the printouts from the LOTS system is that there was always a disclaimer by the Government that one is not necessarily to rely on the information provided, because it may not be either accurate or complete. That seems to me to be a bit of a cop-out by the Government. I can understand why it is there but, when one comes to place an onus upon an agent for a vendor or a vendor with a penal provision at the end of it, if there is not absolute compliance with the Act, it seems to me that, if the agent or the vendor relies on the information provided by the LOTS system and makes inquiries on those areas not covered by it, that ought to satisfy the agent's or vendor's obligation.

The Hon. I. Gilfillan: What is the LOTS system?

The Hon. K.T. GRIFFIN: The Land Ownership and Tenure System is a computerised system run by the Lands Department that, as I recollect, has on it details of charges, statutory charges, mortgages, leases, other encumbrances and perhaps also information about heritage agreements. It seems to me that, with that information on the system, if information is obtained from that system by an agent or a vendor, then, in relation to those particular matters, it ought not to be an obligation upon the agent or the vendor to go

behind that information and do further checks; rather, it should be accepted at face value. Otherwise, the onus on the agent or the vendor would be quite extraordinary and the amount of work required to do the checking would be very expensive. I think we must be realistic about this: some limit has to be placed upon the extent to which inquiries must be made by the agent or the vendor to satisfy the statutory obligations.

It seems to me that, in some respects, the LOTS system provides a basis for an agent to do that provided there is a statutory provision which enables the parties to place reliance upon that for the purposes of satisfying the statutory obligations under this Bill.

There is a concern about the requirement for a statement in relation to a small business to be certified by a qualified accountant. A qualified accountant is defined in clause 3, as follows:

(a) a person who has qualifications in accountancy approved for the purposes of this definition by the regulations,

or

(b) a person experienced in accountancy who is approved by the tribunal—

that is, the Commercial Tribunal—

as a fit and proper person to exercise the functions of a qualified accountant under this Division.

There is no indication in the second reading explanation as to what sort of accountancy qualifications will be approved for the purposes of the regulations. I would like information about that. Are the qualifications of a certified practising accountant, chartered accountant, or member of the Australian Society of Accountants to be recognised, or will some other recognition be given to other qualifications? It would seem to me that that is probably all we need.

I am not convinced that it is necessary to allow the tribunal to make decisions in particular cases about persons who may be fit and proper persons to exercise the functions of a qualified accountant. I think that opens the door to a wide range of persons to be approved without any criteria being established. It is really allowing the tribunal to legislate rather than giving the tribunal a standard and saying, 'Make an assessment according to that standard.' So, unless there is some good and valid reason for giving that power to the tribunal, I propose removing it.

The other concern with certification by a qualified accountant is that the obligation is a very superficial one. I do not think much advantage is to be gained by the certificate which is required by the Bill, because all that the qualified accountant is required to certify is that he or she has examined the accounts of the business and that the financial particulars disclosed appear to be in conformity with the accounts.

That is a purely mechanical procedure. All the accountant has to do is look at the statement in relation to the financial affairs of the business, look at the accounts of the business and say, 'Well, the two compare.' Anyone can do that and they do not have to be a qualified accountant. What is of greater concern is the reliability of the accounts of the business.

It is easy to juggle the accounts, to fiddle the till, to put more takings through the books as receipts than actually go through the till. Of course, that would have some ramifications from a tax point of view if a tax audit were done, but for the purpose of selling the business it is easy to fiddle the books. There is no requirement on the accountant to make inquiries about the accounts that are presented for comparison with the financial statement.

Several cases have been presented to me by rather disturbed purchasers who purchased a business, found that the facts stated in the Form 6 were quite false but nevertheless accorded with the accounts available for perusal, and subsequently the vendor went broke. In those instances, the vendors were companies and the companies went broke but the directors and shareholders went merrily on their way, presumably having pocketed some of the assets, and they could not be pursued under the provisions of the Land Agents, Brokers and Valuers Act for having been directors or shareholders of a company which was party to a false Form 6 statement.

I would like the Minister to consider strengthening the obligation upon the accountant and, more particularly, the rights of a purchaser where false representation is made in the Form 6, and even to the point where, if a company is the vendor and provides a certificate which subsequently proves to be false, the directors of that company and even the shareholders should have some liability. I suppose in some respects that is a bit radical, but it may be the only way to cure the propensity by a minority of corporate vendors of small businesses to falsify the figures.

Proposed section 91h of the Bill provides defences to acts which might at first view be illegal under the Bill. This raises the question of whether sales of land or small businesses between members of a family and those related by marriage should be required to be subject to the same rigorous checking and presentation of statements as with similar sales to parties at arm's length. I have had personal experience of sales of land between members of a family where all that the parties want to do is to transfer from parents to children a farm, a house or a block of land, yet they have to go through all the checks and the rigmarole required under the Land Agents, Brokers and Valuers Act before they satisfy their obligations and in order to avoid the penal provisions of the statute.

I have a proposition which I believe ought to be considered. It is consistent with amendments to the Landlord and Tenants Act relating to commercial tenancies. A purchaser who is related by blood or marriage to a vendor ought to have the opportunity to waive the obligations placed upon a vendor or an agent of a vendor in relation to the sale of a small business or a piece of land. There would be no hardship or injustice created by this and it would mean reduced costs and less rigmarole for those parties.

I want to refer briefly to a number of other matters so that the Minister will have the opportunity to consider these issues before we deal with the Bill in Committee. One of the lawyers who has made some comments to me makes the point that section 88 (7) *(e)* raises the question of certainty of a date and suggests that the offer should date from the time when tenders close. This relates to tendering for the purchase of land or small businesses. Whilst I do not have any particular view about this, it is important to consider it.

It is important also to have some indication of the extent of the additional prescribed information to be included in the regulations. In her second reading speech, the Minister identified what she considers to be the most significant of the additional factors. I believe that we ought to know what all the additional factors might be and I ask the Minister to indicate the extent to which the information about the additional factors will be included on the LOTS system and the extent to which the vendor and agent must make inquiries about, for example, the use of agricultural chemicals and about stock diseases, particularly in circumstances where a property has changed hands several times and where information about the use of agricultural chemicals may not be available. For example, a person may purchase a block of land in the Adelaide Hills on which DDT may have been

used three, four or five years ago, but that information may not be readily available.

Information about fruit and plant protection, transportation of animals, plants or soil are very vague concepts which may have significant ramifications for a vendor and an agent to the point of a penal provision, and they could be prosecuted and fined. So we need to think more carefully about those sorts of obligations. As desirable as it may be to present information to a purchaser, we need to think about the extent to which there is an absolute liability on a vendor. The same solicitor has said also that certain of the provisions of the present Act have not been duplicated or repeated in the present Bill. He referred in particular to the non-derogation provision and suggested that inquiries ought to be made of the reasons for this, so I would appreciate some information from the Minister on why this is so.

The Minister also says that there is no requirement to serve notice of any variation which occurs after the execution of the contract or service of the vendor's statement. In relation to long settlement periods, such information may be relevant and, again, the question is, why there is no such requirement. He also asks why the provisions of section 90 (1) *(b)*, *(d)* and *(e)* have been deleted and why details of consideration in relation to transfers in the preceding 12 months have also been deleted. Of course, they may be picked up under any prescribed matters under new section 90 (1) *(b)* and (3). Mr Brebner says:

> Under section 91 vendors' statements must be served five days (the cooling off period) before settlement. Under section 90 the statement must be served 10 days before settlement although the cooling off period is only two days. I submit that 'to' in the first line of section 90 (1) should be amended to '2'.

Mr Brebner also says:

> By definition 'date of settlement' means the day fixed by the contract of settlement. It is often not possible to serve vendors' statements in the time allowed by the Act. This is particularly likely where:
>
> (i) the parties desire to have settlement less than the usual month after the date of contract;
>
> (ii) there is delay in instructing a solicitor or land broker to act in the matter;
>
> (iii) the parties have negotiated the sale privately without the assistance of an agent;
>
> (iv) there is lengthy delay in obtaining information from a council or a strata corporation.

Mr Brebner makes the point which I made earlier, that the practice has been to delay settlement until the 10 days has elapsed, after the service of the statement. Because of the definition, the delay in settlement has not meant that the vendor has committed a breach of the Act or the agent guilty of an offence. He says:

> Under the amended section 91f the vendor will also be guilty of an offence.

An amendment is therefore required. They are the principal matters of concern in the Bill. The Opposition is prepared to support the second reading to enable those matters to be considered and for the issues to be debated further during the course of the Committee stages. For that reason and for that purpose, I support the second reading.

The Hon. I. GILFILLAN: The Democrats will support the second reading of the Bill and will be interested to hear debate on some of the matters that are raised by the Hon. Trevor Griffin as possible problems in the Bill. Further, I received a letter from the Executive Director of the Small Retailers Association, Mr Terry Sheehan, and, as it covers a requested amendment which is similar to the amendment that the Hon. Mr Griffin outlined on the sum that defines small business, I intend to read the letter. It also raises another matter, which is self explanatory, as far as consultation goes, and I quote:

> Dear Mr Gilfillan, I am writing to you regarding the proposed amendments to the Land Agents & Brokers and Valuers Act. We do regard these amendments with a good deal of concern because it will affect every member of this association when they decide to sell their retail business. Despite the report paper stating on page 2:
>
> The working party consulted widely with Government departments and agencies that will need to provide information to be disclosed on the form.
>
> We have not been consulted nor were we in any way involved in this working party. I believe it is an unfortunate oversight of the Government department concerned, for all my members will be providers of the information required.
>
> We don't believe that it would be in the business community's best interest to stop or delay the passage of this Bill. However, we do seek one small amendment and that is the definition of small business. The definition in the Bill at this time now states:
>
> 'small business' means a business that is, or is to be, sold for a total consideration not exceeding $150 000 or, if some other amount is prescribed, that amount (but if land is, or is to be, sold in fee simple in pursuance of the same contract, any component of the consideration contributable to the value of the land will, for the purposes of this definition, be disregarded).
>
> The sum that defines small business, now $150 000, has not been adjusted for some years and we believe now is an opportune time to adjust the $150 000 up to $200 000. You may consider that this amount is not a substantial increase and is a little conservative. All it does is reflect the compounding c.p.i. rate over the past four years or so. Thanking you in anticipation of your support.
>
> Yours sincerely,
> Terry Sheehan, Executive Director

I have instructed Parliamentary Counsel to draft an amendment to raise the amount from $150 000 to $200 000 and that will be on file as soon as it is prepared. Listening to the comments of the Hon. Trevor Griffin, I note that he is uneasy about the clause, and I quote from the definition of small business:

> . . . if some other amount is prescribed, that amount . . .

On the immediate face of it, I am not as concerned about that as I have been in general about determining issues by regulation. Of course, because regulations come before this place, it will be available for us to comment on or move disallowance to.

The Hon. K.T. Griffin: They might lump it in with a lot of other regulations.

The Hon. I. GILFILLAN: One presumes that the Hon. Trevor Griffin is implying that we may not discover it under those circumstances.

The Hon. K.T. Griffin interjecting:

The Hon. I. GILFILLAN: I take the point that, because it is lumped in, the disallowance would perhaps be too wide sweeping and be difficult for this Parliament to disallow this specific raising of the amount or altering the amount if it were found to be unsatisfactory. I accept the point and I will reserve my final position on it until it is discussed in Committee. As I say, I am not very uneasy because it would appear to be a regular and routine procedure to adjust this figure from time to time to any CPI movements so that it has a realistic value. At this stage, I am not persuaded by the argument for the removal of the provision for the sum to be varied by regulation from the definition of small business. However, we believe that the legislation does address many important but, perhaps, tedious matters that are involved in the buying and selling not only of small businesses but also of houses and property and, therefore, we will be interested in making a constructive contribution to the debate in Committee so that the Bill in its final form will, to the best of our ability, be made effective, taking into account the interests of the landlords and the tenants, the vendors and the purchasers.

The Hon. BARBARA WIESE secured the adjournment of the debate.

MARINE ENVIRONMENT PROTECTION BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 873.)

Clause 10—'Council to establish Marine Environment Protection Committee'—recommitted.

The Hon. DIANA LAIDLAW: I seek leave to withdraw my earlier amendments.

Leave granted; amendments withdrawn.

The Hon. DIANA LAIDLAW: I move:

Page 4—Leave out subclause (2) as amended by a previous Committee and insert the following subclause:

(2) The Committee consists of—

(a) the Chairman of the Council;

(b) whichever of the following members of the Council the Council appoints as a member of the Committee:

(i) the member of the Council appointed as a person with knowledge of biological conservation;

(ii) the member of the Council appointed as a person engaged at a university in teaching or research in a field related to environmental protection;

(c) a person appointed by the Council on the nomination of the Conservation Council of South Australia Incorporated;

(d) a person appointed by the Council on the nomination of the Chamber of Commerce and Industry S.A. Incorporated and the South Australian Employers Federation;

(e) a person appointed by the Council on the nomination of the South Australian Chamber of Mines and Energy Incorporated;

(f) a person appointed by the Council on the nomination of the Minister of Fisheries;

(g) a person appointed by the Council on the nomination of the South Australian Fishing Industry Council Incorporated;

(h) an officer of the Public Service of the State appointed by the Council on the nomination of the Minister of Health;

(i) a person appointed by the Council on the nomination of the Local Government Association;

and

(j) such other members of the Council or other persons as the Council may, from time to time, with the approval of the Minister, appoint to the Committee.

I shall speak briefly, in recognition of the months that have been spent on this Bill and the very few minutes left before we rise tonight. I indicate, however, that my amendments seek to ensure that, in respect of all persons to be appointed to the Committee by the Council, they be on the nomination of the respective bodies that they represent and that there be just the one nomination from those bodies, not a panel of three about which the Council would then make a decision.

The Hon. ANNE LEVY: The Government stands by the amendment that I moved rather than the amendment moved by the Hon. Ms Laidlaw. However, I will not take up the time of the Committee explaining in detail why we prefer our amendment.

The Hon. M.J. ELLIOTT: It is pleasing to see that the problems being created by the previous amendments have now been clarified. I support the amendments of the Hon. Ms Laidlaw, but with the reservation I expressed before: it is not that I like these amendments but I like the Government's amendments even less. So the Democrats will be supporting Opposition amendments.

The Hon. Ms Levy's amendment to subclause (2) negatived.

The Hon. Ms Laidlaw's amendment to subclause (2) carried.

The Hon. ANNE LEVY: I move:

Page 4—Leave out from subclause (5) inserted by a previous Committee 'No person may be appointed to the Committee pursuant to subsection (2) *(g)*' and insert 'No person, other than a member of the Council, may be appointed to the Committee pursuant to subsection (2) *(j)*'.

Subclause (5) was amended in September. The form in which it currently stands is:

No person may be appointed to the Committee pursuant to subsection (2) *(g)* except after publication in a newspaper circulating generally in the State of a notice seeking nominations or applications from interested bodies or persons and after consideration by the Council and the Minister of persons, if any, nominated or applying in the manner and within the period specified in the notice.

I now wish to amend the subclause as indicated. This is because the membership to council, or people co-opted to the council, are co-opted after an advertisement has been circulated in a newspaper. It seems unnecessary to go through the advertising procedure twice. There will be one round of advertisements for people to nominate for the council. There will be a round of advertisements for people to be nominated to the committee and it is felt that people who have already been through a round of advertisements to be appointed to the council should not need to go through another round to be appointed to the committee. They should be able to go onto the committee, if the council wishes it, without having to go through the procedure again.

The Hon. Diana Laidlaw: Very logical.

The Hon. ANNE LEVY: It just seemed sensible.

Amendment carried; clause as amended passed.

Clause 11—'Delegation from Council to the Committee.'

The Hon. ANNE LEVY: I move:

Page 5, lines 8 to 10—Leave out subclause (3) and insert the following subclauses:

(3) A delegation pursuant to this section does not prevent the exercise by the Council of the functions or powers delegated.

(4) Where functions or powers of the Council are delegated to the Committee in accordance with a requirement of the Minister, the Council may not vary or revoke the delegation, except with the approval of the Minister, but if no such requirement has been made the Council may vary or revoke a delegation at will.

Currently, clause 11 (3) provides:

Where functions or powers of the Council are delegated to the Committee in accordance with the requirement of the Minister, the Council may not exercise the delegated functions or powers itself, or vary or revoke the delegation, except with the approval of the Minister.

Section 16 (2) of the Environment Protection Act, which, of course, sets up the Environmental Protection Council, provides:

A delegation under subsection (1) of this section shall be revocable in writing at will and no delegation shall prevent the exercise or performance by the Council of any of its powers or functions.

Clause 11 (3), as it currently stands, is in conflict with section 16 of the Environment Protection Act. Parliamentary Counsel advises that it cannot override it. To avoid putting in a provision which cannot operate because it cannot override the provisions in the Environment Protection Act, I thus propose the amendment. These are in fact standard clauses which have been put into countless Bills many times by this Parliament, in relation to powers of delegation. I am sure that members recognise them.

The Hon. DIANA LAIDLAW: The Liberal Party is pleased to support the amendment.

Amendment carried; clause as amended passed.

Second schedule.

The Hon. ANNE LEVY: I move:

Page 21—Leave out subclause (1).

I will not go into the details of this as we have discussed it before. It is consequential to the amendments which have been made to clause 10.

Amendment carried; schedule as amended passed.

Bill further recommitted.

Title.

The Hon. ANNE LEVY: I move:

That the long title of the Bill be amended by leaving out 'the Environmental Protection Council Act 1972 and'.

This amendment is necessary because, with the amendments which have now been made to the Bill, it no longer amends the Environmental Protection Council Act. Therefore, we need to delete the reference to that Act from the title of the Bill.

Amendment carried; title as amended passed.

The Hon. ANNE LEVY (Minister of Local Government): I move:

That this Bill be now read a third time.

The Hon. DIANA LAIDLAW: I want to make a few remarks on behalf of the Liberal Party on the third reading of this Bill. I note perhaps a sigh of relief by every member in this place that we have finally got through the Committee stages of the Bill. I think it is appropriate that there is the President's dinner tonight, and perhaps one of the causes for celebration will be the passage of this Bill through this place. It has indeed been a tortuous process for all involved: members of both Houses of this Parliament, Parliamentary Counsel, officers, and in particular I mention the table staff because of their considerable patience, particularly this afternoon with the various amendments being moved at the last minute.

It is important to note that, notwithstanding the tortuous process of this Bill—in fact, this is the third Bill on this matter introduced by the Government within a year—without doubt the Bill leaves this place 150 per cent better for all those deliberations. I will not take the time of the Council to go over the massive changes to the Bill during that year. However, it is important to reflect not only on the composition of the Committee, but on the penalties involved and the issues of ministerial discretion, all of which have been debated in the past and all of which have been considerably amended.

In passing, I note our disappointment with respect to amendments which were lost last night on the issue of Government accountability for election promises last November as regards the treatment of sludge and the disposal of that sludge to the Gulf St Vincent and other areas. We will be keeping a very sharp eye on Government practices in this area. We believe that the Government should honour the commitments that it made at the last election in respect of this sensitive and important matter. The fact that we have been unsuccessful with amendments to ensure that the Government honours those commitments means that we shall remain diligent up to the time of the next election to ensure that the Minister's statements and commitments in this place last night are honoured by the Government.

The Hon. M.J. ELLIOTT: The Democrats are pleased to see this legislation passed at last. The levels of marine pollution in South Australia, due to industrial sources and the E&WS Department, have been unacceptable for too long. South Australia is the last State in Australia to legislate in this area, although legislation has been promised for a long time. When the original Bill emerged 12 months ago, it was very weak legislation. I am pleased that, in its rather tortuous passage twice through this Parliament, it has been significantly strengthened. There are still parts in it which are not as I would have had it if I had had my own way, but one is eventually forced to face the political realities of what the other parties want.

The Hon. Diana Laidlaw: That applies to us all.

The Hon. M.J. ELLIOTT: Yes. We have worked our way through and, whilst we are not delighted with the Bill, I am significantly happier with it than I was with the legislation that we first faced. I am pleasantly surprised at the greening of the Liberal Party with regard to this Bill, and I hope to see more of it as we face other legislation.

I am particularly pleased with a couple of aspects. One is that the time that is now allowed for companies and the E&WS Department to clean up their act has been significantly shortened in the Bill. It was to be 15 years, and now it is reduced to eight years, I think. There is far less discretion as to what pollution will be allowed. Standards will be set and licences will be granted only if the standards are met. It is better for the environment and for industry to have predictable standards rather than discretionary standards, which is how it would have been in the original legislation.

Finally, I am pleased that we have a committee with the particular task of overviewing this legislation and the marine environment. I hope that a number of other similar committees will be set up under other legislation to look after other bits of the environment, with the Environmental Protection Council acting as a peak body. We are moving in a significant direction with this legislation and I am glad to see it pass through this Chamber.

The Hon. ANNE LEVY (Minister of Local Government): I, too, am glad that in all probability we will not be discussing sewage and sludge in this place for a while. I think that we have all had quite sufficient of that as a topic of debate. I accept that the Bill is not as many people would wish to see it as it now leaves this place. However, I will not indulge in criticising the democratic decisions of this Chamber. I feel that attempts to do so on the part of one of the last two speakers were a poor reflection on the democratically arrived at decisions of this place.

I remind members also that, although the Bill leaves the Council now, it may be back. Amendments have been passed in the Council which are not acceptable to the Government, so the Bill may come back and there may be a conference. It may be a considerable time before the matter is dealt with finally, but I sincerely hope not. I do not want to have another discussion about sludge in my life, and I imagine that most members are in the same situation.

Bill read a third time and passed.

APPROPRIATION BILL

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

The Hon. ANNE LEVY (Minister of Local Government): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The fundamental requirements of a State Budget are that it maintains and strengthens the State's financial base, while providing the services which the community requires in the most cost-effective manner possible.

These requirements have been central to the budget strategy of the Government since coming to office in 1982.

Meeting them demands of the Government careful judgement and at times a willingness to take unpalatable and often unpopular decisions. Within the community it calls for common purpose and an understanding of the position and progress of the State over the longer term.

The coming financial year will be a difficult one and will indeed call for careful judgement, tough decisions and community understanding.

The last decade of this century offers great opportunities for the continued development of South Australia. However, the national economic slowdown, continuing external account imbalances, and an international environment hostile to our commodity exports, will mean that progress will be hard won. In addition, the Commonwealth's declared policy aim of reducing funding to the States means that there are no easy solutions, nor can the difficult decisions be delayed.

The combination of these circumstances and events will mean that the Government will experience difficulty in ensuring that financial strength is enhanced and the required services provided in 1990-91. Nevertheless, it is determined to do so.

Members may well question the rapidity with which these difficult circumstances have arisen.

The Treasurer, when introducing last year's Budget, indicated then that we could look confidently to the year ahead.

The predictions were that growth was not expected to be as high as had previously been the case, but that South Australia should at least equal the national level.

In the event, growth in both the National and the State economy was stronger than predicted over the whole year and as a result the 1989-90 Budget was able to withstand to a large extent the slowing in economic activity that emerged late in the financial year.

The Treasurer has already informed the Parliament of the size and nature of the reductions made by the Commonwealth. The decisions made at the Premiers' Conference in June meant that South Australia was at least $180 million worse off in 1990-91 compared with last year.

Further detailed analysis following the presentation of the Commonwealth Budget has revealed that the impact is in fact in the order of $235 million.

I would make the point that the true picture cannot be understood from simply looking at the total figures included in the relevant Commonwealth budget paper. These figures include funding that is simply passed through the State budget, higher education particularly, and they are also subject to timing variations and other adjustments.

After account is taken of these factors it is clear that rather than maintaining grants in real terms, the State has suffered real reductions of $87 million which comprises $46 million lost from financial assistance and capital grants and $41 million from special purpose payments. This last figure takes into account a partial restoration of special assistance for water quality programs.

A further reduction of $51 million results from the decision by the Commonwealth to depart, for the first time, from the use of three-year data for calculations by the Commonwealth Grants Commission. The decision was made despite a Commission recommendation to the contrary, and after the Prime Minister wrote to all Premiers supporting the continued use of the three-year period.

In addition to these reductions from what the State could have reasonably expected to receive we have also experienced the impact of the proposed national benchmark salary for teachers, which will add a further $34 million in a full year to our outlays as well as the loss of $63 million in 1990-91 dollars as a result of the Commonwealth's decision to discontinue special debt relief assistance to the State which had been in place for the last three financial years.

These circumstances clearly determine the shape of this Budget.

We face a fundamental change in the State's economic and financial environment and we must respond to that change.

We face a need to restructure the public sector so that it can operate on a significantly reduced level of funding. The process to achieve this without dislocation and hardship must quickly be established.

Above all, the State's financial base must be maintained and our fiscal reputation and credibility carefully protected.

These essential economic aims will remain paramount in 1990-91. However, they must be pursued within the context of social justice and compassion and as part of a wider vision of the State's future.

Concurrent with these aims the Budget also provides for a maintenance of the services which the community has come to expect. Furthermore, it continues to develop the infrastructure and policies which support the Government's vision of South Australia as a modern, secure and innovative community, well able to turn the promise of the 1990's into reality.

The Budget Outcome

While the financial year just passed has been one of growth in the national and South Australian economies, there was a general slowdown as the year progressed reflecting the effects of the Commonwealth Government's high interest rate policy.

The average level of employment in South Australia was 3 per cent higher than in 1988-89 and the average unemployment rate was the lowest for a financial year since monthly ABS surveys began in 1978.

There was a strong growth in output and employment in the manufacturing industry for most of the year, though there were signs of weakness towards the end of the year as the rate of spending throughout Australia slowed.

The good levels of housing activity seen in the previous year were continued through 1989-90.

The level of other construction activity was underpinned by major projects in both the private and public sector such as Myer-REMM and the Entertainment Centre. Rural production and incomes in the State were boosted by a doubling in the size of the wheat crop from 1988-89's weak level and by a large increase in barley production. The value of South Australia's mineral production also increased significantly, due mainly to the increasing importance of Olympic Dam production of copper, uranium-oxide and gold. The State's tourism sector also showed strong growth during the year.

The overall performance of the South Australian economy was solid for 1989-90 but in recent months there have been emerging signs of weakness as interest rates remain high.

The slowing of the economy was reflected in the budgetary outcome for 1989-90. The deterioration in the Budget derives largely from a significant shortfall of $46 million in certain receipts having a net impact on the Budget.

Revenue from stamp duties on property transactions was $19 million lower than expected as a result of a weakening property market and stamp duty receipts on motor vehicles were $3 million lower than expected reflecting lower turnover and lower prices for motor vehicles. Business franchise licence fees for liquor and petroleum were $4 million lower than expected because of reduced sales activity.

The shortfall of $23 million in the State Bank's estimated contribution to the Budget was, a result that reflects the impact of developments in the economy on the performance of almost all financial institutions during 1989-90.

It is pleasing to note, however, that despite these adverse developments the overall deterioration in the Budget financing requirement for the year was only $26 million or, a variation of about a half of one per cent in a Budget of over $5 billion.

The Government was able to keep its expenditure for the year about $20 million below the levels budgeted for after allowance is made for those payments that do not have a net effect on the Budget.

The contribution to the Budget by SAFA was estimated in the Budget at $385 million, including $60 million brought forward from 1988-89 operations. Despite the difficult financial environment SAFA met that contribution and has reported an operating profit for the year of $336 million or $11 million more than the Budget estimate for operations in 1989-90.

The budget financing requirement outcome for 1989-90 was $180.5 million, $26.2 million higher than the budget estimate of $154.3 million but still $19 million or 9 per cent lower than the 1988-89 outcome.

Looking more broadly at the State public sector financial performance during the year, it is important to note that in real terms the overall stock of net indebtedness declined by 2.9 per cent in the year ended 30 June 1990.

The level of net indebtedness expressed in real per capita terms or as a percentage of Gross State Product has been falling consistently in recent years.

It is an indication of the basic soundness of the Government's financial management that the Government has been able to sustain through 1989-90 the improvements in borrowing and indebtedness that have been achieved in recent years.

FINANCIAL OBJECTIVES

Outlook

As already alluded to the financial and economic environment which will constrain our objectives for 1990-91.

It seems likely that the slowdown in the national economic growth rate will be reflected in the performance of the South Australian economy.

Manufacturing production and retail and wholesale sales will be affected by the decline in spending growth throughout Australia. This will be offset to some extent in this State by the submarine and other defence-related projects. In some sectors, steel production being one, growth should be maintained by a re-orientation of production to the export market.

The rural outlook is much less buoyant with wheat and barley production certain to decline from the near record levels of last year, and the prices for wheat and wool are also likely to be weaker.

The level of housing construction appears likely to be maintained but the present over-supply of office space in Adelaide and in most mainland capital cities means that the outlook for non residential construction is poor.

In summary, there will be a significantly lower level of economic growth in the coming year, but it seems likely the South Australian economy will fare no worse than the national economy.

Clearly, the economic outlook will affect the State's Budget.

Members are well aware of the direct link between economic activity and the State's own sources of revenue. In the past, in common with all the States, we have been able to cushion the impact of reductions in Commonwealth funding due to the buoyancy of the economy.

The economic outlook clearly removes that leeway. This comes on top of the severe reductions in Commonwealth funding and gives rise to a double jeopardy we must eliminate.

The means available for us to do so in the short term are limited given the nature of expenditure within the Budget. However, a combination of revenue increases and expenditure reductions is unavoidable. Indeed, it would be irresponsible not to act.

The revenue decisions contained in the Budget represent a substantial adjustment. However, they are in keeping with what some other States have announced and represent the first major change for seven years.

In summary, the Budget provides for a reduction in real terms of 0.8 per cent in gross outlays, and notwithstanding the revenue rate increases, a reduction in real terms of 1.9 per cent in total receipts. A major aspect which impacts on the receipts is a reduction in real terms of 3.6 per cent in Commonwealth grants. Overall workforce levels for Budget sector agencies are planned to remain constant on a June 1990 to June 1991 basis. This results in a financing requirement of $260 million an increase on last year's record low of $180.5 million. Nevertheless this is 24 per cent lower than the average real level of the financing requirement for the last eight years including this budget.

OUTLAYS

I turn now to the outlays side of the Budget.

At the election in 1989, the Government put before the people an agenda for South Australia in the 1990's. That agenda had four cardinal points. First, recognition of the role of families as the basic core of our community and the direction of Government initiatives and policies towards ensuring that their needs are met, their aspirations recognised, their problems dealt with.

Second, a determination to put the basic priorities of Government—health, education, transport and community safety—at the forefront of all financial and administrative planning.

Third, a commitment to a sustainable environmental future and a determination, through a new approach to planning, to ensure that a balance between investment and the environment is maintained.

Fourth, the development of an economy which is strong, which is outward-looking, which is based on high quality, high value products, and which provides jobs with skills.

Despite the difficult economic circumstances, the Government is determined to maintain the momentum towards completing that agenda.

Essential community services have been maintained and in selected circumstances, improved in this Budget.

The Budget provides additional funding for the ongoing costs to the State of the National Child Care Strategy and for additional child care services provided under the social justice policy. Over the next two years an additional 3 500 children or 17 per cent more than at present will have access to child care.

Funding of $1.7 million is also provided for improvements to a range of activities under both the Home & Community Care and Supported Accommodation & Assistance Programs.

The provision of affordable housing for South Australian families remains a high priority. Since 1984-85 this State has experienced a *sustained* reduction in the real level of Commonwealth assistance for housing. This will continue in 1990-91 with a further real reduction in funding of $15 million to a total of $96.1 million. However, following the Premiers' Conference The Treasurer was able to negotiate a partial contribution of special assistance for programs

associated with water quality. This in turn has allowed the Government to reallocate $12 million to support the housing program.

In addition, the HomeStart Loans Scheme launched in September 1989 will assist in compensating for the reduction in the Housing Trust's public housing program and in maintaining the level of industry activity.

Help for families will also be a priority for the Social Justice Strategy. The 1990-91 Budget provides an allocation of some $21.1 million for Social Justice initiatives comprising $11.3 million of new recurrent initiatives and $9.8 million for capital projects. A particular aspect of the approach in 1990-91 will be a strengthened emphasis on vulnerable groups in the community, including people with disabilities, homeless young people, and on issues related to locational disadvantage.

The provision of health services remains one of the basic responsibilities of Government. This Budget provides just over $1 billion to the South Australian Health Commission. The allocation of resources in 1990-91 reflects funding for a number of major new initiatives together with the continuation of additional funding under the Metropolitan Hospitals Funding Package. This funding package was announced in 1989 and provides for an injection of $11.6 million per annum into metropolitan hospital budgets and will total $46.4 million in real terms over four years.

During 1990-91 the new 120 bed hospital will be opened at Noarlunga and the Riverland Regional Hospital will be commissioned at Berri.

The education of young South Australians ranks with the provision of health services as a basic priority for Government. This Budget provides $782 million from State sources to the Education Department for primary and secondary education. The allocation will provide for the maintenance of teaching numbers to manage present enrolment levels.

It will also provide funding of $1 million to meet the Government's election commitment to establish the Orphanage Foundation for teacher in-service training and development. In addition it will fund the continuing implementation of the curriculum guarantee package and allow the Department to proceed with Stage 2 of the "Immediate Post-Compulsory Education" initiative for years 11 and 12 of secondary schooling.

Security and safety are essential services demanded by our community. The Government has responded to these needs through the innovative Crime Prevention Strategy commenced in 1989-90. Funds of $1.5 million are provided to develop and fund crime prevention programs managed and operated within the community. Funding will also be continued for government programs such as Blue Light camps, School Watch, Homeassist and other programs with a crime prevention focus.

The Budget also continues the three year program commenced in 1989-90 to employ an additional 152 police officers. In 1990-91 funds are provided for an additional 97 officers as well as 32 clerical personnel who will be employed in general policing areas to release existing police officers from clerical duties.

The Government is proud of its record of concern for the environment and determined that South Australia will maintain a leading role in this important area of Government action.

The Budget includes an environmental levy—a surcharge of 10 per cent for 5 years on the base sewerage rate—to provide the funds required to undertake essential environmental improvement works. It applies to all customers discharging to the Engineering and Water Supply sewerage system. In 1990-91 the surcharge will realise estimated revenue of $9.1 million and the same amount in a full year. The funds have been specifically earmarked by the Government for environmental improvement projects.

The Budget provides $11 million for the Native Vegetation Management Scheme and $2.6 million for continued funding of the National Soil Conservation Program. Of particular significance is the provision of $4.3 million to allow the commencement of a scheme to achieve the land disposal of sludge from the Glenelg and Port Adelaide Treatment Works as well as schemes to achieve the land disposal of effluent at Mannum and Murray Bridge.

Without an efficient and vibrant economy the community will not be able to produce the wealth that is required to meet the costs of the services it needs. Specific economic development measures in this Budget include a three year funding package for the Department of Industry, Trade and Technology that will enhance the Department's ability to respond to needs in the manufacturing sector, investment attraction, trade and promotion. In addition funding of $500 000 has been provided to the Department of Mines and Energy to enable participation by South Australia in the National Geoscience Mapping Accord which is aimed at optimising the net benefit to the community from petroleum, mineral, soil and water resources. The Department has also received funding for a program to encourage increased exploration activity. The rural base of our economy remains vital to our prosperity and significant funding has also been provided for agricultural research and development.

The development of the Multi-Function Polis provides exciting opportunities for South Australia to attract new investment and forge international trading links. Funds are provided for preparatory work associated with this important venture.

Health and safety in the work place as well as training and skills enhancement are both vital aspects of any moves to modernise our manufacturing industry and provide a platform for the development of the new industries for the twenty-first century.

The Budget provides additional funding for both the Department of Labour and the Occupational Health and Safety Commission in relation to the introduction of new Safe Manual Handling Regulations and the associated Code of Practice under the Occupational Health Safety and Welfare Act.

The Department of Employment and Technical and Further Education will receive a total of $168.5 million of which $148 million will be provided from State sources. With the advent of the Commonwealth Government's Training Guarantee and award restructuring there is anticipated to be substantial pressure on the TAFE system to provide increased programs and services which support the economic objectives of the Government.

The Government has responded to these needs by providing some additional funding while also requiring the Department of Technical and Further Education to reallocate resources from lower to higher priority programs and to raise some revenue from those who use the TAFE system.

In 1991 an administration charge of 25 cents per hour for students undertaking TAFE courses and subjects will be introduced. An appropriate concession policy will be determined for disadvantaged groups in order to facilitate continued access to the TAFE system.

In total, outlays of $6 billion will be made in the Budget in 1990-91. This represents an increase of only 6.2 per cent over last year's and well below the expected rate of inflation of 7 per cent for the coming year.

In determining its outlays the Government has sought to strike a balance between the need for expenditure restraint and the legitimate requirements of the community.

A feature of the Budgets of all State Governments is the importance of wage and salary payments for employees involved in providing services—teachers, nurses, police, administrative officers, and so on.

There has been relative restraint in wages in the public sector in recent years. For 1990-91, however, in addition to base National Wage Case decisions, the Government is faced immediately with significant cost pressures from award restructuring for Government Management & Employment Act employees and national benchmark salaries for teachers—a total additional cost in a full year of at least $70 million.

The Government has decided that any additional costs that arise from the new award structure for Government Management & Employment Act employees must be absorbed by employing agencies without additional funds being provided from the Budget.

The Budget contains no funds for the costs of the teachers' benchmark salary beyond those reflecting the Government's offer of $37 200 per year.

The Government believes that these decisions are appropriate given the need for expenditure restraint, and that they reinforce the intention that to the greatest extent possible new initiatives and additional spending must be met by the reallocation of resources.

In relation to employment, restraint in aggregate terms is necessary and will be achieved. However, the Government believes that some increase is essential in high priority areas. In this Budget these areas of growth include Children's Services, Employment and Technical and Further Education, Correctional Services and the Police Force.

RECEIPTS

The magnitude of the financial shortfall facing South Australia is such that it cannot be corrected without increasing the revenue available to the State.

The Government has always maintained that tax increases should be a last resort. We have taken steps to reduce the real growth in expenditure and we will take further steps to reduce the cost of the public sector in years ahead. However, a large gap remains. The alternative of borrowing to cover the shortfall is not available to us, and even if it were, it would be irresponsible to do so.

I have indicated that the Government believes the community demands that the level of services it enjoys should be maintained. I do not believe the community would tolerate sudden reductions in expenditure on education, health and welfare. Indeed, the evidence is that demands on the Government are increasing.

The Federal Government, which substantially controls the State's funds, has made it clear that it expects the reduction in Commonwealth Grants to be translated into a reduction in services offered by the States. There is no doubt that over time the level and quality of South Australia's community services will need to be adjusted back to the levels of other States.

However, we would commit a grave disservice to our community if we attempted to do so overnight. The dislocation this would cause would carry with it costs that would be inequitable and damaging.

With the exception of a change to the fuel franchise, and the levy on the consumption of tobacco products the Government has been able to avoid any increases to tax rates for six Budgets. In a number of areas there have, in fact, been reductions. We have also been able to ensure that charges for major Government services have been kept at or below increases to the CPI.

In the case of electricity, for instance, there have been real reductions in each of the last six years.

A range of tax measures has been included in the Budget. To a significant extent they mirror changes that have already been announced in New South Wales and Victoria.

In total, $140 million will be collected in tax revenue in 1990-91 and $211 million in a full year as a result of these measures.

Even after allowing for this additional revenue, total receipts will still decrease in real terms.

In deciding upon the package of tax measures included in the Budget, the Government was required to balance a concern for avoiding a reduction in the competitiveness of South Australian industry with the need for fairness in the incidence of the burden of the additional taxation on the South Australian community.

Members will also appreciate that the extremely narrow tax base which all State Governments experience adds further difficulty.

Given these factors the Government has decided that the major adjustments will be made to Financial Institutions Duty. This is one of the few areas in which State Governments are able to raise revenue by means of a measure which is both broad based and progressive. In addition its direct impact can be partly offset by the fact that Financial Institutions Duty imposed in respect of credits or deposits in bank accounts is a tax deduction to the account holder who pays the duty if the credit or deposit represents assessable income.

Consequently the Government has decided to lift the rate of FID from 0.04 per cent to 0.095 per cent. The maximum duty payable on any one transaction will be set at $1 200 as is the case in New South Wales and Victoria.

The revenue derived from these measures is expected to amount to $49 million in 1990-91 and $74 million in a full year.

The Government has also been forced to address the problem of funding the $12 million assistance which has been provided to the District Council of Stirling to enable it to meet the major proportion of its liabilities resulting from the 1980 Ash Wednesday Bushfire. In the course of discussions with the Local Government Association the Government has agreed to the establishment of a Local Government Disaster Fund. Consistent with the LGA's proposals, the Fund will provide the means to fund the assistance to the Stirling Council and in the future help meet the cost of providing assistance to local authorities which face unusually high expenditures as a result of natural disasters. The Fund will be financed by a surcharge of 0.005 per cent on FID which will remain in place for five years. Full details of the administrative arrangements of the Fund will be released when discussions with the LGA have been completed.

The major adjustment to the level of Financial Institutions Duty has enabled the Government to avoid increases in taxes which have a more direct impact on families and low to middle income earners, such as stamp duties on transactions concerning property transfers and motor vehicle sales. In particular, the Government has been able to avoid the imposition of an increased duty on petroleum and diesel fuel. Given the fact that the duty levied in South Australia is significantly lower than that levied in other States, particularly New South Wales, the Government had decided that an adjustment would be necessary. However, given petrol price increases resulting from the current Middle East crisis the Government now believes that it should

not take action that would add an additional burden to ordinary South Australians which would add pressure to the Consumer Price Index within the State.

The decision in relation to Financial Institutions Duty has also enabled the Government to maintain a more generous payroll tax regime in South Australia than that which applies to its major competitors New South Wales and Victoria.

During its entire term of office the Government has been able to avoid any increase in the rate of payroll tax despite increases in every other State except Queensland. Indeed the only changes that have been made have been to raise the exemption level and to extend the benefit of the exemption level to more employers.

However, the circumstances facing the Government in 1990-91 are such that an increase can no longer be avoided. New South Wales and Victoria have both announced new rates of 7 per cent. By the measures previously referred to the Government will be able to keep the rate in this State to 6.25 per cent.

The new rate will take effect from 1 October 1990. From that date also the exemption level of $400 000 will apply to all taxpayers and will no longer reduce as payrolls rise. The effect of this change is that tax payable on payrolls up to $2 million per annum will remain the same and larger employers will pay an extra 1.25 per cent tax only on that part of their wages bill which exceeds $2 million.

As a further means of offsetting the effects of the rate increase the exemption level applying to all employers will increase to $414 000 from 1 January 1991 and $432 000 from 1 July 1991, thereby maintaining its value in real terms.

As well as these changes to the structure of the tax (which will make it much easier for taxpayers to assess their liability) the Government will legislate to bring fringe benefits into the tax base. Most other States have now moved in this direction in order to keep abreast of changes which are occurring in the market place in employee remuneration. To simplify the administrative task as much as possible for employers the fringe benefits liable for tax will be those on which fringe benefits tax is payable to the Commonwealth.

The Government has taken all possible steps to ensure that the changes to the payroll tax system do not adversely affect small business. I particularly draw the attention of honourable members to the fact that the new structure will mean that tax payable on payrolls of up to $2 million per annum will remain unchanged.

The changes to payroll tax rates will add $45 million to revenues in 1990-91 and $70 million in a full year.

The levy on the consumption of tobacco products was increased in 1983 from 12.5 per cent to 25 per cent. Since then the only increase in the duty has been an extra 3 per cent to finance the activities of Foundation South Australia. The rate of duty in South Australia is now the lowest of all the States.

The Government has been urged by the Ministerial Council on Drug Strategy and by health bodies to raise the rate of duty as a further deterrent to smoking. The argument has been put to the Government that price increases are the most effective way of preventing or reducing smoking particularly among young people.

In response to these requests and as a means of assisting with the difficult budget task for 1990-91 the Government proposes to increase the rate of duty to 50 per cent which brings South Australia into line with Western Australia and Tasmania. The new rate will take effect from 1 November 1990 and is expected to raise an extra $27 million in 1990-91 and $40 million in a full year.

There will be no changes in the rates of Liquor Licence fees.

Two changes are proposed in relation to Stamp Duties. The first concerns an increase in the rate of duty payable on compulsory third party insurance policies to that applying to all other forms of insurance (except Life Assurance). This increase to 8 per cent allied to a new monthly licensing system is expected to produce an additional $11 million of revenue in 1990-91 and $12 million in a full year.

This change needs to be viewed within the context of the major reduction in recent years in the cost of compulsory third party insurance. The Government is continuing to work with SGIC to keep premiums as low as possible.

The second change concerns stamp duty on Certificates of Compulsory Third Party Insurance. This duty which is paid into the Hospitals Fund has not been increased since 1974 when it was set at $3 per policy. It is proposed to increase the duty to $15 with effect from 1 January 1991. The proceeds will continue to be paid into the Hospitals Fund. This measure is expected to raise an extra $4.5 million in 1990-91 and $9 million in a full year.

Earlier this year the Government established a review of Land Tax. The review group which reported at the end of May, suggested radical changes to the present system. In releasing the report the Government rejected two recommendations which advocated imposing land tax on the principal place of residence and on primary production land.

Details of the Government's response to the other recommendations of the Review are contained in the budget papers previously tabled in this House. The implications for the Budget however are that the Government has decided to reduce the rate of land tax to ensure that the assessments for 1990-91 do not represent an increase over the previous year in excess of the CPI. The Government will amend the Landlord and Tenant Act to prohibit the inclusion in lease documents of provisions automatically passing on the cost of land tax to tenants.

There will be no change to Motor Registration Fees, including concessions provided to pensioners. However, some other concessions particularly applying to primary producers and local government will no longer apply. Where appropriate the fees charged for services will be set to ensure that the cost of providing those services is recovered from users. Also, increased registration charges for heavy commercial vehicles will be implemented to improve cost recovery from these operators. The additional revenue, subject to the actual implementation date, is estimated to be $4.8 million in 1990-91 and $8 million in a full year, and will be applied towards the Department of Road Transport's roadworks program.

All States are facing the need to make significant adjustments to revenue following the decisions of the Premiers' Conference. The decisions that the Government has made represent our determination to preserve our competitive advantage while at the same time ensuring that an unfair burden is not placed on family budgets.

ESTABLISHING THE PROCESS OF CHANGE

As outlined, this Budget aims to respond to the fundamental changes that have taken place in our State's economic and financial environment.

That response must, in turn, include far reaching and fundamental structural change within the public sector. Consequently, the Government has decided to commence immediately the process of reviewing the operations of all Government agencies.

The review will be based on six key principles—

- to redefine the areas in which the Government must, or desirably should, be directly and operationally involved with a view to ceasing lower priority activities consistent with Government policy;
- to maintain direct services to the public in required areas at current levels or improve them;
- to achieve a fundamental shift in the level of productivity in the public sector, particularly via increased use of the skills of employees and greater sharing of resources between agencies;
- to reduce costs, particularly through reducing overheads and unnecessary operational procedures and structures;
- to restructure organisations utilising the new classification structures agreed to under the structural efficiency principles to fit them not only for the immediate task but also for the next ten years;
- to establish a new management/operational ethos of innovation, minimum resource use for maximum result, regarding people as the major (but not sole) resource and fundamental service orientation.

While all Ministers and Chief Executive Officers will be responsible for determining areas in which substantial improvements are possible, a special group, which will report to the Treasurer, has been established to oversee the process of change. The group, led by the Minister of Finance, includes the Under Treasurer, the Director of the Office of the Government Management Board, and a Chief Executive Officer from a non central agency. Relevant Ministers will join the group in relation to the review of agencies within the Minister's portfolio.

The group has the authority to seek external expertise as and when appropriate.

The co-operation and involvement of the public sector trade unions will be essential for the success of this process and it is my intention that appropriate consultative mechanisms will be established.

The Government is determined that the process of structural change should proceed as quickly as possible. To ensure that a momentum for change is established significant changes within the central agencies will take place immediately. The functions of the Cabinet Office, the Office of the Government Management Board, and some of the functions of the Department of Personnel & Industrial Relations will be consolidated into a new Office of Cabinet & Government Management within the Office of Premier & Cabinet.

The objective of the change is to ensure a co-ordinated central agency approach to assisting Ministers and Chief Executive Officers in making the necessary management changes if productivity is to be improved and overheads reduced. By reducing the number of central agencies from four to three, and by consolidating these functions, savings will be made in both staffing and accommodation costs. Equally importantly, the changes will provide a clear indication to all agencies of the type of effort the Government is seeking in reducing overheads and improving the overall performance of its administration.

FINANCING THE BUDGET

Over the past decade the presentation of the State's accounts has undergone dramatic change reflecting both a process of reform within the management of the State's finances and a new emphasis on the level of debt. The most obvious change has been the move towards the presentation of the account within the National Accounting Format. This means of presentation is recognised as providing a more detailed picture of the State's finances. It particularly focuses on the financing requirement for the Budget. However, there are significant differences in the composition of the financing requirement of the State Government as opposed to the Commonwealth. By far the vast majority of our borrowings go towards the provision of economic infrastructure and community facilities. It has been a standard principle that such expenditure should be met over time so that future generations make a contribution to the costs of the facilities that they will enjoy and the infrastructure from which they will benefit. Over the past few years the Government has in fact been able to maintain its capital works program while at the same time borrowing less. This has been accomplished through the increased use of internal sources of funds. Nevertheless while seeking to reduce borrowing levels the Government believes that the principle I have outlined is a sound one.

The financing requirement for 1990-91 is $260 million compared with the Budget outcome for 1989-90 of a financing requirement of $180.5 million. There are three important points to consider in relation to this financing requirement—

First, in only two of the last eight years has the financing requirement, measured in real terms, been lower.

Second, the 1990-91 financing requirement is about 24 per cent below the real terms financing requirement average of $341 million for the last eight years.

Third, the 1990-91 estimate follows a year in which the financing requirement was the lowest it had been for the last eight years due in part to the carryover of $60 million of SAFA contribution into 1989-90 and to the impact on the SAFA operating result in that year of $59 million in debt relief provided by the Commonwealth.

Members would also be aware that not all public sector spending takes place within the Budget sector. Consequently, to obtain an overall view of public sector expenditure and borrowing it is necessary to go beyond the Consolidated Account.

I made reference earlier to the decline in recent years of the level of net indebtedness expressed in per capita terms or as a percentage of Gross State Product. The outlook for the State public sector in 1990-91 is for a further reduction in the level of net borrowings and other financial arrangements. This reduction will be of the order of 8.6 per cent in real terms.

STATE FINANCIAL INSTITUTIONS

It is appropriate in this context to make some brief comments about the main financial institutions of the State—namely the South Australian Government Financing Authority, South Australian Finance Trust, the State Bank of South Australia and the State Government Insurance Commission.

Although it is the case, as the House is aware, that our State Bank has not escaped the difficult circumstances which have generally prevailed in the banking industry in recent times it does need to be emphasised that our State's financial institutions, whether taken individually or as a group, remain in a very strong financial position, as evidenced, for example, by the large net asset backing which they each have. I would draw attention particularly to the central role played by SAFA in the State's financial system and I invite members to study the very considerable amount of detail which is conveyed in its Annual Report. To my knowledge SAFA is the first statutory authority in this country to have its Annual Report for 1989-90 tabled in Parliament and that in itself is an indicator of the Authority's and The Treasurer's commitment to the maximum flow of information in this area. Without going into great detail here, it should be noted that the operating surplus achieved by SAFA in 1989-90 was above budget at the record level of

$336 million. SAFA is recognised not only in this country but overseas as the best structured and most successful of the States' central finance agencies.

In a relatively small regional economy such as ours and one in which there are very few substantial private sector financial institutions headquartered we make no apology for the Government's firm policy of support for our financial institutions. That support will continue.

RELATIONS WITH OTHER LEVELS OF GOVERNMENT

The South Australian government has led the way in proposing reform in the relationship between the Commonwealth and the States. The Treasurer has pressed the Commonwealth since 1986 to conduct a serious examination of the problem of overlap and duplication of functions between the Commonwealth and the States. It is pleasing to see that the Commonwealth government has now responded with a proposal for a review of intergovernmental relationships. The South Australian government will willingly participate in that review.

We intend to go further. The government has begun a broad ranging review of its relationship with local government in this State. A clear division of responsibilities between the levels of government is required. In co-operation with local government we shall take a fresh look at the arrangements, particularly financial, that govern that relationship at present.

One of the keys to successful reform in the relations between State and Local Government, (as with the Commonwealth) is that the issues be dealt with not in terms of individual functions but in terms of the overall roles, responsibilities, and interests of the respective levels of Government. It is necessary that, as we reform the relationships between the State and Local Government, it is done on a fully co-ordinated basis having regard to the overall financial and other policies of the State and in full consultation with the local government community as a whole.

The Treasurer and I have commenced high level consultations with the Local Government Association on a reform package and I do not wish to pre-empt what might be agreed and announced later in this financial year. However, one aspect of the package concerns the creation of the Local Government Disaster Fund.

CONCLUDING COMMENTS

The form of the Appropriation Bill is similar this year to last year.

Clause 1 is formal.

Clause 2 provides for the Bill to operate retrospectively to 1 July 1990. Until the Bill is passed expenditure is financed from appropriation authority provided by Supply Acts.

Clause 3 provides a definition of Supply Act.

Clause 4 provides for the issue and application of the sums shown in the First Schedule to the Bill. Sub-section (2) makes it clear that appropriation authority provided by Supply Act is superseded by this Bill.

Clause 5 provides authority for the Treasurer to issue and apply money from the Hospitals Fund for the provision of facilities in public hospitals.

Clause 6 makes it clear that appropriation authority provided by this Bill is additional to authority provided in other Acts of Parliament (except, of course, in Supply Acts).

Clause 7 sets a limit of $20 million on the amount which the Government may borrow by way of overdraft in 1990-91.

I commend the Budget to the House.

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

ADJOURNMENT

At 6.5 p.m. the Council adjourned until Tuesday 16 October at 2.15 p.m.