LEGISLATIVE COUNCIL

Thursday 14 February 1991

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

PETITION: METROPOLITAN RAIL SERVICES

A petition signed by 1 853 residents of South Australia concerning rail services in the Adelaide metropolitan region, and praying that the Council use whatever powers invested in it to oppose the closure of any rail service or train station in the inner or outer suburbs of Adelaide and support an increase in funding to upgrade the Adelaide rail service to make it a more attractive, efficient and environmentally sound form of travel, was presented by the Hon. T.G. Roberts.

Petition received.

NATIONAL CRIME AUTHORITY

The PRESIDENT: I refer to previous statements that I have made this week concerning resolutions passed by the Council with respect to the National Crime Authority, and advise that Mr P. Faris, QC, the last of those persons invited to appear before the Council, has declined to appear, as in his view the invitation is not appropriate.

QUESTIONS

ORGAN AND TISSUE REMOVAL

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about organ and tissue removal.

Leave granted.

The Hon. R.I. LUCAS: I refer to recent articles in the press regarding the removal of the brain from the body of Mr Warren Douglas De Laine, a road accident victim who died last October following a motorcycle crash. According to media reports, the brain had been removed from the victim's body without the parents' consent and used as part of research project at the Institute of Medical and Veterinary Science into road accident deaths. The victim's mother, Mr Christine De Laine, was reported as saying she was unable to see her son's body for 30 hours after his death. Her son was buried on 10 October and it was only afterwards, after she sought a copy of his autopsy report, that Mrs De Laine realised his brain had been removed and that there was no reference to it being replaced.

Doctors later confirmed that her son's brain had been taken to study the effects of brain trauma. Mrs De Laine has subsequently been informed that the Human Tissue and Transplantation Act 1983 gives absolute power to the Coroner to extract organs from the deceased when necessary for research. Although the De Laine family have now had the comfort of having their son's brain interred with his remains, Mrs De Laine does not accept the interpretation that the Coroner has ultimate say over the extraction of organs from a body. She says the Act requires clarification so that the rights of grieving families and loved ones are protected.

I note that one recent press report has said that the Institute of Medical and Veterinary Science (which was involved in research on the removed brain) has been asked to prepare a report on how it handles and stores human brain specimens. I also note that the IMVS's director, Dr Brendan Kearney, was on radio this week speaking on this issue, and made the comment that it was unusual for specimens to be retained by the institute for more than a few days.

In today's press it was stated that up to 250 human brains—almost all from accident victims—are cremated at the IMVS every year, usually long after the victims' funerals. The article quotes the facility's head of tissue pathology, Professor Vernon-Roberts, as saying in some cases it was necessary to store brains due to the length of some microscopic examinations. He said it was the practice to cremate human brains after tests had been completed unless otherwise directed by the Coroner. My questions to the Attorney are:

1. Will the Attorney-General re-examine the Human Tissue and Transplantation Act 1983 to see if it can be amended to overcome instances such as that which occurred following the death of Warren De Laine?

2. Will he investigate possible amendments to that Act with a view to ensuring that wherever practicable the brain from accident victims is reunited with the deceased prior to their funeral?

The Hon. C.J. SUMNER: I have provided to Mrs De Laine correspondence that was sent to me by the Coroner. That sets out fully the Coroner's position in relation to this matter, and I am sure it could be made available (if it has not already) to the honourable member by Mrs De Laine. The point which is made and which is confirmed by the Crown Solicitor is that the Coroner is empowered to carry out whatever tests are necessary on a deceased person to determine the cause of death. In some circumstances, that may involve the removal of parts of the body and, as in this case, involve the removal of the brain for testing to ascertain the cause of death.

The Crown Solicitor advises that the Coroner's Act is clear in that respect. There may be some confusion with the honourable member's question about the Human Tissue and Transplantation Act, but the power that was used by the Coroner in this case was under the Coroner's Act and, under that Act, according to the Crown Solicitor and the Coroner himself, the Coroner has the power to remove tissue and parts of a deceased person for the purpose of testing to ascertain the cause of death.

However, the question of research is another matter. As I understand it, the organs are not removed specifically for the purpose of research; they are removed to determine the cause of death. That does not mean that the results may not be used subsequently in research. However, the question of the use of these organs for research purposes is a matter on which I am still seeking clarification. That is the situation. The Coroner advises me that he does not inform next of kin automatically if certain organs of the body are to be removed because, in his experience, that can be extraordinarily distressing to relatives. Whilst in this case Mrs De Laine wanted to be informed that the brain was being removed for the purposes of testing, in other cases the Coroner believes that next of kin do not want full details of what is happening to the deceased person's body by way of autopsy which, of course, in some cases can be quite intrusive.

The questions that the honourable member has asked give rise to some confusion, in the light of what I have said. I am still examining the question of research, and I will further examine the relationship of the Coroner's Act to the Human Tissue and Transplantation Act.

The Hon. R.I. LUCAS: As a supplementary question, has the Attorney-General been provided with any information that these brains referred to by various of the experts I have quoted have been taken primarily for the purposes of research rather than to determine the cause of death?

The Hon. C.J. SUMNER: I will check the situation with respect to that, but the correspondence that I have sent to Mrs De Laine in relation to this matter indicates—to me, at least—that, as far as the Coroner is concerned, the organs are taken for the purposes of determining the cause of death, which is the Coroner's brief under the Coroners Act. The organs may be used for research but the principal purpose is not to take the organs for the purposes of research. However, that is the point which I indicated to the honourable member, which I was still having clarified and which I have indicated to Mrs De Laine that I am still having clarified because, obviously, there seems to be some misunderstanding about that issue.

YOUTH OFFENDERS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question on the subject of an appeal against sentence.

Leave granted.

The Hon. K.T. GRIFFIN: On 21 December last year four youths created a disturbance on a train travelling to Outer Harbor. They used indecent language, were throwing missiles and damaging the train. Transit police, with the assistance of passengers, hassled these youths off the train amid the cheers of passengers. One of the youths, a 13-year-old, appeared in the Children's Court; I understand that others failed to turn up. The 13-year-old was fined $10, there was no conviction and no bond and no community work was ordered.

Earlier this week the *News* carried a story that one of the passengers who assisted the transit police is fearful for his safety and that of his young son after he was bashed and further threatened by the same gang of youths who had previously been caught on the train. In that same report the *News* carried a statement that there would not be an appeal against the penalty which was imposed.

In conjunction with that area of concern, I was given information recently that a very large gang of 30 to 50 youths—of so-called 'graffiti artists'—was travelling up and down on the Outer Harbor trains harassing passengers and painting those trains during the month of January. Also, during that same period—in fact, on 18 January—on the Noarlunga line a group of youths harassed passengers, threw rocks through the windows of the train, and caused glass to be scattered over passengers. In that context I have been informed also that, whilst the Transit Squad endeavoured to deal with all these incidents, it has its job cut out to keep pace with all those incidents and that among STA guards there is a concern for the safety of passengers as well as a concern that penalties are too low when someone is brought before the court.

My questions of the Attorney-General are, first: did the Attorney-General review the penalty imposed on the 13-year-old youth and, if so, will he say on what grounds he determined that no appeal should be lodged? Secondly—and the Attorney-General may have to refer this to the appropriate Minister—what steps are being taken in view of these incidents and others to ensure that the Transit Squad is adequately resourced, that passengers and STA staff are protected from threats and harassment and that graffiti is reduced?

The Hon. C.J. SUMNER: Members will know that on 1 January this year increased penalties for juvenile offending came into effect. The potential penalties were increased to fines of $2 000, and the amount of compensation that could be awarded against a juvenile was increased to $10 000. In addition to that, provision was made for discrete community service orders to be ordered by the court as part of a sentence so that youths could be made to clean up graffiti or repair the damage from vandalism and the like.

That legislation, which increased the penalties from 1 January, was passed earlier but came into effect on 1 January because, by that time, we had the resources allocated in the budget to enable there to be supervision of youths under community service orders. However, there will need to be a further amendment to the provisions relating to community service orders, because the legislation, as passed, referred to those orders being imposed after conviction of the offender, and in the Children's Court it is common, at least with early offenders, not to impose a conviction.

The Government therefore intends to amend that legislation further by providing that a community service order of the kind that I have outlined can be imposed irrespective of whether a conviction is recorded against the youth. I expect legislation dealing with that to be introduced very shortly. As far as the individual case is concerned, it was drawn to my attention. It was considered by the Crown Solicitor, and the advice I was given was that an appeal would not be successful.

The boy referred to was involved in the incident with three others. This is the boy who was eventually dealt with by the court. It was accepted by the police and by the court that he was not the ringleader, and this is reflected in the fact that this boy was charged with using indecent language and throwing a missile while the others were charged with assault on STA guards and with damaging STA property.

The youth was, at the time of the incident, on a bond which was not estreated. The magistrate has presumably taken the view that continuation of the bond would provide some worthwhile restraint and direction for the youth. The youth pleaded guilty at the first available opportunity and, obviously, would have been given some credit by the magistrate for that. I sought a report from the Crown Solicitor, who recommended against an appeal in this case. I am advised that the sentence, including the recording of no conviction, is well within the magistrate's sentencing discretion. I understand that the boy was aged 13. The other two who were charged with the more serious offences are still to be dealt with by the courts.

As far as the second question is concerned, namely, the incidents that have been referred to on the trains and the role of the Transit Squad, I will refer that to the appropriate Minister and bring back a reply.

TOURISM DEVELOPMENTS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism a question about tourism developments.

Leave granted.

The Hon. DIANA LAIDLAW: Since the State Bank catastrophe became public knowledge last Sunday there has been considerable speculation in the media about the fate of various proposed major tourism developments in South Australia, including those in the Barossa Valley, Flinders Chase, Mount Lofty and Wilpena. Specifically, in relation to the proposed Wilpena Station resort, I note with some interest an interview last night on Tony McCarthy's show on 5AN with a Professor Shearman.

Professor Shearman indicated that he and a number of friends and colleagues had been writing to banks around Australia about the viability of the Wilpena development, and that the replies he and his group had received to date advised that the project is non-viable. Professor Shearman went on to indicate that it is believed that some banks may loan money to the Wilpena project if it was guaranteed by the Government against loss. Will the Minister advise whether Ophix Finance Corporation has obtained financial backing for the proposed Wilpena Station resort and whether she or any other member of the Government (or the Government as a whole) has received advice from Ophix that banks are reluctant to loan money unless there is a guarantee by the Government against loss? Also, has the Minister information in respect of major projects proposed in the Barossa, Flinders Chase and Mount Lofty in terms of the scheduled commencement dates of construction and operation?

The Hon. BARBARA WIESE: I am not able to provide much information about the business affairs of individual companies and proponents who are interested in tourism developments in South Australia, and neither should I be in a position to be able to talk about the business affairs of those people. That is a matter for the companies concerned, and whether or not they are able to obtain finance for tourism developments in this State is very much a matter for them.

Having said that, all I can report on the matter of the Flinders Ranges development is that the most recent information I have received is that the proponent (Ophix) has advised that negotiations on finance are at an advanced stage. Ophix is confident that it will be able to achieve appropriate financial backing for that development and, if that is so, it would hope to commence construction during the course of this year.

The Hon. Diana Laidlaw: The financial or calendar year?

The Hon. BARBARA WIESE: I do not know. As to the question of a request for a guarantee against loss by the Government, I am not aware of any such proposals having been put to the Government and I am fairly certain that, if there had been, I would be aware of them. I must say that I am not the Minister responsible for the Wilpena station development, as the proposed development is to be constructed on land controlled by the National Parks and Wildlife Service and obviously the Minister for Environment and Planning is the Minister responsible for the majority of the contact with the proponents. Officers in my organisation in Tourism South Australia have had contact from time to time with the proponents on issues relating to tourism matters. If such a proposal had been put, I think it would have been drawn to my attention.

As to the proposed developments for the Barossa and Flinders Chase, I am not sure to which developments the honourable member is referring. I know of three proposals for developments in the Barossa, but I am not able to provide any financial information about any of those proposals, some of which have not actually obtained all of the appropiate planning approvals at this point. At least for some of them I would suspect that the question of financial arrangements and the like is probably premature. As to the development that is proposed to be constucted outside Flinders Chase National Park on Kangaroo Island, I understand that negotiations are now taking place with the owners of that project and another company.

I am not able to say any more about that at this point, but I understand that discussions and negotiations are taking place between two companies concerning that development. In that instance, as well, the question of financial backing is probably premature.

HEALTH DEVELOPMENT AUSTRALIA

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question in relation to Government involvement in the fitness industry.

Leave granted.

The Hon. M.J. ELLIOTT: Recent newspaper articles announced that Health Development Australia, a joint venture between the SGIC and the Government-funded Health Development Foundation, is setting up franchises in health centres. On 8 February the *Advertiser* reported that HDA Deputy Chief Executive Kevin Haag was negotiating to take over the failed Lady's Choice health club at Holden Hill and to operate it as an HDA franchise. It said it was hoped that club would reopen on 18 February, so it is likely that HDA—taxpayers' money—has already been spent in the premises. The previous operator had been evicted after failing to pay rent up to $120 000.

On 9 February, the *Advertiser* reported that HDA had agreed to management buy-outs of its Prospect and Noarlunga clubs. Last year the existing HDA health clubs lost half a million dollars of taxpayers' and SGIC money. I have spoken to an established private operator who is very concerned about State Government money being put into an industry that he feels is already well serviced with private operators. He said the apparently cosy arrangements in which public servants were being set up in the industry provided private operators with unfair Government-funded competition which would place many in difficulty. Appreciating the Government's desire to allow independent operation but mindful of the State Bank experience, I ask whether the Attorney-General will answer these questions:

1. What are the terms of the franchise arrangements being established between HDA staff and the HDA?

2. Is there any commitment on behalf of HDA to provide financial assistance, if required, to the franchise operators?

3. How much money has the Government and SGIC put toward these franchises?

4. Why were no private operators approached to take up the franchises?

5. Why has HDA decided to set up in a location where a previous operator had been unable to run a viable business?

The Hon. C.J. SUMNER: I will take those questions on notice.

ROAD CLOSURES

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Attorney-General a question relating to road closures on Australia Day.

Leave granted.

The Hon. J.C. IRWIN: My question concerns elements of the Local Government Act and the Summary Offences Act. My attention has been drawn to advertisements appearing in the *Advertiser* of 24 January 1991 pertaining to road

closure arrangements for the Skyshow fireworks held on Saturday 26 January, Australia Day. Road closures were mentioned in the glossy pamphlet sent out with the *Advertiser* on that Saturday. One advertisement was inserted by the Acting Commissioner of Police (Mr Hurley) and said in part:

Pursuant to section 59 of the Summary Offences Act 1953, I direct that no person shall drive, rank or leave standing any vehicle . . .

The advertisement went on to designate various areas. I have been advised that section 59 provides that directions can be given to police officers when roads are likely to be unusually crowded. It does not apply directly to the public and is for regulating traffic. 'Regulating' does not mean prohibiting and 'traffic' does not include parked vehicles.

A further two advertisements were placed in the same paper by the Corporation of the City of Adelaide under a Lord Mayor's order, again using section 59 of the Summary Offences Act, mentioning certain streets and stating that failure to comply with the directions might be prosecuted. I am advised that the only way in which a council can exclude vehicles from a roadway and erect barriers is by by-law. That is not suitable for short periods, such as Skyshow.

As the prohibition can be applied only by a resolution of the council pursuant to section 359 of the Local Government Act, this means that the exclusion would apply from when the resolution applying the by-law was published in the *Gazette* until revoked by another resolution also published in the *Gazette*. I understand that neither the Adelaide City Council nor Thebarton council passed or published appropriate resolutions in accordance with section 359 for 26 January.

Whilst I am constrained from giving any opinion relating to the concerns raised about the fireworks display, I believe I am allowed to say that the event attracted many thousands of people, and proper crowd and traffic control was undoubtedly necessary. There may be other occasions on which there is an unlawful use of barricades for one-off events, such as those held at Memorial Drive. Because of legal and cost ramifications, let alone confusion which may flow from the possible misuse of section 59 of the Summary Offences Act and the apparent non-use of section 359 of the Local Government Act, I ask the Attorney-General the following questions:

1. Does he believe that section 59 of the Summary Offences Act specifically excludes traffic and parking and may be misused by the police and the mayors of councils?

2. In conjunction, has section 359 of the Local Government Act been used properly in relation to Skyshow and other events?

3. If there is a discrepancy will he advise the appropriate officers to comply with section 59 of the Summary Offences Act and section 359 of the Local Government Act? Will he consider an answer and give me a reply at some later time?

The Hon. C.J. SUMNER: Yes.

RURAL HEALTH CRISIS

The Hon. R.J. RITSON: I understand that the Attorney-General has an answer to a question I asked on 20 November concerning rural health and I would be happy for it to be incorporated in *Hansard* if the Attorney so wishes.

The Hon. C.J. SUMNER: I seek leave to have the reply incorporated in *Hansard* without my reading it.

Leave granted.

The Premier has provided the following response to the honourable member's question:

1. The Government, as a matter of policy, provides timely and detailed information on the State's budgetary and economic position. The honourable member alone can determine whether his perceptions conform with the facts.

2. Contrary to the implications in the honourable member's question, staff at the Whyalla Hospital will continue to provide a high level of service to the Whyalla community. I am advised that the budget allocation available to the hospital is considered to be sufficient to provide a level of service commensurate to that provided in 1989-90. Efficiencies will need to be made to ensure expenditures are contained within the budget allocation.

1980 BUSHFIRE APPEAL

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General a question about the 1980 Ash Wednesday Lord Mayor's Bushfire Appeal.

Leave granted.

The Hon. J.F. STEFANI: In August last year I made contact with Mr Wegener, the Administration Manager of the Adelaide City Council, to obtain some information on grants which were allocated to various bushfire victims from the funds donated by the public during the Lord Mayor's Bushfire Appeal. Mr Wegener gave instructions to staff at the Adelaide City Archives to supply whatever information I required and that duly occurred. The information which I sought and received concerned the disbursement of public funds collected during a public appeal and therefore it was considered that such information should be made available to any member of the public and should be public knowledge.

In January this year I again contacted the Adelaide City Council and sought to obtain further information about the disbursement of the bushfire appeal funds. On this occasion I was advised that I must put my request in writing to the Acting City Manager because the City Manager was on annual leave. On 9 January 1991, I wrote to the City Manager seeking information about the amount paid to 14 bushfire victims.

On 25 January 1991 I received a reply from Mr Andrew Taylor, Acting City Manager, advising me that the corporation has no obligation to disclose details of the distribution of public money collected during the bushfire appeal to anyone, other than the Attorney-General. When Mr Wegener returned from annual leave, I telephoned his office and was advised that council had received advice from the Crown Solicitor not to supply information about the appeal to any member of the public, including myself, and that that information should only be made available through the Attorney-General's office. In view of this position, my questions are:

1. Did the Crown Solicitor refer or discuss this matter with the Attorney-General?

2. Did the Attorney-General give any instruction to the Crown Solicitor about this matter?

3. Does the Attorney-General agree that members of the public should be deprived of any information about the disbursement of the appeal funds collected from the people of South Australia?

4. Will the Attorney-General provide a complete list of the names and the amounts allocated to each of the bushfire victims who received assistance from the Lord Mayor's Bushfire Appeal?

The Hon. C.J. SUMNER: I do not have any recollection of this matter having been discussed with me by the Crown

Solicitor, or anyone else for that matter. However, I will make some inquiries in my office and bring back a reply.

ECONOMIC DOWNTURN

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Attorney-General a question about the economic downturn.

Leave granted.

The Hon. PETER DUNN: I attended the Outlook Conference earlier this year in Canberra for the Australian Bureau of Agricultural Resource Economics. Indeed, they implied that the recovery in Australia would be very long and very slow and very painful, taking three to five years before recovery of values to anything like they were in 1988-89.

Since that period we have seen the demise of the floor price of wool. Who knows what the value of wool is at the moment. We have seen wheat prices fall in the past 18 months from about $190 to $120. We have seen only today the Government trying to assist the wheat industry by guaranteeing sales that were made to Iraq prior to the war breaking out. We have seen the demise of the Riverland industries, particularly the citrus and the grape industries. We have seen the sheep and meat industries totally collapse, with no live sheep being sold at all. In fact the only rural industry with some hope is the beef industry and that seems to be only just a profitable enterprise at the moment.

All these industries are export industries and they all rely on the value of the Australian dollar. There has been a fall in real estate values. Perhaps the demise of the State Bank was caused by the fall in real estate values in this State and in the rest of Australia over the past couple of years. Therefore, this State and we as individuals are suffering dramatically. My question is: has the Attorney-General or the Treasurer made any endeavour to influence the Federal Labor Government, and perhaps the 'world's greatest Treasurer', to lower the Australian dollar, comparing a trade-weighted basket of currencies, so that the Australian export industries may again become competitive on world markets?

The Hon. C.J. SUMNER: I do not know of any such representations. The Australian dollar was floated some years ago, with the enthusiastic support as I recollect it of the Liberal Party at the time. Most of them were upset about the fact that Mr Fraser and Mr Howard had not taken this action during their period in Government. As far as I understand it, at the Federal and national level generally there has been a bipartisan approach to at least that aspect of economic policy, namely, whether or not the Australian dollar should be fixed or subject to the international market, and both Parties agree that the dollar should not be fixed as it has been in the past. As far as I know, no representations have been made on that matter to the Federal Government.

PLANNING POWERS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General (in the absence of the Minister of Local Government Relations, representing the Minister of Environment and Planning) a question about the transfer of planning powers from State Government to local councils.

Leave granted.

The Hon. BERNICE PFITZNER: The *Advertiser* of 28 December 1990 signalled a change of administration and power in the planning area, with the transfer of some important decision-making from the State Government department to local councils. Upon inquiry from the Department of Environment and Planning, it is alleged that schedule 5 of the 1982 Planning Act will be eliminated and schedule 7 will have a number of items deleted.

The *Advertiser* article suggested that local government would have more power in planning decisions. The stated rationale behind these changes is to make administrative processes more efficient. However, it appears that the informed community and the environmental groups do not agree. They feel that the proposed changes will result in planning decisions being made about vitally important areas of the State not by the small team of experienced experts in the South Australian Planning Commission but by the variously motivated and structured councils.

It is also felt by the informed community that the expected range of philosophical attitudes within any council, combined with councillors' natural desire to feel sympathy for individual would-be developers, would tend to have a profound influence on the outcome of many environmentally sensitive development proposals. One wrong decision would create a precedent for the next. My questions are:

1. Has the Minister fully consulted the community about the proposed changes?

2. Will funds be available for local councils to take on the extra workload or will councils have to increase their rates?

3. Does the Minister believe that councils will be able to take on the extra workload more cost effectively and efficiently than expert sections of the South Australian Planning Commission?

4. Are the proposed changes a consequence of a recommendation from the current and ongoing planning review in South Australia and, if so, what documentation exists of the review's recommendation?

The Hon. C.J. SUMNER: As this is a matter for the Minister for Local Government Relations, I will refer it to her for a reply.

TRADE STANDARDS GROUP

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about the Trade Standards Group.

Leave granted.

The Hon. J.C. BURDETT: I refer to an article in the current issue of the *Public Service Review* which is headlined 'Weighting for the losses . . . or how SA could do itself out of $ millions'. In part the article states:

> Planned changes to the role of the Trade Standards Group threaten to cost South Australians millions of dollars in lost revenue and destroy the credibility of the State's industry in the eyes of both the buying public and our export customers.
>
> One of the functions of the Trade Standards Group is to monitor the standard of measuring instruments used in commerce and industry.
>
> This includes the testing and licensing of fuel pumps, scales, weighbridges and hopper weighers. In short, the group's role is to ensure that people get what they pay for at all levels of trade.
>
> This role is earmarked for abolition during 1991 as part of a cost-cutting measure but, according to sources within the department, the loss of this service could cost South Australia many millions of dollars in lost revenue.

It goes on to point out that the proposal is part of the GARG recommendations and, in particular, in regard to weighbridges and the grain industry, it points out that a 1 per cent error in weighing South Australian wheat last year

would have led to a $25 million error in income for the State. A figure under or over the mark would have led to a variation of $50 million, and it points out that similar errors could occur with regard to wool, fruit, beer, oil refinery products, etc., and the margin of doubt becomes something phenomenal.

The article refers to the expected saving. I am certainly not opposed to deregulation, but in this area, when we look at the retail industry, and leaving the monitoring of the volume and weighing instruments which they use to themselves, without any State checking at all, it seems to me to raise questions. Also, in the case of the export industry, it seems that this warrants questioning.

At the time when I was Minister of Consumer Affairs, although the great majority of retailers were honest, there certainly were significant cases of underweight and undervolume detected by officers of the department. My questions are: is the Minister committed to this program? If so, is she satisfied that consumers and the export market will be protected? If there will not be the regular sort of monitoring, with weighbridge monitoring trucks and so on, what sort of monitoring will there be?

The Hon. BARBARA WIESE: The proposals concerning deregulation in this area have come through a process of national consultation and are part of a series of recommendations that have been made after longstanding investigation by officers of respective State Government organisations responsible for this area of activity coming together and making recommendations to SCOCAM on uniform trade measurement legislation for Australia.

As I indicated, that work has been going on for a very long time and has been very comprehensive. The final recommendations of the officers were presented to the meeting of SCOCAM late last year and agreed to by all States except Western Australia. Western Australia withheld agreement on the uniform legislation, not because there was any substantial disagreement with the major thrust of the legislation but for reasons related to a couple of technical points. Hopefully, they will be issues that will be dealt with and the Western Australian Government, too, will become satisfied with the legislation at some point.

Nevertheless, the proposed uniform legislation recommendations were agreed to by the Ministers at that meeting late last year. Whether or not we introduce such a system in South Australia, of course, will be dependent on suitable legislation being passed by the South Australian Parliament. The appropriate Bill is not yet ready for introduction into this Parliament, but there will be adequate opportunity for members of the South Australian Parliament to examine it when it comes forward. Of course, there will also be further industry consultation. As I understand it, there has already been considerable consultation with appropriate industry bodies during the course of work of the officers on this matter.

There has been representation from the trade measurements area of our own Department of Public and Consumer Affairs being involved in the preparation of the recommendations that came before SCOCAM. If such a proposal for deregulation or self-regulation were to be introduced in South Australia, I would expect that there would be some sort of monitoring or auditing role that the Department of Public and Consumer Affairs might still play, at least for a time. The details of such a proposal for auditing are currently under consideration within the department, and no firm decisions have been made on those matters.

It would certainly seem appropriate to me that there should be some sort of auditing procedure taking place if such a scheme were to be introduced in this State. There would need to be considerable consultation with people in the field as to how such a scheme might work. That is the current status of the matter. Once the terms for the uniform legislation are clearer and we have some firm propositions to put before the relative parties, that will be done.

STATE BANK SPONSORSHIP

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister for the Arts, a question on the subject of State Bank sponsorship.

Leave granted.

The Hon. DIANA LAIDLAW: For many years the State Bank has been a very generous sponsor of the arts in South Australia, so it would not be a surprise to members in this place to learn that arts organisations have some reservations and concerns about the future of the bank and their future, in turn. I have been able to confirm that the State Bank will continue to sponsor the forthcoming Come Out festival for youth. However, that commitment was made and confirmed some time ago in respect of the multicultural arts trust; again, the State Bank is a very generous sponsor, and it has not necessarily been assumed—but it certainly has not been confirmed—that it will continue to sponsor the arts trust's programs in this forthcoming year. The Festival Centre, Festival of Arts and numerous smaller performing arts and visual arts and craft groups in this State rely to a large extent for their programs on sponsorship from the State Bank. Has the Minister or her department made any inquiries in the past week into the fate of the arts sponsorship program by the State Bank, as there is a real fear that, with cutbacks that the State Bank must make, the arts and cultural activities will be one of the first areas hit?

The Hon. BARBARA WIESE: The honourable member highlights a very important aspect of the value of the State Bank to the South Australian community. There is no doubt at all that the State Bank is without peer in South Australia as a good corporate citizen, providing financial support to a very large number of community organisations in this State in many ways. If we did not have the State Bank operating here, much of that activity, I suggest, would not take place, because we have found that banking institutions and other companies that have their headquarters in other parts of Australia tend not to take the same sort of interest in the South Australian community and South Australian community activities that the State Bank does. This is certainly another reason why we should do as much as we can to ensure that the State Bank is retained in the State and that it is restored to health as quickly as possible.

As to the question about arts organisations, obviously, I will need to refer that matter to my colleague, the Minister for the Arts, who I am sure will be able to bring back an appropriate reply.

HARBOURSIDE QUAY

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question relating to Harbourside Quay land at Port Adelaide.

Leave granted.

The Hon. J.C. IRWIN: The *Advertiser* of 9 February and the *Portside Messenger* of 13 February both report the sale by Port Adelaide council to the State Government of land known as 'Harbourside Quay' for $1.8 million. I understand

that the land purchase negotiations have been handled by the Premier's Special Projects Unit. When will the Port Adelaide council receive the lump sum of $1.8 million to settle the transaction, and from which source will the funds come?

The Hon. C.J. SUMNER: I will refer the question to the Premier and bring back a reply.

STA FUEL COSTS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister representing the Minister for Local Government Relations, who represents the Minister of Transport in this place, a question on the subject of State Transport Authority fuel costs.

Leave granted.

The Hon. DIANA LAIDLAW: I raise this matter because I note that one of the reasons given for the recent blowout in the public transport budget in Victoria is the rising cost of fuel since the Iraqi conflict. The STA budget forecast for fuel, oil and power expenses for this financial year is $14.2 million. That is a considerable increase—some 14.5 per cent—above the actual expenditure last year, but I seek advice from the Minister about what was the additional cost to the STA of increases in fuel costs since the Iraqi conflict. Has the STA been able to meet these increases within the confines of budget estimates for 1990-91 or, if that is not the case, is it anticipated that those increasing fuel costs will be a cause for further increases in fares?

The Hon. BARBARA WIESE: I will refer the honourable member's question to the appropriate Minister and ensure that a reply is given.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 13 February. Page 2875.)

The Hon. DIANA LAIDLAW: I support the second reading of this Bill, and I want to address my remarks specifically to Division IIB of the Bill, referring to equal employment opportunity. Currently, local government in this State is subject to the State's equal opportunity legislation, and that is as it should be. I note, however, that in the Minister's second reading speech, in justifying the establishment of this equal opportunity advisory committee, she refers only to women with respect to their under representation amongst the local government work force. The facts and figures that she gives in her second reading speech certainly support the need for further attention to be given by councils to this area of equal opportunity and women.

However, I believe, and certainly I would argue, that equal opportunity in local government must extend far beyond the confines of women and that local government should be looking at and the State Government encouraging equal opportunity for people from migrant backgrounds, people with disabilities and the like. That is why I am rather disappointed by the very narrow focus of the Minister in looking at the potential for this equal opportunity advisory committee and its relevance to local government. I note that in new section 69c(3) at least one member of the committee, comprising five members, must be a woman and at least one a man. I would like to ask the Minister if, during discussions on the establishment of this committee, consideration was given to specifically designating that one person at least should be from a non-English speaking background.

Other points I should like to make briefly relate to the functions of this advisory committee. One such function is to devise guidelines and objectives for councils, although I am not sure what is envisaged by that reference; nor am I sure how the committee and the councils will work in respect of this reference to objectives. Are they talking about numbers of women or people from various cultural backgrounds being members of councils? Some clarification is sought in respect of the reference to objectives for councils.

Reference is also made to the monitoring of measures taken by councils to implement the equal employment opportunity programs. I believe that we must ask how the advisory committee plans to monitor these measures and how intrusive it proposes to be in the operation of councils. If councils do not cooperate, will they be penalised through contracts and other work in the future, as that is one option that operates in the United States? In the affirmative action legislation at the Federal level, most members would appreciate that in terms of monitoring the performance of companies and large statutory authorities in this country there is a requirement that they furnish their results to the affirmative action agency. If they do not do so, the Government will publish the fact that they have not participated. No reference to such matters is made in this Bill.

I express an interest in the fact that there is no reference to elected members of council and equal opportunity, but attention is paid solely to persons in the paid work force. I am very keen to encourage greater representation of women amongst councillors in this State and in all areas of service to local government, including the positions of Chairman and Mayor.

If we were to see more women participating in such roles, it would be easier for women in paid positions in councils and in a variety of other areas in our community. Local council is a particularly important area for women. Whether women are in the paid work force or working principally at home, they are very dependent on their local community, whether it involves schools, shopping, using the footpath, power, landscaping and so on.

Women use, and are very dependent upon, their local community, and I believe that, with a greater contribution from women in both elected and paid positions on councils, we will see a more reponsive, effective and rewarding community in the future. I support the Bill and the additional focus on equal opportunity in local government as provided by this Bill. However, there are a number of questions that I should like the Minister to answer in relation to the operation of this advisory committee. I believe that those questions are fundamental to the full acceptance by councils not only of equal opportunity but also of the status of this committee.

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

FREEDOM OF INFORMATION BILL (No. 2)

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

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill represents the second stage of the Government's commitment to make information in the possession of it and its agencies accessible to members of the public.

Much information in the hands of the Government can be and is made available at present. The introduction of the administrative scheme, which has been in operation since 1 July 1989, ensured that individuals have access to Government records relating to their personal affairs.

This Bill was introduced into Parliament during the last session. When the Bill was introduced it was made clear that it would lie on the table until the budget session so that interested parties would have the opportunity to examine it and make submissions on it. Comments have been received on the Bill from various organisations and representative groups. Following consideration of the comments a number of amendments have been made to the Bill.

Under this Bill members of the public will have access to a wide range of information held by the Government and its agencies.

This Bill is based on three major premises relating to a democratic society, namely:

(1) The individual has a right to know what information is contained in Government records about him or herself;

(2) A Government that is open to public scrutiny is more accountable to the people who elect it;

(3) Where people are informed about Government policies, they are more likely to become involved in policy making and in Government itself.

A number of rights and obligations are established. These are:

(1) A legally enforceable right of access to documents in the possession of Government.

(2) A right to amend inaccurate personal records held by Government.

(3) A right to challenge administrative decisions to refuse access to documents in the courts.

(4) An obligation on Government agencies to publish a wide range of material about their organisation, functions, categories of documents they hold, internal rules and information on how access is to be obtained to agency documents.

The rights conferred are not, of course, absolute. They are moderated by the presence of certain exemptions designed to protect public interests including the Cabinet process, the economy of the State and the personal and commercial affairs of persons providing information to, and dealing with, the Government.

Freedom of information legislation was first enacted in Australia by the Commonwealth Parliament in 1982, followed by the Victorian Parliament in the same year, with legislation being enacted in New South Wales last year.

This Bill draws on the experience of the operation and administration of the legislation in these other jurisdictions. At the time the Victorian legislation was introduced it was acknowledged that the legislation would need to be reviewed periodically. The need for review has also been acknowledged in the Commonwealth sphere.

The operation of both the Commonwealth and Victorian legislation has now been subject to reviews by parliamentary committees: in the case of the Commonwealth legislation, by the Senate Standing Committee on Legal and Constitutional Affairs, which reported in 1987 and, in the case of the Victorian legislation, by the Legal and Constitutional Committee, which reported in November 1989. As well as these Parliamentary reviews both Governments have conducted internal reviews of their Acts.

Thus, since the 1983 report of the Interdepartmental Working Party on Freedom of Information, there is now valuable experience available on which to draw in framing freedom of information legislation. The Bill draws on this experience and on the New South Wales legislation which has also drawn on the experience in the Commonwealth and Victoria. The result, I believe, strikes a balance between rights of access to information on the one hand and the exemption of particular documents in the public interest on the other. This is not to say that, in the light of experience in South Australia, this balance between rights and exemptions may need to be changed.

Not only has the experience of the operation of freedom of information legislation in other jurisdictions in Australia been drawn on but valuable experience has been gained from the operation, since 1 July 1989, of the administrative scheme to allow individuals access to records relating to their personal affairs. In the first six months of the operation of the scheme a total of 1 830 formal requests were made for access to personal records, of those requests approximately 94.8 per cent had access granted, 2.1 per cent were refused and .5 per cent were awaiting a decision as at 31 December 1989. Significantly the agencies receiving the greatest number of requests were those involved in providing services in the fields of health, education, child-care and policing. The scheme is also playing a valuable role in educating the public sector and the Privacy Committee is to be commended for the way it has, in a very short time, come to terms with the requirements of the policy to provide access to personal records and in assisting agencies in implementing the policy. The first Annual Report of the committee for the year ending 31 December 1989 has been tabled.

Attention is drawn to several features of the Bill. 'Agencies' subject to the legislation are defined in clause 4 (1). Agencies that are exempted from the legislation are listed in schedule 2. Other agencies can be proclaimed to be an agency or to be an exempt agency. By virtue of clause 6 courts and tribunals are not agencies and matters relating to a court's judicial function or the determination of proceedings before a tribunal are not an agency or part of an agency.

Part II of the Bill sets out the information agencies must publish and have available for inspection by members of the public.

Part III provides for applications for access to agencies' documents and how applications are to be dealt with, clause 12 provides that a person has a legally enforceable right to access to an agency's document.

Agencies must deal with applications within 45 days (clause 14). This is the same time limit as applies under the other Australian legislation.

Provision is included (clause 17) for agencies to require advance deposits before dealing with any application.

Clause 28 provides that agencies may refuse to deal with an application if dealing with the application would substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions. This is similar to Commonwealth and New South Wales provisions.

Provision is made that an agency cannot refuse access to a document that is reasonably necessary to understand a document to which access has been given under the Act. Also, a right of access is given to documents that contain information concerning the personal affairs of the applicant irrespective of when the documents came into existence.

Provision is made for agencies to consult with other bodies before giving access to certain documents. Agencies are required to consult with:

- another Government or a local government, if the document contains matter concerning the affairs of that Government or local government;
- a person, if the document contains matter concerning the personal affairs of that person;
- a person, if the document contains information relating to trade secrets of that person, information containing commercial value to that person, any other information concerning the business, professional, commercial or financial affairs of that person;
- a person, if the document contains information concerning research that is being, or is intended to be, carried out by or on behalf of that person.

Part IV of the Bill deals with the right of a person to have an agency's records amended if the records contain information concerning the person's personal affairs and the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

A three tier process of review is provided for. Where an applicant is dissatisfied with an agency's response he or she can apply to the agency for a review of the decision. A person who remains dissatisfied following an internal review may apply for a review to the Ombudsman and/or the District Court.

The Ombudsman is given power to review a determination made by an agency (clause 39). This gives the Ombudsman jurisdiction to investigate agencies which he is unable to investigate under the Ombudsman Act 1972 since the agencies covered by the Bill are wider than those covered by the Ombudsman Act. And, since 'agency' is defined in clause 4 (1) to include Minister, the Ombudsman will also be able to investigate a Minister's determination not to release a document (except where the Minister has certified that a document is a restricted document). These provisions are in accordance with the recommendations of the 1983 working party but are wider than those in any other Australian Act in allowing the Ombudsman to review whether a 'Minister's document' should be released. The Police Complaints Authority is given power to review a determination made in relation to police documents.

Clause 53 provides for fees and charges. It provides that the Minister may, by notice in the *Gazette*, establish guidelines for the imposition, collection, remittal and waiver of fees. In establishing the guidelines the Minister must have regard to the need to ensure that disadvantaged persons are not precluded from exercising their rights under the Act and the need to ensure that fees and charges should reflect the costs incurred by agencies in exercising their functions under the Act. I am pleased to note that the principle of cost recovery was supported by the Opposition as far back as 1986. I quote from comments made in the Parliament by the Hon. M. Cameron, MLC:

> If the Government wishes to head towards cost recovery on such a piece of legislation, let us talk about it. That is the way to go. There is plenty of opportunity in the Bill to do that—it is entirely up to the Government. Certainly, it will receive no criticism from me if it attempts to recover costs as much as possible.

The Bill follows the New South Wales Act in creating three classes of exempt documents, namely, restricted documents, documents requiring consultation and other exempt documents. Documents requiring consultation have already been discussed.

Restricted documents are Cabinet documents, Executive Council documents, documents exempt under freedom of information legislation of other Australian jurisdictions and documents affecting law enforcement and public safety. Clause 45 provides that a certificate signed by the Minister stating that a document is a restricted document is conclusive evidence that the document is a restricted document. A certificate ceases to have effect after two years; a further certificate can be issued.

The District Court is given jurisdiction to consider the grounds on which it is claimed that a document is a restricted document, notwithstanding that the document is the subject of a ministerial certificate. (Clause 43). The District Court can consider the document and, if it is not satisfied that there are reasonable grounds for the claim, can make a declaration to that effect. If the Minister does not agree with the court, he or she must give notice to the applicant and to the Parliament with reasons for the decision to confirm the certificate.

The categories of exempt documents are designed to ensure that the confidentiality of information is protected where this is required for the proper and efficient conduct of Government.

Particular attention is drawn to the exemption of Cabinet documents. A document is a Cabinet document if:

- it is a document that has been prepared for submission to Cabinet (whether or not it has been so submitted);
- it is a preliminary draft of such a document;
- it is a document that is a copy of or part of, or contains an extract from such a document;
- it is an official record of Cabinet;
- it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet.
- it is a briefing for a Minister in a Cabinet submission.

Clause 1 (2) *(a)* of schedule 1 specifically provides that a document is not exempt as a Cabinet document if it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of Cabinet.

Part III of schedule 1 deals with a variety of documents for which exemption from disclosure may be claimed. That claim may be overruled by the District Court. The documents are: internal working documents, documents subject to legal professional privilege, documents relating to judicial functions, documents the subject of secrecy provisions, documents containing confidential material, documents affecting the economy of the State, documents affecting financial or property interests of the State, documents concerning the operations of agencies, documents subject to contempt, documents arising out of the companies and securities legislation, private documents in public library collections and documents relating to competitive commercial activities.

As I have previously indicated this Bill differs from the one introduced earlier this year. The main areas of change are:

(a) the removal of local councils from the coverage of the Act;

(b) the inclusion of a reference to privacy considerations in clause 3 (3);

(c) the inclusion of definitions of 'personal affairs' and 'State records';

(d) an amendment to clause 18 so that a refusal to deal with an application is treated in the same way as a determination;

(e) an amendment to clause 26 and clause 6 of schedule 1 dealing with personal affairs to clarify the method of consultation where a person has an incapacity or to reflect archival practice;

(f) clarification of the powers of the Ombudsman and the Police Complaints Authority to investigate;

(g) the inclusion of a provision to ensure that the Ombudsman or an officer of the Ombudsman or Police Complaints Authority cannot be called as a witness at a District Court review;

(h) the inclusion of a provision to allow for an appeal on a question of law to the Supreme Court;

(i) the clarification of the right to seek a review of fees. It is arguable under the earlier provisions that a review could only be conducted by a court of competent jurisdiction when action has been taken against the applicant for non-payment of fees;

(j) the time period for the release of Executive Council documents has been increased to 30 years to make it consistent to the period applying to Cabinet documents;

(k) the Operation Planning and Intelligence Unit and Anti-Corruption Branch of the Police Department have been included under schedule 2 as exempt bodies.

The definition of 'agency' no longer includes municipal and district councils. Provisions dealing with freedom of information in the local government sector are to be included in the *Local Government Act 1934*.

The Government accepts the view advanced by some commentators that rights to access must be weighed against privacy considerations. Therefore, the Bill has been amended to make it clear that it is Parliament's intention that when a decision on access is made under the Act, consideration should also be given to the privacy implications of such a decision.

In addition, the Bill now includes a definition of 'personal affairs'. Recent decisions in the Commonwealth arena have given a very limited meaning to the words 'personal affairs'. The words have been interpreted in terms of 'domestic affairs' for example, health, marital or other relationships, domestic responsibilities and financial obligations. Such an interpretation is considered too narrow as it would exclude records such as employment records.

In the original Bill, a refusal to deal with an application because it would substantially and unreasonably divert the resources of the agency was not considered to be a determination. Hence there was no appeal mechanism. The Government does not consider that to be appropriate and an amendment has been made to enable an appeal in such a situation.

In addition, Schedule 2 has been amended to include the Anti-Corruption Branch and the Operation Planning and Intelligence Unit of the Police Department as exempt agencies.

Both units were established pursuant to the Governor's directions. In performing their functions, the units receive confidential information from a number of sources. Given the type of material handled by the units and the level of security required by virtue of their special functions, the Government considers that both units should be exempt agencies for the purposes of freedom of information legislation.

In this context, it is important to note that both units are subject to regular independent audits, in each case by a former judge. If documents held in these areas are not held in furtherance of branch or unit functions, then the Commissioner of Police would be in breach of the Governor's directions which established the Anti-Corruption Branch and the Operation Planning and Intelligence Unit. It is important to recognise that this level of accountability does not apply to similar units in Victoria and New South Wales. I commend this Bill to members.

Clause 1 is formal.

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

Clause 3 sets out the objects of the measure, the means by which it is intended that those objects be achieved and Parliament's intentions in relation to the interpretation and application of the measure and the exercise of administrative discretions conferred by the measure. The clause provides that nothing in this measure is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

Clause 4 defines terms used in the measure and makes other provision with respect to interpretation of the measure.

Clause 5 provides that the measure binds the Crown not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Clause 6 provides that for the purposes of the measure the following are not to be regarded as an agency or part of an agency: a court, a judicial officer of a court, a registry or other office of a court, the members of staff of such a registry or other office in relation to matters relating to the court's judicial functions, a tribunal, an officer vested with power to determine questions raised in proceedings before a tribunal, a registry or other office of a tribunal and the members of staff of such a registry or office in relation to the determination of proceedings before the tribunal.

Clause 7 provides that if a document held by an agency is deposited in the office of State Records (formerly known as the Public Records Office), the document is, for the purposes of this measure, to be taken to continue in the possession of that agency.

Clause 8 provides for the transfer of the responsibilities under the measure of an agency which ceases to exist to an agency nominated by the Minister or, in the absence of such a nomination, to the Office of State Records.

Clause 9 requires the responsible Minister for an agency to publish, within 12 months after the commencement of this measure and at intervals of not more than 12 months thereafter, an up-to-date information statement and information summary and sets out what an information statement and an information summary must contain. The clause does not require the publication of information if its inclusion in a document would result in the document being an exempt document.

Clause 10 requires an agency to make copies of its most recent information statement and information summary and each of its policy documents available for inspection and purchase by members of the public. Nothing prevents an agency from deleting information from the copies of a policy document if its inclusion would result in the document being an exempt document otherwise than by virtue of clause 9 or 10 of schedule 1 (that is, because it is an internal working document or a document subject to legal professional privilege). The clause provides that an agency should not enforce a particular policy to the detriment of a person if the relevant policy should have been, but was not, made available for inspection and purchase in accordance with the clause at the time the person became liable to the detriment and the person could, by knowledge of the policy, have avoided liability to the detriment.

Clause 11 provides that clauses 9 and 10 do not apply to an agency that is a Minister (unless the agency is declared by regulation to be one to which those clauses apply) or an agency exempted by regulation from the obligations of those clauses.

Clause 12 gives a person a legally enforceable right to be given access to an agency's documents in accordance with this measure.

Clause 13 sets out how an application for access to an agency's documents is to be made.

Clause 14 sets out who is to deal with applications for access and the time within which they must be dealt with.

Clause 15 prohibits an agency from refusing to accept an application merely because it does not contain sufficient information to enable identification of the document to which it relates without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

Clause 16 provides for the transfer to another agency of an application for access in the case where the document to which it relates is held by another agency or the document is more closely related to the functions of the other agency.

Clause 17 empowers an agency to require an applicant for access to pay an advance deposit if in the opinion of the agency the cost of dealing with the application is likely to exceed the application fee.

Clause 18 sets out in which cases an agency may refuse to deal or continue dealing with an application.

Clause 19 requires an agency to determine an application for access within 45 days after it is received (unless the application has been transferred to another agency or the agency has refused to deal or continue to deal with the application). If it is not dealt with within that time the agency is, for the purposes of the measure, to be taken to have determined the application by refusing access.

Clause 20 sets out when an agency may refuse access to a document.

Clause 21 sets out when an agency may defer access to a document.

Clause 22 sets out the forms in which access may be given.

Clause 23 requires an agency to notify an applicant for access of its determination or, if the document to which the application relates is not held by the agency, of the fact that the agency does not hold such a document.

Clause 24 provides that clauses 12 to 23 have effect subject to the provisions of clauses 25 to 28.

Clause 25 deals with the giving of access to a document that contains matter concerning the affairs of the Government of the Commonwealth or of another State or of a council.

Clause 26 deals with the giving of access to a document that contains information concerning the personal affairs of any person (whether living or dead).

Clause 27 deals with the giving of access to a document that contains information concerning the trade secrets of any person or other information that has a commercial value to any person or any other information concerning the business, professional, commercial or financial affairs of any person.

Clause 28 deals with the giving of access to a document that contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person.

Clause 29 gives a person who is aggrieved by a determination of an agency under Part III of this measure an entitlement to a review of the determination and sets out how an application for review is to be made. On an application for review the agency may confirm, vary or reverse the determination. An agency that fails to determine an application for review within 14 days of its receipt is, for the purposes of the measure, to be taken to have confirmed the determination in respect of which a review is sought. However, a determination made by a Minister or the principal officer of an agency is not subject to a review under this clause.

Clause 30 gives a person to whom access to an agency's documents has been given the right to apply for amendment of the agency's records if the document contains information concerning the person's personal affairs, the information is available for use by the agency in connection with its administrative functions and the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

Clause 31 deals with applications for amendment of agencies' records.

Clause 32 sets out who is to deal with applications for amendments and the time within which they must be dealt with.

Clause 33 prohibits an agency from refusing to accept an application for amendment merely because it does not contain sufficient information to enable identification of the document to which the applicant has been given access without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

Clause 34 requires an agency to determine an application for amendment by amending its records in accordance with an application or by refusing to amend its records. An agency that fails to determine an application within 45 days after receipt of the application is, for the purposes of the measure, to be taken to have determined the application by refusing to amend its records in accordance ith the application.

Clause 35 sets out in which cases an agency may refuse to amend its records.

Clause 36 requires an agency to notify an applicant for amendment of records of its determination or, if the application relates to records not held by the agency, of the fact that the agency does not hold such records.

Clause 37 provides that if an agency has refused to amend its records the applicant may, by notice, require the agency to add to those records a notation specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading and if the applicant claims the records to be incomplete or out-of-date, setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date. An agency must comply with the requirements of a notice and notify the applicant of the nature of the notation. If an agency discloses to any person any information in the part of its records to which a notice relates, the agency must ensure that when the information is disclosed a statement is given to the recipient stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading and setting out particulars of the notation added to its records and the statement may include the reason for the agency's refusal to amend its records in accordance with the notation.

Clause 38 gives a person who is aggrieved by a determination of an agency to refuse to amend its records a right to a review of the determination and sets out how an application for review is to be made. On an application for review the agency may confirm, vary or reverse the determination under review. An agency that fails to determine an application for review within 14 days after its receipt is, for the purposes of the measure, to be taken to have confirmed the determination in respect of which a review is sought. However, a determination made by a Minister or the principal officer of an agency is not subject to review under this clause.

Clause 39 provides that a person who is dissatisfied with a determination of an agency that is liable to internal review after review by the agency or who is dissatisfied with a determination not subject to internal review may apply for a review of the determination to the Ombudsman or the Police Complaints Authority. The application must be directed to the Ombudsman unless the determination was made by a police officer or the Minister responsible for the Police Force, in which case it must be directed to the Police Complaints Authority. Where such an application is made, the Ombudsman or Police Complaints Authority may carry out an investigation and, if satisfied that the determination was not properly made, direct the agency to make a determination in specified terms. There is no power under this clause to inquire into the propriety of a ministerial certificate.

Clause 40 provides that a person dissatisfied with a determination of an agency after review by the agency may appeal against the determination to a District Court. On such an appeal the court may confirm, vary or reverse the determination to which the appeal relates or remit the subject matter of the appeal to the agency for further consideration and make such further or other orders (including orders for costs) as the justice of the case requires.

Clause 41 sets out the time within which an appeal must be commenced.

Clause 42 provides that an appeal will be by way of rehearing and that evidence nay be taken on the appeal. It also provides that where it appears that the determination subject to appeal has been made on grounds of public interest and the Minister makes known to the court his or her assessment of what the public interest requires in the circumstances of the case subject to appeal, the court must uphold the agency's assessment unless satisfied that there are cogent reasons for not doing so.

Clause 43 deals with the consideration by a District Court of restricted documents.

Clause 44 provides that if, as a result of an appeal, the District Court is of the opinion that an officer of an agency has failed to exercise honestly a function under the measure, the Court may take such measures as it considers appropriate to bring the matter to the attention of the responsible Minister.

Clause 45 provides for an appeal to the Supreme Court on a question of law.

Clause 46 deals with ministerial certificates as to restricted documents.

Clause 47 sets out how notices that an agency is required to give by this measure may be served.

Clause 48 puts the burden of establishing that a determination is justified on the agency.

Clause 49 provides that, for the purpose of any proceedings, a determination under this measure that has been made by an officer of an agency is to be taken to have been made by the agency concerned.

Clause 50 provides that if access to a document is given pursuant to a determination under the measure and the person by whom the determination is made believes in good faith, when making the determination, that the measure permits or requires the determination to be made, no action for defamation or breach of confidence lies against the Crown, an agency or an officer of an agency by reason of the making of the determination or the giving of access and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the author of the document or any other person by reason of the author or other person having supplied the document to an agency or Minister.

The clause also provides that neither the giving of access to a document pursuant to a determination under the measure nor the making of such a determination constitutes, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

Clause 51 provides that if access to a document is given pursuant to a determination under the measure and the person by whom it is made honestly believes, when making the determination, that the measure permits or requires the determination to be made, neither that person nor any other person concerned in giving access is guilty of an offence merely because of the making of the determination or the giving of access.

Clause 52 provides that a person acting honestly and in the exercise or purported exercise of functions under the measure incurs no civil or criminal liability in consequence of doing so.

Clause 53 empowers the Minister, by notice in the *Gazette*, to establish guidelines for the imposition, collection, remittal and waiver of fees and charges under the measure, sets out the matters the Minister must have regard to in establishing such guidelines, provides for the recovery of fees and charges and empowers a court to reduce a fee or charge that in the court's opinion is excessive.

Clause 54 requires the Minister to report annually to Parliament with respect to the administration of the measure and requires agencies to furnish to the Minister such information as the Minister requires for the purpose of preparing the report.

Clause 55 empowers the Governor to make regulations.

Schedule 1 sets out classes of exempt documents.

Schedule 2 sets out exempt agencies.

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

ADJOURNMENT

At 3.27 p.m. the Council adjourned until Tuesday 19 February at 2.15 p.m.