LEGISLATIVE COUNCIL

Wednesday 20 February 1991

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

QUESTIONS

BAIL LAWS

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

Leave granted.

The Hon. K.T. GRIFFIN: Information has been provided to me that the Ingle Farm Caltex Service Station was robbed on Sunday, 17 February 1991. Those who are charged with that armed robbery with a firearm appeared in court on Monday, 18 February. My information is that the defendants were released on bail. On that same day (Monday, 18 February), in the evening there was an armed robbery at the Salisbury Highway Caltex Service Station and the same defendants who were released on bail on the Monday morning were apprehended and charged with the armed robbery of the Salisbury Highway Caltex Service Station. My information is that on Tuesday morning (the 19th) they were again released on bail.

The person who has drawn this matter to my attention is incensed at this second release on bail. That person says that there is another case in the Para Districts Court where a person has been charged over a period of four months with at least seven offences—breaking and entering, stealing cars and electrical equipment and other offences—and on each occasion that person has been released on bail. Periodically, there have been other instances of release on bail where a person has been on bail previously, and concern has been expressed about that type of situation.

While one acknowledges as a matter of principle that those charged are innocent until proved guilty, nevertheless, if there is a reasonable prospect of defendants re-offending, the community has a right to expect bail to be refused. This is more so where serious criminal behaviour is alleged. My questions are:

1. Will the Attorney-General investigate the granting of bail in respect of the charges arising out of the two Caltex service station robberies and determine what submissions were made by the police in respect of bail and whether the granting of bail was proper and ought to be the subject of a review in each case?

2. As the Bail Act has been operating for about five years and, as I recollect, the last review was in 1986 or early 1987, will the Attorney-General indicate whether any general review of the operation of the bail laws is planned? If not, will he give consideration to such a review; if so, will he indicate when that is likely to occur?

The Hon. C.J. SUMNER: The honourable member would know, I assume, as a former Attorney-General, that the question of bail is not a matter for me to determine; that in this State questions of bail are determined by courts, not by the Attorney-General. The general point needs to be made, or at least the honourable member needs to be reassured, that the question of bail is a matter for the courts to determine, and that is as it should be as the matter of bail deals with the liberty of the subject and it is appropriate that independent magistrates make decisions relating to the granting of bail.

Obviously, I am not aware of this particular case; indeed, the honourable member has not provided me with even sufficient detail to have the matter examined. But, if he does provide me with the information, I will certainly examine the matter and ascertain what the attitude of the police prosecutor was to the question of bail.

At this stage there is no intention to review the Bail Act. It was reviewed a few years ago and some minor amendments were made to it, as I recollect. There is a right of review which exists in the prosecution authorities, and that right of review was introduced in the Bail Act by this Government when it rewrote that Act. Prior to that the bail provisions did not contain any right of review on the part of the prosecution. That right of review is now in law as a result of the legislation introduced by this Government.

Normally it is a matter for the police to advise the Crown Solicitor if a police prosecutor thinks that a review of bail is indicated in a particular case. I do not know whether it was indicated in this case, but obviously I can ascertain that. In other words, if a police prosecutor is dissatisfied with the decision of the magistrate then an application can be made to review the bail decision, and that is generally a matter for the police prosecutor to determine when bail is granted by the courts.

The remand in custody rates in South Australia are higher than in most other States of Australia. We have, and indeed have traditionally had, a higher remand in custody rate than most other States. It is certainly very much higher than it is in Victoria, and that is also a matter that has to be taken into account. In fact, it is difficult to find out why the remand in custody rates in South Australia are higher than elsewhere, but the fact is that they are. As I said, the question of bail is a matter for the courts. In this particular case I do not know what the attitude of the police prosecutor was, but I will check and bring back a reply.

TANDANYA

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Tandanya.

Leave granted.

The Hon. DIANA LAIDLAW: In relation to the appointment of Mr George Lewkowicz as temporary administrator for Tandanya, it remains unclear what his specific responsibilities are to be, whether he has been appointed by the board or by the Minister, and to whom he will be reporting. For instance, will his responsibilities be confined to the reorganisation of financial management practices or in trying to bring some order to the problems confronting Tandanya? In the latter case, will he be seeking to uncover the reasons for the budget blowout over the past six months?

In recent times I have received advice from former employees and others associated with Tandanya of serious financial malpractice and abuse of funds at Tandanya by members of the board and senior staff. I have been told that senior management, in particular the Director, has regularly enjoyed extended and extravagant lunches and that the accounts for those, together with the accounts of friends, associates and acquaintances, has been booked up to Tandanya. I have also been told that the Chairman was inclined to borrow funds from Tandanya for use at the Adelaide Casino, and that the Chairman and other members of the Tandanya party who toured overseas last year used Tandanya funds for gambling at casinos in various European cities. That advice has come to me via a member of the party that toured overseas.

I ask the Minister to detail the terms of Mr Lewkowicz's duty statement and to say whether such terms include the investigation of alleged financial abuse and malpractice at Tandanya. If not, who will be investigating such matters—or does the Government merely hope to sweep under the carpet concerns about financial abuse and malpractice at Tandanya? I should say that these concerns have been doing the rounds of Adelaide for some time and, as a long-term associate member of Tandanya, I am concerned about such rumours. I hope that as part of this investigation into Tandanya these matters will be investigated and, it is hoped, resolved.

The Hon. ANNE LEVY: I, too, have heard these rumours but, as with all rumours, I will withhold judgment until more facts are available. The terms for Mr Lewkowicz are currently being drawn up in detail by Crown Law and so they are not available at this moment. As soon as they have been drawn up I shall be happy to make a copy available to the honourable member. There is no doubt that Mr Lewkowicz is a public servant and as such is responsible to the Government, but he will also be reporting to the board of Tandanya and his tasks will certainly include sorting out the financial state of Tandanya and the status of various accounts that are as yet unpaid. Before proceeding further, we will need to wait until Crown Law has provided the document that will specifically set out Mr Lewkowicz's responsibilities and accountability.

ROAD SAFETY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister for Local Government Relations, representing the Minister of Transport (although I am sure this matter will be of more than passing interest to the Minister of Small Business), a question about road safety.

Leave granted.

The Hon. L.H. DAVIS: In the past 24 hours I undertook a survey of five automotive, mechanical and brake repair firms that revealed that the severe economic recession has meant that many owners of cars, commercial vehicles and trucks are either postponing necessary repairs or maintenance work, attempting without necessary experience to do it themselves or simply not doing it. In other words, there is a severe danger to lives and property as a result of cars and other vehicles being driven that are blatantly unsafe. This concern was expressed to me by a number of people to whom I spoke.

One well established and reputable firm in the repair of commercial vehicles reported a 50 per cent downturn in business—and he knew his customers were not going to other people; they were simply deferring the work. In fact, 9.5 per cent of the moneys outstanding to him are in the hands of collectors. He listed for me a number of shortcuts which are being taken by persons or firms owning commercial vehicles and which, in his opinion, are of great concern when one considers the importance of road safety: for instance, blocking off the hydraulic line to one wheel where the brake mechanism has failed so that there are brakes on only three wheels; not fixing steering defects; buying spare parts and repairing imperfectly what are often sophisticated hydraulic systems; instead of replacing rusted wheel cylinders, just fitting new kits; inappropriate linings on brake shoes; and, to save fuel, taking off the anti-pollution equipment.

As one battling owner said, 'At the moment, for many people, their antidote for problems with their car is like taking an Aspro for cancer.' It is a matter of public interest, and I ask the Minister to be kind enough to refer it to the Minister of Transport, given the nature of concerns expressed by people in that industry.

The Hon. ANNE LEVY: I am happy to refer that statement to my colleague in another place. I am not sure what is the question, but if there is a question to be answered I will bring back a reply.

RUDI ROODENRYS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Local Government Relations a question about the local government bureau.

Leave granted.

The Hon. J.C. IRWIN: On 1 January this year the Bureau of Local Government Services came into existence as part of the memorandum of agreement signed by the Premier and the President of the Local Government Association. The bureau's Chief Executive Officer is Mr Rudi Roodenrys, formerly responsible for local government within the old Department of Local Government. I understand that Mr Roodenrys has resigned for a number of reasons, including not being offered a contract for his time at the bureau, and that the bureau only exists until 30 June 1992. My questions are: why was Mr Roodenrys not offered a contract? Has the Minister appointed a new Chief Executive Officer and, if not, will the Minister advertise the terms and conditions of the position?

The Hon. ANNE LEVY: I understand that Mr Roodenrys has resigned because he has applied for and accepted a senior position in local government in Tasmania, and I certainly wish him well in his new career. Discussions about a replacement for him are occurring with the Local Government Association and the management committee of the bureau.

RURAL CRISIS

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Tourism, representing the Minister of Agriculture (and probably the Minister of Family and Community Services), a question about the rural crisis.

Leave granted.

The Hon. I. GILFILLAN: The plight of the rural sector in South Australia and across the nation is becoming more acute with each passing day. Officially, we are in a recession. However, more and more people in the community believe we are on the path to a depression. In this State, hundreds of people and families are leaving, or preparing to leave, the land, not because they want to but because they no longer have any income. It is a widely held opinion that these people need a 'stay on the farm' allowance. Without it, we are witnessing the start of an agricultural exodus: rural refugees migrating off the land. They are packing their belongings into the back of utes and coming to the city where they still cannot find work, and will have to receive unemployment benefits. I speak as a farmer on Kangaroo Island, where that process has already begun.

The wool industry, as everyone knows, faces a bleak and uncertain future in the immediate term. Wheat growers will see their incomes knocked down by an estimated 79.5 per cent—there are not too many people in metropolitan Australia who are sacrificing 79.5 per cent of their income—

principally because of US subsidies to Gulf allies. I indicate that there is an opinion that, if the Americans want to subsidise their allies' wheat sales in the Gulf area, they ought to buy Australian wheat at a fair market price and then give that wheat at a subsidised rate to the people whom they want to benefit, rather than punishing their so-called friends, Australians, by chopping them out of the market. Fruit growers are, and have been, overrun by cheap and often inferior products dumped on us by foreign producers.

The Commonwealth Government is attempting to provide some relief through the Rural Adjustment Scheme, which it funds and which is administered by the States. The scheme offers subsidised loans at competitive market rates, but many cannot afford the repayments. Household support packages, equivalent to unemployment benefits, are available for up to two years, if you walk away from the farm. In other words: desert your life's work, your livelihood. A family allowance scheme is available after a lot of hassling but is worth between only a quarter and a third of the unemployment benefit, if you are lucky enough to get it.

A rural counselling program is available in some communities which are already in crisis. However, despite this, on contacting the office of the Federal Primary Industries Minister, John Kerin, today we were informed that only one in six of those people applying for rural assistance received any support—one in six. The question must be asked: what happens to the other five?

In the past couple of days I have again asked the Federal Government and its representatives to consider joining with banks to renegotiate farm loans over a longer period at greatly reduced interest rates, but I have been told that Canberra will not, because the banking industry has been deregulated and to become involved in such a way would be contrary to policy. Unless that policy is changed, it is a widely held belief that those interest rates and those terms of loans will drive people into bankruptcy and off the land.

Rural South Australians are hurting right now. They need immediate help, and we as a community must act without delay if we are to prevent our rural infrastructure from collapsing. We must offer people the chance to stay on the farms and keep vital rural assets maintained and working, ready for the upturn, which will inevitably occur. However, when it occurs, if we have decimated the population of our rural farmers (the people with the skills) and decimated the people who are supporting the towns, the shops, the schools—the supportive infrastructure of rural South Australia—there will be nothing left to really start that engine ticking over again.

Prior to framing these questions to the Minister, I repeat to the Council that we are on the brink of a crisis the likes of which I do not believe anyone in South Australia in the rural sector has lived through before. We at least have the breathing time to do something now that can intervene to prevent what will be a human tragedy of massive proportions. I ask the Minister:

1. Does he agree that there is a real crisis of massive proportions emerging in rural South Australia?

2. Will the State Government undertake to develop immediately a 'stay on the farm' allowance, equivalent to unemployment benefits, and fight for Federal involvement in such a scheme?

I must say that, on Kangaroo Island (where the situation is extremely desperate), one accountant has persuaded his clients' wives—those who are not actually involved in partnerships on the farms—to apply for unemployment benefits as a last desperate way to keep these people on the land. The partners on the farms cannot apply for unemployment benefits because they are not prepared to walk away from their farms and leave them deserted to take a job where it is offered. In many cases, the asset valuation precludes them, because of the ridiculous valuations which are put on rural properties that make a negative or nil income. I am asking the Government to consider and implement a stay on the farm allowance.

Will the Minister or the Government fight for Federal involvement in such a scheme? If not, what strategies does the State Government have for dealing immediately with the rural crisis? I ask the Minister to answer as best she can from the evidence which she now has and also to refer the question to her colleagues.

The Hon. BARBARA WIESE: I will be very pleased to refer the honourable member's questions to my appropriate colleagues. I can say that the Minister of Agriculture is very much aware of the current situation in which South Australian and, indeed, Australian farmers find themselves at the moment and is very concerned about that. I know that he has taken up personally numerous issues with his Federal counterparts, and I am aware also that the Premier has been involved in some of these discussions. As to the detail of such representations and actions that the Minister of Agriculture in particular is taking on these matters, they are questions that I will have to refer to him for a detailed response.

OPEN ACCESS COLLEGE

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about the Open Access College.

Leave granted.

The Hon. R.I. LUCAS: During the first week of the school year I received a number of complaints about the inability of the Government to have the Open Access College fully operational at the start of the 1991 school year. For example, I received a letter from the north-eastern branch of the Isolated Children's Parents Association. Part of that letter states:

> At our last meeting of the North-East ICPA held on 9 February concern was expressed at the inability of the Open Access College to be fully operational at the beginning of the school year, as had been guaranteed, thereby causing considerable inconvenience to some students.
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> In particular, class teachers have not yet been appointed, books not received, new telephone numbers not available, difficulties with the switchboard and no assistance available for new students, causing considerable hardships and setting children behind in their year's program.
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> One of the strategies of the Open Access Plan was to recruit itinerant teachers in term 4 prior to the year of commencement and assign them to the Open Access College for training and in-service by college personnel. This has not been implemented; in fact, one itinerant teacher was appointed at the beginning of this school year.

In that first week I also received a telephone call from a principal at a school offering open access education to a large number of year 11 and year 12 students. He told me that he had been told by an officer of the Open Access College that resource material would not be available until mid to late February of this year for his year 11 and year 12 students.

In the second week of this year I tried to ring a teacher at the Open Access College and was told that there was no telephone extension; there was a teacher there but I was not able to speak to the teacher because there was no extension. I asked whether I could leave a message for the teacher and was told that there was no way of doing that, either.

The Hon. R.J. Ritson: Leave an apple instead!

The Hon. R.I. LUCAS: I could not even leave an apple. Whilst the Minister of Education has sought to indicate that a telephone was operational from day one of the school year, which is technically correct, no extensions were available to most of the teachers at the Open Access College when either parents, students or, indeed, the shadow Minister of Education rang to try to contact individual teachers.

This week, which is the third week of the school year, my office has been contacted again by a number of families expressing their concern about the inability of the Government to have the Open Access College fully operational. Some of those families have indicated that in the third week of the school year their children still have not been contacted by their teacher at the Open Access College. The Burra Community College, which has 38 year 11 and year 12 students doing open access education, did not receive any resource material from the Open Access College until Monday of this week, and those 38 year 11 and year 12 students spent a good part of the first two weeks of this school year having to struggle by with whatever material the teachers at the schools could provide in the absence of resource material from the Open Access College.

Today, I have received further examples of problems with the Open Access College. The teachers have told me of examples of groups of students of individual teachers at the college being changed three or four times in the first two weeks of this year. Students who have shared the same teacher group for years have been separated unnecessarily by the administration of the Open Access College. Parents have had to drive 50 to 100 kilometres to purchase material for their own children because the Open Access College has been unable to provide the material for those families. Only one ancillary staff member is handling the dispatch of all material to students in the reception year right through to year 12.

Much of the chaos at the Open Access College has been caused by what has been described to me—and I can only agree with the description—as the ill-considered decision to move the college to the Marden High School site at the start of the school year; a time when schools, in particular, are extraordinarily busy. I have been informed that the department was advised that to make the move at this time of the year would be a recipe for disaster. Whilst all this is going on, the Minister is wandering around in a coma-like trance mumbling that there is no problem at the Open Access College. My questions are:

1. Will the Minister urgently provide extra ancillary staff in the dispatch area and whatever other short-term help may be required to get the Open Access College fully operational?

2. Who made the decision to move the Open Access College to the Marden High School site during the busy period at the start of the school year, and did the Education Department receive advice that such a move should not be contemplated at the start of the school year?

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

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Emergency Services a question on speed cameras.

Leave granted.

The Hon. J.F. STEFANI: Members would be well aware that, since the introduction of speed cameras about six months ago, more than 35 000 traffic infringement notices have been issued by the Police Department.

The Hon. M.J. Elliott: Have they got you yet?

The Hon. J.F. STEFANI: No, not yet. This has resulted in a huge grab of over $3.5 million from offending motorists who have been photographed by the speed cameras and have been issued with fines without the loss of demerit points. At the present rate, it is anticipated that more than $7.1 million will be collected by the Government from fines issued through the speed camera system over the next 12 months.

Speed cameras are operated throughout South Australia, including the Hills area. I have been informed that recently at Lyndoch a 40 foot bus was photographed travelling on the main highway around a bend at an alleged speed of 98 km/h. A few days later, the unsuspecting bus operator received through the post an infringement notice and fine. Knowing that his bus could not be driven safely at such high speed on that section of the road, the irate driver made contact with the Police Department and, after making strong protestations, was advised by the police that he had a genuine case and the fine was withdrawn. In view of the complaint that I have received, my questions to the Minister are as follows:

1. What is the estimated number of innocent and unsuspecting drivers who, through no fault of their own, are issued with an infringement notice through faulty equipment function and unwittingly are asked to pay a speeding fine as they are unable to prove their innocence?

2. How many complaints of this nature have been received by the Police Department?

3. What problems have been encountered with the speed camera system and what steps have been taken to make the system fail-proof?

The Hon. C.J. SUMNER: I will refer those questions to my colleague and bring back a reply.

STATE GOVERNMENT INSURANCE COMMISSION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the SGIC.

Leave granted.

The Hon. M.J. ELLIOTT: The State Government Insurance Commission is involved in inwards reinsurance whereby it covers the liabilities of other insurance companies for a premium. I understand that most reinsurance companies deal specifically in that area and that the majority of them are based overseas. The involvement of a relatively small and local government insurance commission in this area exposes it to claims stemming from major events overseas.

In the 1989-90 annual report, there is a brief mention of provision being made for losses on the inwards reinsurance portfolio as a result of violent storms in England and Europe. That provision for loss contributed to an after tax loss of $4.8 million in the general insurance fund, although I do not think there is any real indication of how much of that amount was related directly to reinsurance. That the SGIC should expose itself to suffer losses because of storms on the other side of the world is causing concern to many people. SGIC was established to provide a local insurance alternative to South Australians, not to insurance companies in England and Europe. My questions are:

1. What is the rationale behind SGIC's involvement in this area?

2. What provision has been made for claims against inwards reinsurance policies held by the SGIC?

3. What amount of money has already been paid out on inwards reinsurance policies?

The Hon. C.J. SUMNER: I will refer those questions to the appropriate Minister and bring back a reply.

BICYCLE TRACKS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister for Local Government Relations, representing the Minister of Transport, a question about bicycle tracks.

Leave granted.

The Hon. J.C. BURDETT: Constituents who are members of bicycle clubs have brought to my notice that there are a lot of bicycle tracks in Adelaide, and they hope that there will be more. I am told that it is possible to ride a bicycle from somewhere in the area of Klemzig to the sea without crossing very many roads, in the main, using bicycle tracks.

The point raised by these constituents is that, if one drives a car or rides a bicycle on the road, there are street signs and that, in particular, one is made aware of the major roads that are being crossed and the area. However, there are no signs whatever on bicycle tracks. It has been pointed out that, in the main, bicycle tracks go under the bridges of major roads, such as South Road and, if the cyclist does not know the area, he does not know the road under which he is passing. The simple suggestion has been made to have the name of the road—for example, South Road—displayed on the bridge under which the bicycle track passes. Will the Minister give consideration to this matter?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply, although I suspect strongly that this is a matter for council rather than ministerial investigation. However, I am sure that the Minister will be able to supply the appropriate answer.

PRIMARY PRODUCER EDUCATION

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister for Local Government Relations, representing the Minister of Education, a question about primary producer education.

Leave granted.

The Hon. PETER DUNN: An article by Linda Briggs in today's *Australian* titled 'Farmers learning on the job' states:

> Age and structural barriers are more important impediments to agriculture and the rural sector than the lack of formal education among farmers, according to agricultural academics.
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> The academics were responding to a recent report from the Victorian College of Agriculture and Horticulture which found less than 25 per cent of the farm work force possessed more than a lower secondary education.
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> The report prompted the shadow Minister for Science and Technology, Mr Peter McGauran, to say Australian farmers, who are among the most poorly educated in the western world, were ill-prepared to deal with the agricultural industry which was on the brink of becoming a high technology enterprise . . . The average age of farmers is in the mid-50s and their formal education may be to the intermediate certificate (equivalent to Year 9), he said. 'While they don't have a formal education, they have accumulated knowledge by attending conferences and workshops and making the most of advisory services run by departments.'

Given that there appears to be no future for young farmers, taking into consideration that the average age of farmers is greater than 50 years and, as the Hon. Mr Gilfillan pointed out, they cannot get unemployment benefits at the moment because the assets test does not allow them to get those benefits and they cannot even get off their farms to gain an education, there seems to be a recipe for disaster some years down the track not only for the rural sector but also for those in the city.

We have seen how poorly secondary industry has performed; it has been propped up by primary industry for a considerable time. Primary industry is looking to be propped up for a short time while we are in this deep depression. So I ask: what plans does the State Government have for a more adequate education process for rural workers?

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

ANSWERS TO QUESTIONS

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question about answers to questions.

Leave granted.

The Hon. R.J. RITSON: On 20 November I asked a question of the Premier through the Hon. Mr Sumner. That question was in two parts: one part, to which most of the explanation pertained, was in relation to cuts to the budget of the Whyalla Hospital; the other part referred to increases in State taxes and charges. In effect, the question was:

> Did these signal some budgetary impact upon the State of which we were not yet aware?

The answer could only have been 'Yes' or 'No', but the answer I received reads as follows:

> 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.

Since the matter of the State Bank has come to light, my perception that the Government was garnishing extra money in anticipation of this crisis with the introduction of the FID rises and similar measures, has been proved to be right. So, the answer, to the question, as I perceive it is 'Yes'.

The gobbledegook answer I received does not give any indication as to whether the Premier meant 'Yes' or 'No'. So, I ask whether he will state whether the answer means 'Yes' or 'No', or whether it just means that 'the Government as a matter of policy provides timely and detailed information on the State's budgetary and economic position', etc. That really is the most appalling answer I have ever received. It is meaningless. I ask again: does the Premier mean 'Yes' or 'No'?

The Hon. C.J. SUMNER: I will refer it to the Premier and see whether he has anything more to add. I think the situation simply is that where matters are on the public record through budget statements and the like, there is little point in asking questions about them because members should be able to glean the information from the publicly produced documents. Whether the Premier has anything to add to that, I do not know. I will refer it to him in case he feels that any further reply is necessary.

ODEON THEATRE

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts a question about the Odeon Theatre.

Leave granted.

The Hon. DIANA LAIDLAW: In December the Minister will recall that she and the Minister of Education (Mr Crafter) decided to set up a review of the operation of the Odeon Theatre, I suspect as a means to defuse considerable public agitation about a proposal by the Youth Arts Board

to close the theatre. In December the Minister indicated that it would be set up within a few weeks and that the report would be finalised within two months.

However, from statements issued by the Minister for the Arts on 6 February, it is apparent that it took two months to set up the inquiry. Four days later, after the announcement of the inquiry, the Minister launched the program for the Youth 'Come Out' Festival to be held in May this year. Along with others in attendance at the launch of the excellent program arranged by Mr Fitzgerald and others associated with Carclew for 'Come Out,' I was interested to note that the Odeon Theatre is to be used on one occasion only for the Youth Arts Festival.

This is our special and unique Odeon Theatre for youth performing arts in this State, and indeed this country; yet, during the forthcoming 'Come Out' festival it is booked for one purpose only and on one day—and that is a writers' seminar, not even a performing arts activity. My questions are:

1. Does the decision by the organisers of 'Come Out' reflect a prejudgment of what the review team will recommend in terms of the fate of the Odeon Theatre? Are they assessing that it will be a *fait accompli* that it will be closed, and therefore have made a judgment not to book anything at that theatre?

2. Will the Minister indicate the terms of reference for the Odeon review, the composition of the committee and the chairperson of that committee? I note that the Minister's statement in the *Advertiser* of 6 February indicated that the committee would be headed by Ms Helga Kolbe of the Education Department, but a statement in the local *Messenger* this week indicates that the review team will be headed by the Arts Department Program Director, Ms Jo Caust.

The Hon. ANNE LEVY: The answer as to whether there is any pre-judgment is 'No.' If anyone has made a pre-judgment it would be 'Come Out'. There is no reason of which I am aware relating to the committee that could have encouraged or led to that decision by 'Come Out'. In terms of the committee that was set up, the honourable member seemed to imply that we had been tardy in setting up the team. I indicate that January is the month when a lot of people take their annual leave. I certainly wished to ensure that the committee was very competent, capable and wide ranging, and because many people were on annual vacation in January it took some time to contact people and to ask them whether they would serve on the committee.

The members of the review committee are Jo Caust, as chair of the committee. As the honourable member stated she is Director of Arts Programs in the Department for the Arts. There is Helga Kolbe from the Education Department; Malcolm Gray, who is the chair of the South Australian Youth Arts Board; Brian Debnam, the head of the Centre for the Performing Arts, which is part of the Adelaide TAFE College; Elizabeth Mansutti, who is an author and an expert in children's television presentations; and Glen McGillivray, who was recently appointed Director of the Australian Theatre for Young People.

I am sure that the honourable member would agree that this is a very highly qualified and competent committee. I regret the incorrect statement published in the *Advertiser* which was due to the inability of someone in the *Advertiser* to read a press release correctly. The correct information was supplied to the *Advertiser*, but it was obviously misread and consequently the incorrect information was published the next day. With regard to the terms of reference, they have also been made public and were published in the *Advertiser*.

The Hon. Diana Laidlaw: Did the *Advertiser* get that right?

The Hon. ANNE LEVY: I think that was correct. However, I am happy to read the terms of reference into *Hansard*, as follows:

The committee will at its discretion conduct public hearings and interview appropriate groups and individuals to identify the range of youth performing arts training services offered at the Odeon Theatre since its inception; identify the range of groups and organisations which used the theatre during the last 12 months; comment on the current youth performing arts program and the Odeon Theatre's role in that program; identify what, if any, maintenance and upgrading might be required at the Odeon for the remainder of the lease period and indicate what its projected annual operating costs might be; comment on any service delivery options for the youth performing arts program which are identified and theatres which could be used for this program; comment on any changes to the management structure for that program which are identified; and recommend an appropriate course of action for continuation of the youth performing arts program in South Australia.

The committee has commenced work. The members of the committee have indicated to me that they do not expect to complete their work until April. As the task of collecting submissions, interviewing people and doing their evaluations is planned as a fairly extensive program, they expect not to be able to complete their report until April.

COMPULSORY UNIONISM

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about compulsory unionism.

Leave granted.

The Hon. J.C. BURDETT: I have in front of me five letters from workers at the Strathmont Centre, and approaches have been made by many others as well, people who have not sent me letters. A number of workers at Strathmont Centre had been members of the Federated Miscellaneous Workers Union of Australia, South Australian branch. They were dissatisfied with the services of the union and resigned. As a sample, I shall read one of the letters, dated 30 January 1991:

Re: Resignation from FMWU

I refer to previous correspondence addressed to you and your signed resignation from the FMWU dated 17 July 1990—

and note the date—

and received in this office on 6 August 1990. In accordance with the rules of the union and in particular Rule 7—Resignation of Member, you are required to pay three (3) months dues if it is your intention to continue working at Strathmont Centre. The amount you are required to pay the union is $40.50. Upon receipt of this amount you will have complied with the registered rules of the union.

The S.A. Branch assures you of our continuing commitment to the improvement of your wages and conditions of employment and other associated benefits. May I suggest that now is an appropriate time for you to reconsider your decision to resign from the union and for you to renew your membership. Please feel free to contact me or any of my branch officials should you have the need to do so.

My question is: does the Government, and the Department of Labour in particular, go along with the position that, when a member of a union who works on a Government site has resigned, and has resigned some time ago, he must pay the three months dues if it is his intention to continue working at, say, Strathmont Centre? Surely, the suggestion contained in the letter is that such a person cannot go on working at Strathmont Centre if he does not pay the so-called arrears.

The Hon. G. Weatherill: They abide by the rules, and the rules say that you will give three months notice.

The Hon. C.J. Sumner: As a lawyer you ought to know about constitutions.

The Hon. J.C. BURDETT: By way of interjection, it has been suggested that as a lawyer I ought to know about rules—okay, but the rules can only apply to membership, and what these people are saying is that they have to pay the dues if it is their intention to continue working at Strathmont Centre. In other words, if you do not pay you cannot go on working. My question is: is that the policy of the Government?

The PRESIDENT: I call the honourable Attorney-General. I draw his attention to the time.

The Hon. C.J. SUMNER: The facts seem to be somewhat in dispute. However, I will refer the honourable member's question to the appropriate Minister and bring back a reply.

COASTAL DEVELOPMENT

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

That the regulations under the Planning Act 1982, concerning coastal development and commission powers, made on 14 February 1991, and laid on the table of this Council on 19 February 1991, be disallowed.

In moving the motion, I do not intend to debate it in any great detail—that I will leave to my colleague Mrs Pfitzner and my colleague in another place, the shadow Minister for Environment and Planning (the Hon. David Wotton) who has moved for the disallowance of the regulations in that House. There are a number of reasons why the Liberal Party objects to these new regulations as tabled yesterday, following approval by Cabinet and gazetted on 14 February 1991.

This exercise is but one example of the contempt or lack of consideration this Government has for the memorandum of the signed agreement between the Premier and the President of the Local Government Association. The whole basis of the agreement was the negotiation of an extensive range of new arrangements between the State Government and local government, not just matters under the former Minister of Local Government but all matters between Government and local government—particularly those matters that have been passed on, for good or bad, with local government at the end of the line to give approval and administer certain activities.

The Liberal Party and I have no great problem with the general principle of giving to local government many of the powers and responsibilities formerly carried out or carried out now by the State Government. However, this has to be achieved by negotiation, and that negotiation would have to include who picks up the financial responsibility for exercising these new powers and who picks up any other responsibility in connection with new powers. Planning matters, be they of local or State significance, must be spelt out and set down in very clear terms without ambiguity—if that is possible. I understand how difficult it is to set down some of these planning matters without having some ambiguity. Once these matters have been agreed on by all parties involved, there should be no great problem in letting local authorities give approval as it affects their own area.

I have had no contact whatsoever from the Local Government Association about these new development control regulations in relation to whether or not it wants to take them on or whether individual councils want to or can pick up any financial responsibilty that will go with them. I do not have to be consulted and neither do any of my colleagues because we are not the Government. But the solemn undertaking of the Local Government Association to me was that I would be, on behalf of the Opposition, advised on all matters being negotiated with the Government. I have not been consulted and, in the absence of any advice from the local government or its association, I will take it that the executive of the Local Government Association and its council members do not really know what power it is that is being given to them in these regulations.

In the present climate, these new regulations should be arrived at by the negotiating process which has been outlined by the Minister and by so many people since it was set up by the memorandum. If none of the Cabinet Ministers are familiar with what was signed by the Premier on their behalf, they had better become familiar with it, and quite quickly. I will immediately initiate—

The Hon. Anne Levy: That is not to say that departments do not negotiate with the LGA as they always have done.

The Hon. J.C. IRWIN: That's okay, but I am indicating that I have had no indication that there has been any consultation, and I have had an agreement with the LGA that it would keep me, on behalf of the Opposition, in touch with what was being negotiated in general terms.

The Hon. Anne Levy: I'm sorry: I thought you were talking about the negotiating team, which is different from the LGA.

The Hon. J.C. IRWIN: I take your point there, but I still would say that—and I think I have probably already said—that even in the case of these regulations, which relate to planning, they affect local government and might well involve a financial responsibility in administering the new arrangements. That ought to be considered as part of the negotiation team process, and I have complained about that deficiency. I will immediately initiate consultation with the Local Government Association on the regulations that have been gazetted and now tabled in the Council, and I hope to be in a position at the end of the debate—and I imagine that will be in a couple of weeks time—to say something more about this matter.

The proposal covered in regulations is to transfer planning powers from State to local government in areas of State significance. On 4 December 1990, Cabinet approved a number of procedures in order to provide short-term improvements to the planning system. One such procedure approved was the proposal to transfer these planning powers from State to local government in areas of State significance. The official announcement was made on 28 December 1990. I do not know how many people actually saw that, or even would be interested in an official announcement if it was made three days after Christmas when everyone had their mind on other things. I would be cynical enough to suggest that that date was picked for some reason.

In making the announcement the Premier used as his platform the planning review, but the decision and announcement were made without discussion with the planning review reference group, which consists of representatives of the relevant bodies invited to play an advisory role in the review process. The Cabinet submission states that discussions were held with the Department of Local Government, and there is some understanding that consultation occurred with the Local Government Association. However, none of the councils affected by this decision was consulted directly.

The Hon. Anne Levy interjecting:

The Hon. J.C. IRWIN: But there are councils which, under the regulations, have to carry out the powers conferred on them. I believe you should consult with not only the LGA—

The Hon. Anne Levy: The understanding was that we consider with the LGA.

The Hon. J.C. IRWIN: I think you should consult with the councils as well that are directly concerned.

The Hon. Anne Levy interjecting:

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

The Hon. J.C. IRWIN: We are talking about areas of State significance. I believe that the councils that will have the—

Members interjecting:

The PRESIDENT: Order! The honourable Mr Irwin has the floor. Members can enter the debate at a later stage if they so desire.

The Hon. J.C. IRWIN: Whatever were the agreed channels of consultation, the councils that were to directly carry out the State responsibility were not consulted. If that is not a fact, the Minister will let me know if she makes a contribution to the debate. As I have said previously, I support local government having a greater role to play in making planning decisions; that was the very basis of the introduction of the planning Act in 1982 by my colleague the Hon. David Wotton. The Liberal Party is of the opinion that decisions relating to areas of State significance should involve some input from the State authority. Local councils that have made representations to the Liberal Party have expressed grave concerns that they were not consulted and that no commitment had been given by the Government to provide the resources to enable councils to carry out this additional significant responsibility.

I am aware that for some time local government has been expressing a concern that, while the State Government has been keen to hand over extra responsibility to councils, it has not been prepared to provide the financial support to assist with the administration of that responsibility. That has been a cry from local government for a number of years and, with some luck and good management of the consultation and negotiating process, that cry might stop by the end of June 1992 when new arrangements for responsibilities for local government will be in place, and hopefully the funding for them will also have been agreed. The councils that carry out that responsibility will then be accountable to their own electors and ratepayers for what they have done. That is exactly what the negotiating process is all about, unless either the Government or the other side of local government want to turn it into something else.

Finally, it is our opinion that this decision to transfer powers should not be made without the appropriate opportunity for debate in this Parliament and in this Council. I urge members to support this motion.

The Hon. BERNICE PFITZNER: I was dismayed to learn that the first recommendation made to Cabinet by the South Australian planning review included the recommendation for a transfer of planning powers in several key areas from the South Australian Planning Commission to local councils. The planning review referred to the changes as 'a short-term reform', but in my view they are not only short term but also short-sighted. I have been told that members of the planning review reference group, which consists of representatives of a number of relevant organisations, were not all consulted about the changes prior to their being announced through the media on 28 December 1990. I also understand that local councils, which will be markedly affected by the changes, were not formally consulted by the Government. I hear from the Government that this, perhaps, is not the official consulting process, but commonsense should dictate to us that those local councils which are markedly affected, and those planning review reference groups that have been invited to make comment, should also be consulted.

The details of the changes to the regulations under the Planning Act were gazetted on 14 February 1991, so the new regulations currently apply. The Government's rationale behind the transfer of powers was:

1. The development plan and supplementary development plan had improved since the Planning Act was introduced in 1982. I cannot support the stated improvements as, during my time as a councillor in local government, there were regular arguments about the interpretation of objectives and principles of development control of the development plan and the supplementary development plan.

One extract from a determination in the Planning Appeals Tribunal, summed up by the Commissioner, Mr Bulbeck, reads:

> Regarding the provisions of the plan, there can usually be found objectives and planning development control principles which can be so argued as to speak either for or against a proposal . . . There is a paucity of clear cut direction.

The development plans and supplementary development plans do not have 'clear rules', as has been suggested by the planning review in justifying the recommendation.

2. The next Government rationale for changes is the suggestion of improved council expertise in planning matters. Those whom I know are currently on or close to councils which will be intimately affected by some of the regulation change inform me that the planning expertise of councils has not changed significantly since I was a local government councillor in 1988 and 1989. Furthermore, the increased workload for affected councils will severely stretch their existing staffing resources, and the more complicated planning proposals could necessitate the employment of a consultant planner.

3. The Government also claims that there will be a reduction of workload for the Planning Commission. It must be made clear that the workload involved in processing development applications must be undertaken somewhere. It is grossly unfair that those councils most affected by changes in the regulations will be expected to bear the financial cost of protecting the hills face, for instance, from inappropriate development and degradation.

4. It is also claimed that the amendments will reduce delays in the planning system caused by duplication. It could just as easily be argued that there could be even more delays with the new regulations, especially with the processing of applications for prohibited developments, which councils believe have merit and deserve consideration. There have been many such applications in the past, and there is no reason to imagine that there will not be many more in the future.

5. The Government also claims that the amendments to the regulations will maintain control at the State level through the veto over prohibited development without the cost of administration. This suggestion ignores the fact that developments designated as prohibited developments in the development plan or the supplementary development plan will, in spite of the changes to the regulations, still require assessment by both bodies, and hence will still incur the cost of administration. Furthermore, the assessments by both bodies will take place in the less optimal sequence for those areas of special State significance.

The concern about the potential erosion of the planning control at State level is real and applies to so-called 'consent' as well as 'prohibited' developments. The regulations which have been removed served a very valuable role in permitting the Government of the day to monitor exactly what was happening in areas of special State significance. It might be

said, however, that such monitoring is of no value if it is ignored. There is some suggestion that monitoring of council decisions in the past has revealed some disturbing facts which seem to have been ignored and which should perhaps be addressed by the planning review.

I seek leave to incorporate into *Hansard* a South Australian Planning Commission document which details the number of land subdivision applications that were approved by councils over a period of a month in 1987, in spite of the commission's recommendation that the applications be refused.

Leave granted.

Details of land division applications recommended for approval/refusal by SAPC and councils decisions
Survey period=Decisions received between 1 June 1987 to 30 June 1987

Area: Number of land division applications

	No objections by SAPC	Recommended for refusal by SAPC	Councils, approved contrary to SAPC advice to refuse *	Councils refused in accordance with SAPC advice to refuse	SAPC—recommended for refusal but council decision not known to date
State	966	168 *	72 (43% of *)	55 (33% of *)	41 (24% of *)
Metropolitan	404	20 *	14 (70% of *)	1 (5% of *)	5 (25% of *)
Central	323	54 *	18 (33% of *)	16 (30% of *)	20 (37% of *)
Country	239	93 *	39 (42% of *)	38 (41% of *)	16 (17% of *)

The Hon. BERNICE PFITZNER: I will identify some of the more salient points in this data document. I refer to those councils across the State that approved, contrary to the South Australian Planning Commission; 43 per cent were approved against the commission's advice. In the metropolitan area, 70 per cent of the applications were approved contrary to South Australian Planning Commission advice. In the central area, 33 per cent of applications were approved by council contrary to advice, and in the country the figure was 42 per cent. So, one sees that there is a discrepancy and a need for a monitoring device, which should be set in the State and in the body of the South Australian Planning Commission.

6. The Government also claims that the changes to the regulations reflect consistent calls by local government for the State to set strategic policy and leave administration at the local level to councils. This rationale sits very uneasily with the motion which was passed at the East Torrens District Council meeting just last night. I believe that the motion, which was passed unanimously by council, reads:

That the Department of Environment and Planning be advised that this council (the East Torrens Council) opposes the changes to the fifth and seventh schedules of the planning regulations whereby council becomes the determining authority for development within the Mount Lofty Ranges and the hills face zone. Council considers that the hills face and Mount Lofty Ranges zones are regions having an effect well beyond any particular council region and thus requires a coordinated/uniform policy approach.

Council also has the following concerns:

1. Lack of consultation; reference to a draft (underlined) planning practice circular is not really consultation with local government.

Perhaps, after hearing from the Government it was just an information document, and not consultation. The motion continues:

2. It would appear that the Government has put its policies in place through ministerial SDPs and now council has to bear the brunt of criticism from the residents as it administers those policies and also pay for the increased administrative workload with the Government still being involved and having the power of veto for prohibited applications that will flow on from the latest SDP (Mount Lofty Ranges No. 2).

This was the thrust of the council's motion. Therefore, it is my view that the rationale for the changes to the regulations as claimed by the Government is erroneous and, at best, very flimsy.

Let us now look at the actual changes that the Government has made, and made them it has. As I have already said, the changes were gazetted on 14 February 1991. The main changes are the revocation of the fifth schedule, regulation 23, and the variation of the seventh schedule, regulation 47, resulting in the striking out of certain key clauses in schedule 7, including those relating to the hills face zone, the Mount Lofty Ranges watershed, the conservation zone and the Murray River flood zone.

It must be appreciated that the specified six classes of development which have been removed with the deletion of the Mount Lofty Ranges watershed are all classified as prohibited developments in the draft of the Mount Lofty Ranges No. 2 SDP. One of the six classes which has been deleted is the division of land. However, it may well be that the final definitive version of the Mount Lofty Ranges SDP will include some specified qualification to the division of land such as contained in the Mount Lofty Ranges watershed SDP. It must be appreciated also that, in planning terms, 'prohibited' really means 'restricted' and not prohibited, and that rules and regulations exist in the Planning Act for means by which a prohibited development can be processed. This will be referred to shortly.

It should be recorded also that, for the Murray River flood zone, division of land remains in schedule 7. The fifth schedule lists the types of applications for which the local council was required, prior to the change in the regulation, to consult with the South Australian Planning Commission. The fifth schedule is now completely deleted and classes of application relating to areas like the Flinders Ranges, landscape zones and Murray River fringe zones will now be left to local councils to determine, without the advisory assistance or monitoring facility of the South Australian Planning Commission.

The issues of concern are: who pays for the extra work load involved in collecting the relevant information which was previously provided by the efficient and knowledgeable experts in the Planning Commission? Will councils denied the input from the experts in the Planning Commission be consistent in their decision making? Will different councils interpret the provision of the DP and SDP in different ways, and will they have a different vision of what is required to properly guide development into the future? Will the same council make different decisions on different days? I can foresee a lack of consistency which will be confusing, frustrating and expensive for future applicants. Will the lack of expert opinion from the Planning Commission make it easier for councils to be guided by the heart rather than the head?

Schedule 7 lists the types of applications which must be determined (that is, decided) by the South Australian Planning Commission and not councils. Some of the types of development applications which have been struck out have been mentioned already. Others include some South Australian Housing Trust developments and shopping developments in some country towns. All these schedule 7 items were included in the Planning Act regulations for a good reason. That some items are now listed in the DP or SDP as prohibited developments is no justification for their elimination. If the different councils, for instance, those making decisions relating to development in the hills face zone, are consistently voting to approve a given type of development even though it is designated prohobited, it will be increasingly difficult for the South Australian Planning Commission consistently to deny concurrence.

Expenses will have occurred, expectations raised, and time spent processing an application which the South Australian Planning Commission would have refused immediately. As a consequence of all the expended time and money, it will become increasingly difficult, for moral and humanitarian reasons, for the Planning Commission to continue to refuse to concur with a council's decision. Important planning decisions in these areas of special State significance should be coordinated and visionary. They should not be made by a council which does not have the same access to experts with experience and vision. Furthermore, important planning decisions ideally should not be made by a council which, in an endeavour to contain its council rates, might allow itself to be intimidated by a threat of costly legal action.

For developments listed in schedule 7, the South Australian Planning Commission is the planning authority. If the commission refuses to give consent for a proposed development and the applicant appeals against the decision, it will be the commission and not the council which defends the decision. However, once a class of development is removed from schedule 7, as has now occurred, the council becomes the planning authority and is responsible for defending its decisions. It must be abundantly clear that the commission has all the experts and experience to successfully defend its decision and is much less likely than council to be intimidated into making decisions which it knows to be environmentally unsound or wrong.

Finally, it is my view that such an important change to planning powers and processing should not have been allowed to creep into being as it has. Surely with constructive debate, some useful changes to the planning rules and regulations could easily be made. In my view, schedule 7 should be strengthened by the inclusion of a few additional clauses rather than being emasculated by deletions. It distresses me to see the Department of Environment and Planning attempting to divorce itself from responsible planning decision making. For these complex and far-reaching reasons, I strongly support the motion that the regulations under the Planning Act 1982 concerning coastal development and commission powers be disallowed.

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

SOUTH AUSTRALIAN FILM INDUSTRY

The Hon. DIANA LAIDLAW: I move:

That the Legislative Council calls on the Minister for the Arts:

1. To provide a clear statement as to the Government's objectives and priorities for the film industry in South Australia including the future role of the South Australian Film Corporation (SAFC); and

2. To explain why the Government in determining the terms of a rescue package ignored the following advice of consultants KPMG Peat Marwick—

(a) that further strategic analysis of changed industry and economic circumstances be a precondition for adoption of recommended option 4 (page 12);

(b) that renegotiation of existing employment contracts be a precondition for the provision of additional financial assistance to the SAFC (page 10); and

(c) that to cover the SAFC cash shortfalls with a loan rather than a cash injection was not a financially viable option because increased borrowings would increase interest charges and simply compound future deficits (page 8)?

On 9 January this year, the Minister for the Arts announced that the Government would 'make a SAFA loan of up to $2.4 million available during the next 18 months to resource the South Australian Film Corporation'. She went on to advise that the loan would be contingent upon the corporation's making major changes to its management, financial practices and staffing. At the same time, the Minister released a copy of a report by consultants KPMG Peat Marwick, whom the Minister appointed in September 1990 to report on the Film Corporation's operations and management practices following revelations of a massive operating deficit in 1989-90 plus disastrous cost overruns arising from the *Ultraman* production.

KPMG Peat Marwick stated bluntly at numerous stages throughout its report that the corporation has a severe cash flow crisis and is fighting for survival. A reference to the Film Corporation's recent financial and economic performance reveals that this is so. During the past three years, the Film Corporation incurred operating losses (after State Government grants and abnormal items) exceeding $1 million in aggregate. During this period, grants totalled $1.75 million. The corporation's accumulated losses now exceed $4 million, while net assets have been reduced from $3 million to $2 million.

For this financial year (1990-91), the consultants determined that the corporation's performance expectation is likely to deteriorate further. They note that the corporation forecast originally a deficit of $615 000 for this year, but that the best case position is now expected to be far worse while the worst case position could be an additional operating deficit of about $900 000 after making allowance for the State Government subsidy of $530 000 plus any write-off of post pre-production investment. If the worst case scenario becomes a reality, the corporation's cash shortfall this year will be about $1.1 million.

For 1991-92, the consultants forecast bleak financial results similar to those for the current year. They suggest also that, given the current financial state of the Australian film industry, such a grim outcome for the corporation could continue well beyond 1991-92. In fact, the consultants state on page 7 of their report that so many uncertainties exist in relation to the corporation's operating environment and that of the Australian film and television industry in general as to make it impossible for the consultants to project likely corporation financial results in any precise way. Therefore, it comes as no surprise to note that the first of KPMG Peat Marwick's 55 recommendations to the Bannon Government states that:

The Government review its objectives for the film industry and the appropriate role for the South Australian Film Corporation in the light of changed industry and economic circumstances.

This recommendation is all the more interesting considering that KPMG Peat Marwick's brief from the Minister was that the State Government wanted the corporation to continue to operate. On page 5 of their report, the consultants state:

A number of strategic options (including possible closure of the corporation) are discussed in this report. Our recommendations

are premised on a policy decision by the State Government to continue the operation of the SAFC.

On page 11, it is stated:

The objective of this review presupposes the continuation of the SAFC and we therefore recommend an option that is consistent with this assumption. But further strategic and industry analysis is necessary before the Government makes a policy decision on the future of the SAFC. The scope of our review covered only some of these strategic issues.

So, notwithstanding the Government's brief that the consultants come up with an option that would continue the operation of the Film Corporation, after assessing the SAFC's financial status and the volatile economic environment for the film industry for the next few years, the consultants saw fit to beg the Government to be most cautious before embarking upon any course of action to prop up the South Australian Film Corporation.

Essentially, KPMG Peat Marwick's first recommendation begs the Government to assess with great care if it wants to have a film industry in South Australia and, if so, why; and also to determine with great care what it wants to achieve by supporting a film industry and what role the corporation should play in realising such objectives. Sadly, it appears that Arts Minister Levy and the Government she serves have either failed to comprehend or have simply ignored all the wise words of caution explicitly and implicitly scattered throughout the KPMG Peat Marwick report. When the Minister released the report and announced the loan on 7 January she gave no indication that the Government had reviewed, let alone determined, its short-term and long-term objectives for the film industry or the role of the corporation within the industry and no such statement has been forthcoming since that time.

It remains unclear what the Government's objectives are for the film industry in South Australia. In fact, it is also unclear whether or not the Government has endorsed all of the consultants' 55 recommendations or merely some sections of the report and, if sections of the report only, which recommendations are unpalatable and have been discarded. Nor is it clear what the Film Corporation board's response has been to the report. In 1989, the board of the corporation flatly rejected all the recommendations for change outlined in the Milliken report, yet the KPMG Peat Marwick report echoes so many of the same concerns and recommended courses of action highlighted in that earlier report.

All this uncertainty is unhealthy. Accordingly, the first part of my motion today calls on the Minister for the Arts to provide a clear statement of the Government's objectives and priorities for the film industry in South Australia including the future role of the South Australian Film Corporation. In the first part of the motion, I am simply calling for the same clear statement of the Government's objectives that the KPMG Peat Marwick consultants called for in their report to the Minister. I trust that the Minister will use the opportunity provided in my motion to explain the Government's objectives because a wide and comprehensive understanding of what the Government actually wants for the film industry in South Australia is vital if actions to be taken on the basis of KPMG Peat Marwick's report are to be embraced in the short term and to be relevant in the longer term.

The second part of the motion calls on the Minister to explain why the Government ignored essential parts of the consultants' package of recommendations when designing their rescue package for the corporation. KPMG Peat Marwick addresses five options for the future of the corporation:

1. No change to drama production and studio operations.
2. Scale down the SAFC operations, cease drama production but continue studio operations.
3. Close down drama productions and studio operations.
4. Maintain film production and studio operations but reduce staffing and operating budget by at least $300 000 per annum and rationalise activities.
5. Reduce staffing and operating budgets substantially but also increase investment in new productions.

Of these five options, the consultants recommended that option No. 4 be adopted, but they prefaced their recommendations with a clear statement that the adoption of option No. 4 be 'subject to further strategic analysis and Government policy decisions'. As I stated earlier, it is not apparent that such further strategic analysis of the film industry has been undertaken prior to the Government's endorsing option No. 4. I believe that those in the film industry, certainly those with whom I have spoken in recent weeks, and taxpayers in general are entitled to know whether the Government undertook such an analysis and, if so, what it revealed and, if not, why not?

I labour this point not only because the Government's own consultants recommended that a further strategic analysis of the industry should be a pre-condition prior to the Government's embracing option No. 4 but also because the Government has opted for a risky and potentially unwise loan strategy as a means to help the South Australian Film Corporation overcome its cash flow crisis. In doing so the Government has ignored clear warnings by KPMG Peat Marwick about the wisdom—

The Hon. Anne Levy: What would you have done?

The Hon. DIANA LAIDLAW: —of pursuing such a course of action.

The Hon. Anne Levy: She won't answer.

The Hon. DIANA LAIDLAW: You just won't wait. I have got quite a statement to make here.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: No, the Minister is agitated because she knows that she has embarked on a risky strategy for the Film Corporation. On page 8 of its report, KPMG provides an assessment—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —of the corporation's potential deficit to the year 1992-93 after allowing for a continuation of the State Government's operating grant, with the worst scenario being $1 million in 1990-91, $1.2 million in 1991-92 and $1.3 million in 1992-93. I seek leave to incorporate in *Hansard* a copy of that purely statistical table.

Leave granted.

No. of SAFC properties realised	Deficit after Operating Grant ($'000)		
	1990-91	1991-92	1992-93
2	100	200	300
1	500	700	800
0	1 000	1 200	1 300

The Hon. DIANA LAIDLAW: Immediately following this table the consultants state:

Were significant deficits to occur, it is not considered a financially viable option for the South Australian Film Corporation to cover the cash shortfalls by borrowing thereby increasing interest costs and hence compounding future deficits. The above indicative figures therefore assume any deficits are covered by cash injections into the South Australian Film Corporation.

The Government has decided to address the South Australian Film Corporation's cash shortfall problems by means of a loan of up to $2.4 million rather than cash injections. Again, the film industry and taxpayers generally are entitled to an explanation why the Government has opted for this

loan strategy. It is a risky strategy, and not only for the reasons provided by KPMG Peat Marwick.

The fact is that the Auditor-General has repeatedly warned of the folly of such a loan strategy for debt burdened Government agencies that are essentially conducting commercial activities. To highlight the Auditor-General's concern about such practices, I refer to his repeated warnings in successive annual reports in relation to the South Australian Timber Corporation. For instance, in his report for the year ended 30 June 1988, the then Auditor-General stated with respect to the capital structure of the Timber Corporation as follows:

> In previous reports I have stated that commercial entities involved in new products (such as scrimber) need time to develop those products and establish markets. In that situation it is usual for companies involved in that type of operation to have an equity base.

This reflection by the Auditor-General is directly pertinent to the operations of the South Australian Film Corporation. The corporation is a commercial entity involved in the development of new products. If the South Australian Film Corporation is to trade its way out of its current problems it will need time to develop those products and establish new markets. In order to do this it needs the equity or capital base or the injection of cash, as KPMG Peat Marwick highlighted, not a loan incurring further debt commitments while the SAFC seeks to develop new products and establish markets.

Members know that the Government chose to ignore the Auditor-General's sound advice in relation to the capital structure of the South Australian Timber Corporation. We all know the consequences of that decision—a massive debt problem. Yet, for the South Australian Film Corporation, we see that the Government has not learnt from the disasters of the Timber Corporation. The Government is simply following the same course all over again and, in doing so, is placing the corporation in a no-win situation.

Neither my Liberal colleagues nor I—and the Minister may want to hear this—want to see the South Australian Film Corporation fail. We recognise that the corporation is an important focus for the continuation of a local film industry in South Australia—an industry that has provided countless important economic, social and cultural benefits to this State. At the very least we want to see the Film Corporation operate as a financier of productions, but as a silent creative partner in such productions. Such a structure would ensure that the South Australian Film Corporation's name was retained as a banner, which I see to be an asset in the marketing and distribution of the product for cinema and television, and that the corporation remained a focus for the local industry. I am well aware from my discussions—

The Hon. Anne Levy: Option No. 3.

The Hon. DIANA LAIDLAW: I have not confined myself to the options that KPMG Peat Marwick indicated. It does resemble that option, but I have spent a great deal of time speaking to independent film producers in this State and elsewhere in determining the minimum situation that the Liberal Party would like to see. We certainly do not want to see the Film Corporation disappear in this State. However, we are concerned that, through its loan strategy, the Government is placing the Film Corporation in a no-win situation.

The Hon. Anne Levy: So you would recommend to follow option No. 3?

The Hon. DIANA LAIDLAW: I did not say that. I said that—

The Hon. Anne Levy: You are implying option No. 3.

The Hon. DIANA LAIDLAW: I did not say that. I said that, following discussions with the industry, I have outlined what the Liberal Party would prefer to see retained in terms of the industry, that is, the bottom—

The Hon. Anne Levy: You would have taken option No. 3 from the consultants?

The Hon. DIANA LAIDLAW: First, we would not have seen the corporation in this fiasco, I would argue; and, secondly, I do not see that, because the Government has commissioned this report and I have not, I have to confine my determinations to any of those options.

The Hon. Anne Levy: So, you would throw away the consultant's report?

The Hon. DIANA LAIDLAW: No, Minister. You are so desperate on this subject that you are trying to put words in my mouth.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: No. You ordered the report because you and your Government got the Film Corporation into this mess, and I see no reason why I should be confined to it.

The Hon. Anne Levy: In no way.

The Hon. DIANA LAIDLAW: Oh, yes you did. I repeat that notwithstanding the fact that the Minister for the Arts states that the Government's loan package for the South Australian Film Corporation is designed to save the corporation—and she has repeated that again with some hysterical interjections—the Government by its own hand is burdening the corporation with further debt problems and compromising its viability and its future.

I remind members that at no time since the Minister announced the loan package on 7 January has she withdrawn her statement in this place on 2 August last year when she placed the board of the corporation on notice. At that time she said that if the board failed to get its house in order over the next three years the Government would have no alternative but to reassess the role of the corporation and, if necessary, consider the possibilities of the corporation's ceasing to produce films in its own right or even closing down the corporation. That statement about threatening to close down the corporation has not been retracted by the Minister since she announced this so-called rescue package.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: My argument is—if the Minister would only stop to listen—that the so-called rescue package, based on loan only, is in itself placing the viability and the future of the corporation at grave risk. We now have a situation where on 2 August the Minister threatened the corporation with possible closure if it did not get its house in order in three years time (now only 2½ years time), while on 7 January she agreed to a package of a loan incurring more debt, up to $2.4 million for 18 months only. Threatening to possibly close the corporation in three years but providing a loan, a so-called saviour loan on terms that are available for 18 months only, is a most amazing circumstance.

The Hon. Anne Levy: You want to stop production?

The Hon. DIANA LAIDLAW: The Minister keeps saying that I want to stop production. It does not matter what I want; the fact is that the corporation has virtually stopped production. It has not produced this year. If she read the report she would know that that is one of the major concerns of KPMG Peat Marwick. The fact is that the corporation itself is not producing. Now the Minister has withdrawn the Government film fund of $500 000 that used to be channelled through the South Australian Film Corporation for documentaries. There are many more people

in the community now not producing because of the Government's own actions. So she should stop this nonsense of accusing me in this matter; the fact is that the corporation is not producing now and she and her Government have cut off funds to independent producers to produce in this State.

The Hon. Anne Levy: There is a lot more documentary production in this State.

The Hon. DIANA LAIDLAW: The Film Corporation is not involved in that directly, and the Minister knows that.

The Hon. Anne Levy: I know.

The Hon. DIANA LAIDLAW: So stop telling me I want to close it down because, esssentially, it has stopped itself, has it not?

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: It is channelled through the Film Corporation. Because the Minister and the Government have made a decision to stop funding the Government film committee, KPMG Peat Marwick has argued that the documentary and film division of the Film Corporation should close.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That is because you have taken away those funds which traditionally—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: They did not have to be; you made the choice to starve the film industry and the independent sector of those funds that would normally go to the independent sector, and that was to prop up the Film Corporation.

Members interjecting:

The PRESIDENT: Order! Members will come to order. This is a debate, not an argument. The Hon. Miss Laidlaw will address her remarks to the Chair.

The Hon. DIANA LAIDLAW: The Minister knows full well from documents that I have tabled in this place that the decision to continue production on *Ultraman* was a decision at the top echelons of the Premier's Department, against the advice of their lawyers—

The Hon. Anne Levy: I deny that. That is completely false and I want that in *Hansard.*

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: It has been in *Hansard* over and over again. I have tabled—

The Hon. Anne Levy: And I have said it is false every time you have said it.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I find it very difficult to accept the Minister's argument when the documents I have tabled have come from the Premier's office itself. Perhaps the Minister does not believe that such documents are credible. But I leave that to the Minister.

The Hon. Anne Levy: It is a complete misquote.

The Hon. DIANA LAIDLAW: Before you put your foot in your mouth again, Minister, I would suggest that you look at the table—

The PRESIDENT: Order! The honourable member would do better addressing the Chair. The Minister should stop interjecting. She will have an opportunity to enter the debate at the proper time.

The Hon. DIANA LAIDLAW: For the Minister's information, I will provide her with a personal copy of the Premier's minutes and the minutes of the meeting. The minutes of the meeting show quite clearly that the board was directed from the top echelons of the Premier's Department, and therefore one would assume with the Premier's knowledge, that the overages on *Ultraman* be paid and that production continue, and that was against the lawyers' advice to the Film Corporation and against the advice of the senior management at the corporation.

The Hon. Anne Levy: Not true.

The Hon. DIANA LAIDLAW: The Minister is just so stubborn. She will not even believe what the Premier says in black and white.

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

The Hon. Anne Levy: The honourable member misreads everything.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I do not wish to suggest that the Minister has no confidence in what the Premier has directed or what the Premier's Department is saying, or what the board members who continue to be on the board (who one would think enjoyed the Minister's confidence) have indicated in relation to whence the force and the direction came for the continuation of the *Ultraman* program—and that is from the top echelons of the Premier's Department. If the Minister does not believe the board minutes, she should get rid of people such as Mr Jarvis and others who have stated that clearly in board minutes. I suspect that the Minister does believe them because she has not got rid of them.

The Hon. Anne Levy: I do not believe a word of that.

The Hon. DIANA LAIDLAW: The Minister may not believe it, but it is in the board minutes. I just do not know what the Minister is carrying on about.

The PRESIDENT: Order! I again ask the honourable member to address the Chair and I ask the Minister to stop interjecting. She will have an opportunity later to enter the debate.

The Hon. DIANA LAIDLAW: The Minister threatened to close the Film Corporation in August, if the Film Corporation did not get its house in order and yet the financial package, which is meant to save the corporation and save much of the industry in this State, is a loan package with a time limit of 18 months. My assessment of this amazing situation is that the Bannon Government has placed the unfortunate board of the corporation in a no-win situation. Certainly, my Liberal Party colleagues and I, together with people throughout the film industry in South Australia, would like some explanation from the Minister about what she believes the Government is doing—and this motion aims to facilitate such an explanation. The Minister should also explain why the Government ignored the advice of KPMG Peat Marwick (page 10 of its report):

> . . . that the Government should insist upon a renegotiation of existing employment contracts at the corporation as a pre-condition to additional financial assistance being provided to the SAFC.

Clearly, this advice was not acted upon or insisted upon by the Government prior to the announcement of the $2.4 million rescue package for the South Australian Film Corporation. South Australians are entitled to an explanation as to why it was not acted upon. In the meantime, it is interesting to note that KPMG Peat Marwick's recommendations in relation to employment contracts echo the recommendations made by Sue Milliken some 2½ years earlier. For instance, both KPMG Peat Marwick and Ms Milliken recommended that contracts be terminated and/or renegotiated for executive producers in the Drama Department. In fact, it is tempting to speculate (and many people in the industry are speculating) about what the situation would be for the corporation today and what the future prospects of the corporation would be had the Government and the board had the resolve and exercised the foresight some 2½ years ago to implement Ms Milliken's recommendations.

In the context of this motion, I trust that the Minister for the Arts will be prepared to answer a host of further questions about the Government's expectations for the Film Corporation and the responsibilities of the board in implementing the 55 recommendations in KPMG Peat Marwick's report. My questions which follow are in addition to the 10 questions that I have placed on the Notice Paper in the past week. All are questions which have been raised with me during my extensive discussions with persons involved in the film industry in South Australia, New South Wales and Victoria, ranging through producers, directors, technicians and actors. My questions are:

1. Has the Government endorsed all the recommendations in the report by KPMG Peat Marwick? Has the Government received a firm undertaking from the board that it will implement all the recommendations? This question has been raised repeatedly with me because there are people who are most concerned in the industry itself about the fact that the Government provided financial assistance to the corporation but did not insist as a precondition of that financial assistance that contracts be renegotiated. That has made people very nervous about the status of the other recommendations in the report, and particularly the board's perception of their responsibilities towards implementing those recommendations.

2. What steps have been taken by the Government to ensure the corporation actually meets the conditions outlined as opposed to simply providing the Minister with an indication that the corporation is making progress towards the recommended changes? This matter has been raised following statements by the Chairman of the corporation that he sees his responsibility as merely an indication of making progress towards such changes as a precondition for gaining further funds.

3. What proportion of the $2.4 million was made available to the corporation immediately following the Minister's announcement of 7 January, and what major changes in the management, financial practices and staffing had the corporation undertaken at that time to satisfy the Minister that the loan funds be made available at this very early date?

4. On what basis was the sum of $2.4 million determined as appropriate for the package to help the Film Corporation? Why is it not $1.4 million or $3.4 million? Certainly, KPMG Peat Marwick gave no indication of what such a figure should be and, of course, it did not wish a loan to be made in the first place. From where has this figure of up to $2.4 million been plucked?

5. What are the guidelines for the use of those loan funds? We do not know whether it is for salary or production, whether it is for paying off other loans the Film Corporation had with SAFA, or whether it is for other debt purposes. What are the conditions of the loan in terms of the further imposts on the corporation?

6. Has the Government agreed to provide the corporation with a pre-production budget, as recommended in KPMG Peat Marwick's report and, if so, what is the sum and when will such an important initiative commence? Other issues are also important, such as the timetable for the changes in the Act recommended by KPMG Peat Marwick.

7. If the Minister is not satisfied that the corporation is undertaking to implement the reforms that are outlined in the report that the Minister and the Government have endorsed—although to date we do not know what is the status of those recommendations—does the Minister intend to close down the corporation entirely in 18 months when the term of the loan ceases, or does she propose to continue to allow the corporation to limp along for some three years, which was her earlier deadline, or close the corporation if it did not get its affairs in hand?

The Hon. R.J. RITSON secured the adjournment of the debate.

SELECT COMMITTEE ON CHILD PROTECTION POLICIES, PRACTICES AND PROCEDURES IN SOUTH AUSTRALIA

The Hon. M.S. Feleppa, for the **Hon. CAROLYN PICKLES:** I move:

That the time for bringing up the committee's report be extended until Wednesday 10 April.

Motion carried.

SELECT COMMITTEE ON THE REDEVELOPMENT OF THE MARINELAND COMPLEX AND RELATED MATTERS

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

That the time for bringing up the committee's report be extended until Wednesday 10 April.

Motion carried.

SELECT COMMITTEE ON THE CIRCUMSTANCES RELATED TO THE STIRLING COUNCIL PERTAINING TO AND ARISING FROM THE ASH WEDNESDAY 1980 BUSHFIRES AND RELATED MATTERS

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

That the time for bringing up the committee's report be extended until Wednesday 10 April.

Motion carried.

SELECT COMMITTEE ON THE PENAL SYSTEM IN SOUTH AUSTRALIA

The Hon. I. GILFILLAN: I move:

That the time for bringing up the committee's report be extended until Wednesday 10 April.

Motion carried.

SELECT COMMITTEE ON COUNTRY RAIL SERVICES IN SOUTH AUSTRALIA

The Hon. R.R. ROBERTS: I move:

That the time for bringing up the committee's report be extended until Wednesday 10 April.

Motion carried.

STATE BANK GROUP

Adjourned debate on motion of Hon. M.J. Elliott:

1. That a select committee of the Legislative Council be established to:

(a) Examine—

(i) the financial position of the State Bank and all of its subsidiaries;

(ii) the circumstances surrounding the high level of debt;

(iii) the adequacy of information made available to the bank board, the Treasurer, the Parliament and the public;

(iv) the role and function of the board and the Treasurer.

(b) Make recommendations on any changes necessary to the State Bank of South Australia Act, including investment guidelines, accountability and reporting requirements for the State Bank.

(c) Examine the financial position of the State Government Insurance Commission, South Australian Superannuation Fund Investment Trust and South Australian Government Financing Authority.

(d) Examine any other related matters.

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

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

(Continued from 13 February. Page 2873.)

The Hon. I. GILFILLAN: In speaking to support this motion for the establishment of a select committee moved by my colleague the Hon. Mike Elliott, I want to make plain that this is a Democrat Party initiative; we fully support as a Party the establishment of a committee which can look widely and without restraint into matters relating to the bank. The material which specifically has concerned us has been outlined in the Hon. Mike Elliott's speech when he moved the motion. It is important to put on the record that well over 18 months ago I raised matters of a serious and profound nature relating to the bank's financial exposure. At that time I incurred what I described as the wrath of the bank, when I asked questions relating particularly to my estimates of loss on various of its investments, especially in the central business district.

The terms of reference of this select committee are cast wide enough to enable other institutions to be looked at, and the clause 'Examine any other related matters' does open up the opportunity for the committee to look at the bank and, I believe, banking generally. There is very good reason for us to review the consequences of the policy of deregulation of banking, as it is applied right across the nation. Certainly, in this State we have certain banks represented, and this committee may be the vehicle for looking at matters which have been of concern to people who have been following the procedures of banks throughout Australia as a result of deregulation. I certainly believe that the committee should, under its terms of reference, be able to look at other than what has necessarily been brought to the surface now: it should be able to examine areas of concern of the bank's previous investments. We should be able to investigate its ethics and its practices. It is in the light of that that I want to read some correspondence, of which I have copies, addressed to Warwick Kent Esquire, Chief General Manager, Corporate and International, Westpac Banking Corporation, 60 Martin Place, Sydney, from Allen Allen and Hemsley. It relates to a practice which I think it is important that this Council recognises, so that in due course we can view these matters as they may apply to banking in South Australia. Indeed, as you will see from this letter, they already do so. The letter, dated 26 November 1987, states:

Dear Warwick,

PPL Managed OCLs

The purpose of this letter is to report to you on:

- the work we have done (section A);
- what went wrong (section B);
- the conclusions I have reached (section C.1);
- the reasons for those conclusions (section C.2); and
- my recommendations (section D).

Section A—The Work We Have Done

Documentary

The documentary team examined all relevant PPL and Westpac files.

This exercise involved the consideration of at least 50 000 documents. Details of over 7 000 documents were entered into our computer system and approximately 1 500 documents were subjected to detailed review, because they were particularly significant.

As a result, for the purposes of the interviews described below, and for any subsequent purposes, we had and will have a capacity to use the system to provide extremely useful analyses of the documents.

For example, we can call up a list of all documents found in a particular person's file, or all documents authored and/or received and/or copied to a particular person. This exercise has had three very significant benefits:

1. It enabled us to conduct the interviews described below against the background of what was said in the relevant documents. This greatly facilitated the efficient extraction of information in these interviews.

2. I can write this report, extremely confident that the assessments contained in it have been made in the light of the relevant documents and interviews based on the relevant documents.

3. If litigation should prove to be unavoidable, PPL is in a position to discover quickly and efficiently and at very little additional cost.

The Interviews

A policy decision was taken not to interview ex-PPL employees, because it was thought that the risks of signalling the problem outweighed the advantages to be derived from such interviews.

Then follows a list of people who were interviewed in the light of analysis of the documents relevant to their positions. I do not intend to read those names into *Hansard*. The letter continues:

All those interviewed were co-operative and frank and, quite apart from this, interviews conducted against the background of a detailed consideration of the relevant documents lead to a far more accurate picture than those conducted without this advantage.

Field Investigation Trips

Each of the interstate offices was visited. These visits had three purposes:

1. To consider the documents held by the local office;

2. To interview the local State Manager and relevant Westpac personnel; and

3. With the assistance of the local State Managers' feel and knowledge of the attitudes and circumstances of particular customers, to form an opinion, on a State by State basis, of the extent of possible liability.

In Sydney, these functions were attended to, *mutatis mutandis*, by interviewing the relevant PMOs.

Assistance Received

I gratefully acknowledge:

- the counsel and assistance received from (which I code) A and his Westpac legal team; and
- the enormous contribution made by B who managed the investigation summarised in this report with outstanding energy and skill.

Summary of PPL's Performance with Managed Loans

Attachment 1 summarises PPL's position on a State-by-State basis. Overall, while managed, PPL-managed borrowers—

this does have relevance to South Australia, as will be revealed further on—

- had capital losses of $33.1m;
- had an unfavourable position vis-a-vis a totally unmanaged position of $7.6m;
- had an unfavourable position vis-a-vis a fully hedged position of $12.5m.

Section B—What Went Wrong?

Late in 1984, PPL started to offer a managed FX loan product. In early 1985, PPL's Managing Director was C. Reporting to C was the General Manager, D. Reporting to D were the executives who headed up the two sides of PPL's business, E, heading up asset-based finance, and F, heading up treasury.

C and D did not get on, and E and F did not get on. F was close to C, who tended to view his performance through rosy-eyed glasses as a result.

Reporting to F was G, who headed up the PPL Forex department. It was not a good time to be marketing this product; the Australian dollar had been sliding against the US dollar for a year and was about to start its momentous downward slide against all currencies.

C started what was to become a tradition of weak management by sending F a memorandum in June 1985 (part of attachment 2) telling him that the product was being introduced against his wishes. Notwithstanding the Chief Executive's opposition, the product went ahead and a further 42 customers were to be added to the 22 which existed at the date of C's memorandum.

G had reported to her two dealers—H and I. All three were generally regarded as competent Forex people.

F did not share the generally high regard for G. F disliked and distrusted G and their relationship was extremely stormy. In February 1986 G was dismissed/resigned in controversial circumstances. G's staff certainly felt that she had been badly done by and resigned as chief Forex dealer virtually at the same time, and was followed by I in April.

Those left to shoulder the burden were J and K.

There were better times to lose one's Forex dealing team. The Australian dollar was plummeting against all major currencies.

By mid 1986, the deterioration since February had been dramatic.

- The department was demoralised;
- Reporting systems with clients had broken down;
- The volume of dealing was far too much for the PPL system to handle;
- The dealers were relatively inexperienced;
- Clients were complaining about their crippling losses and, most of all, about an inability to communicate with the Forex department.

These difficulties did not prevent a further 22 clients being signed during the first half of 1986, which worsened all the difficulties referred to above.

The brunt of the client complaints were taken by the State Managers and PMO's, who had the relationship with them. State managers and PMO's, for their part, found it impossible to get any sensible answers out of the Forex department. All the time, the dollar dropped and dropped.

It was these pressure cooker circumstances which caused memoranda like L's (WA Manager) in June 1986. This memo is trenchantly critical of the entire manner in which borrowers were being managed. It is important to note that this memo was sent to all the PPL senior management from the senior manager down.

On 27 June an equally vituperative memorandum (part of attachment 2) was sent by the Sydney PMO's to D.

Early in July 1986, D sent a memo to F which said that D regarded F as being responsible for several seriously deficient aspects of managed borrowings. This memorandum is in very strong terms and it is staggering that the memorandum concludes by merely asking F to do better in future.

I believe that D's attitude may have been based on a view that C would not countenance action against F. Whatever be the reason, it was a very weak conclusion to a very strong memorandum. By early July 1986, then, there can be no doubt that all senior management at PPL were only too well aware of the gravity of the situation.

The failure of C, D and F to act decisively to redress the position is a tragedy, and it is on these three gentlemen that primary responsibility for the situation PPL faces today must rest. Unfortunately, weak management tends to beget weak management, and one could summarise all management from the middle of 1986 onwards by saying that it was management by memo and management by memos which were primarily designed to protect the author from responsibility, rather than to redress the position.

During the balance of 1986, the position continued to deteriorate; clients continued to lose money; communications with clients and with State managers and PMOs continued to be a disaster, and management continued to do nothing about it. By late 1986, there was a clear view within PPL treasury that the product should be abandoned. This met robust opposition from [an officer] on behalf of the State managers and PMOs, who took the view that to drop customers who already had much about which to complain was unwise.

I think this view correct. However, managed borrowing should not have been allowed to lurch on towards 1987 in a management vacuum. At the end of 1986, it was decided to merge the PPL and Westpac treasuries and to restructure the Westpac group's merchant banking operations. C, D and F departed. M was appointed to head PPL's treasury operations, which included managed loans.

During the first quarter of 1987, the Westpac Risk Management Unit (via N) was supposed to exercise a supervisory role over loan management. This first quarter of 1987 was a period of non-management. N gave advice, but had no power to direct. M regarded his management responsibility for managed loans as being purely nominal, and the position continued to drift.

At the end of the first quarter of 1987, it was decided to formally transfer the management to the Westpac unit. This decision was not implemented as quickly as was planned. This was partly due to stiff resistance from Westpac risk management, who doubtless feared they were being handed a can of worms, and partly due to a lack of drive on the part of PPL executives.

The management vacuum thus remained in force until late June 1987, when most contracts were terminated and five managed customers were transferred to Westpac risk management. In short, managed forex loans was a bad idea, introduced at the worst possible time, and badly managed. The dollar fared well from late 1986 to mid-1987, and given the management vacuum, PPL was clearly lucky that it did.

In September 1987 complaints made by managed borrowers had come to A's attention and he asked O of P to look into the matter. This led to Q's letter of 7 September, which is attachment 3. The views expressed in this report and in that letter are substantially the same. As a result of Q's letter, B was asked to direct an investigation into the matters raised in it.

SECTION C—MY CONCLUSIONS AND MY REASONS FOR THEM

C.1 CONCLUSIONS

1. According to PPL's own documents, PPL:
   - told clients it would do a professional management job;
   - told clients that it would adopt a conservative, 'when in doubt, hedge' approach to risk management.
2. PPL's own documents acknowledge that:
   - PPL did neither of these things; and
   - this failure caused loss which would not otherwise have been incurred.
3. Trading conditions during the relevant period were such that all a prudent manager could have done is to have hedged and stayed hedged for the duration. This:
   - was objectively what PPL should have done;
   - would have been consistent with PPL's representations as to the policy it would adopt.
4. As a result of 1-3, a number of clients did significantly worse than the fully-hedged position.
5. PPL undoubtedly took points which, at best, exceeded its entitlement and to which, in my view, PPL had no entitlement at all. PPL probably switched transactions between its own account and its managed borrowers accounts.
6. The exemption clause in the power of attorney signed by managed borrowers will not operate to defeat actions which are available to those borrowers based on:
   - point taking and deal switching;
   - failure to follow the conservative management policy which PPL represented to clients it would follow.
7. As a result of 1-6, it is likely that managed borrowers would succeed against PPL.
8. The measure of damages will be:
   - the amount lost via the taking of points;
   - the profit lost via the switching of transactions;
   - the difference between the fully-hedged position (plus, say, 20 per cent to approximate the point at which clients should have been fully hedged) and the position actually achieved.
9. Clients will be slow to commence action because of:
   - the breadth of the exclusion clause in the power of attorney will deter clients (who do not know of the deal switching and point taking and the damaging PPL documents) from commencing action;
   - their lack of knowledge of how damaging PPL's documents are;
   - the lack of success of OCL actions to date;
   - the high costs involved.
10. Given 9 and given full-time hands-on management by a suitable executive having total responsibility, suitably supported by State managers, it should be possible to keep liability at a manageable level.

C.2 REASONS FOR CONCLUSIONS

CONCLUSIONS 1 AND 2: THE ACKNOWLEDGMENTS CONTAINED IN PPL'S OWN DOCUMENTS

I wrote to you on 22 October and attached to that letter a collection of documents. Many more documents have been examined and a number of them are very damaging. I see little point in adding further documents to the bundle, however, because the documents attached to my letter of 22 October illustrate the extraordinary extent to which PPL's own documents support the conclusions I have reached. The bundle is attachment 2 to this letter. All those reading this letter should read these documents—they are devastating.

CONCLUSION 3: TRADING CONDITIONS—THE OBLIGATION TO HEDGE

Between the beginning of 1985 and November this year, the Australian dollar depreciated:

- 53 per cent against the Swiss franc;
- 32 per cent against the US dollar; and
- very significantly against virtually every other currency.

An inter-bank trader can have one of three postures with respect to any given currency:

1. long;
2. short; or
3. out of the market.

Importantly, when the inter-bank trader goes short or long, he is under no necessary added risk in doing so. The risk manager is in a very different position:

- First, he cannot go out of the market—he is managing an offshore borrowing which is a fact of life;
- Secondly, if the loan is in currency A and the manager shorts that currency, his managed client is a double risk;
- Thirdly, if he keeps the managed loan hedged most of the time, the cost of the loan will equal (or perhaps slightly exceed) the cost of onshore borrowing. It is precisely to avoid these costs that clients have borrowed offshore and, regrettably, some of them would have had difficulties in servicing their loans at onshore rates;
- Fourthly, an inter-bank trader is aware that a certain level of buying and selling will tend to alter prices and can take this into account in his trading activities. A risk manager is not in a similarly fortunate position. If his clients are long a total of, say, $US100 million and he is going to close—

page 9 of this letter is missing—

There is an alternative view which asserts a market convention that a modest amount of points may be taken, the number of points being designed merely to recoup the costs of carrying out the transactions. The PPL forex section made extensive use of a suspense account for significant periods of time. The suspense account was used to 'park':

- transactions which would otherwise have caused difficulties with Reserve Bank imposed limits;
- transactions before allocating them to a managed borrower or to PPL's account.

Transactions put into the suspense account were entered into suspense account books, which were kept for this purpose. These books have disappeared, and an extremely diligent search has failed to find them.

The absence of these books greatly hinders the unravelling of transactions and this difficulty and the difficulty in establishing when in the course of a day's trading a particular transaction took place have prevented us from quantifying the profits which PPL made from point taking.

Notwithstanding this, the following factors cause me to believe that a court would find that point taking occurred:

- the 6 April 1987 memorandum from R which is part of attachment 2;
- spot checks of deal slips and position sheets done at the direction of B;
- the extraordinary comparative profitability of PPL trading on its own account compared to its trading record for managed borrowers;
- the extraordinary trading volume which was otherwise at variance with PPL's represented management policy.

Deal Switching

The loss of the suspense books makes it impossible to form a firm view about deal switching. However, the position sheets disclose some transactions which would probably cause a court to infer that deal switching had gone on. I have interviewed a PPL employee whose first-hand observation was that some (albeit unquantifiable) deal switching did go on, and I think it probably did.

CONCLUSION 6: THE EXEMPTION CLAUSE WILL BE OF LITTLE ASSISTANCE IN THESE CIRCUMSTANCES

All managed borrowers signed a power of attorney which contained a widely drawn exemption clause. That exemption clause will defeat actions (both in contract and tort) based on a failure to exercise sufficient care and skill.

The High Court decision in *Darlington Futures Ltd* v. *Delco Australia Pty Ltd* (68 ALR 385) makes it clear that, as a matter of construction, clauses of this sort will not be allowed to defeat claims based on point taking and deal switching, because these depend on allegations of deliberate dishonesty. Even if, contrary to the view expressed above, the exemption clause was held to defeat a claim based in contract for point taking and deal switching, PPL would still face an identical claim based on breach of fiduciary duty.

In its Hospital Products decision (*United States Surgical Corp.* v. *Hospital Products International Limited* (156 CLR 41)), the High Court said that it was reluctant to introduce fiduciary duties into commercial relationships unless there was a genuine element of control by one party over the affairs of the other, with a consequent vulnerability of that party. I have little doubt that a fiduciary duty existed here because of the total control which PPL had over the managed loan and the vulnerability of managed borrowers which resulted from this total control. Liability for breaches of fiduciary duty cannot be contractually excluded because they are not based on contract.

Section 52 of the Trade Practices Act creates an obligation not to carry on business in a misleading fashion and this obligation cannot be contractually excluded.

PPL represented that it would keep clients fully hedged, except in advantageous situations, and failure to do this leads to a liability under the Act which cannot be contractually excluded.

CONCLUSION 7: MANAGED BORROWERS WOULD SUCCEED AGAINST PPL—

This needs no expansion in the light of the discussion which has preceded it.

CONCLUSION 8: THE MEASURE OF DAMAGES

It will be obvious from my discussion of the difficulties of quantifying point taking and deal switching in conclusion 6 that a court will face the same difficulties which I have faced and will probably not be able to make a precise calculation of the relevant loss/loss of profits. This will not deter a court from doing rough and ready justice as best it can on the evidence available. This is clear from the long-established cases of *Chaplin* v. *Hicks* (1911) 2 KB 786 and *Howe* v. *Teefy* (1927) 27 SR (NSW) 301 and from the more recent decision of the Full Court of the Federal Court of Australia in *Enzed Holdings Ltd & Ors* v. *Wynthea Pty Ltd & Ors* (1984) 57 ALR 167. The Enzed Holdings decision concerned calculation of damages for a breach of section 52 and it is thus authority for the proposition that a court will adopt a similarly robust approach to overcome any of the difficulties in determining precisely when hedging should or should not have taken place reviewed in my discussion of conclusion 3.

CONCLUSION 9: CLIENTS WILL BE SLOW TO COMMENCE ACTION

The following factors will make clients slow to commence action:

- Breadth of the exclusion clause

For reasons discussed, the exclusion clause will not operate to defeat claims based on point taking and deal switching, but clients are unlikely to be aware that these breaches took place. The exclusion clause will not defeat actions under the Trade Practices Act, but most clients will be unaware of how clearly PPL's oral representations are recorded in PPL's documents and will assume that proof that the representations were made will boil down to oath versus oath.

- Lack of Knowledge of the Damaging PPL Documents

A number of management/personality/frustration factors which we have discussed led to PPL producing documents which were unusually self-critical. Most organisations tend to produce documents which are unduly self-justifying. Most clients would not expect PPL's documents to provide them with the treasure trove which they in fact present.

- Lack of Success of OCL Actions to Date

Both reported OCL actions have gone against the borrower and one other was discontinued with considerable publicity. None of these actions involved managed OCLs but there is a tendency, nontheless, for these results to act as a deterrent to action.

- The High Costs Involved

Many borrowers (particularly in these troubled times) are not flush with cash and they would doubtless perceive that PPL would defend proceedings grimly.

This is particularly pertinent because many of these deals, which are referred to later in this letter, were done with clients on Eyre Peninsula in South Australia and many South Australians were left in a bad way as a result of these loans. The letter continues:

CONCLUSION 10: GIVEN SUITABLE MANAGEMENT, LIABILITY SHOULD BE CONTAINABLE TO A MANAGEABLE LEVEL

As I indicated in my discussion of conclusion 4, the total extent to which managed clients' positions fell below fully hedged was $12.5 million. This is not to say, of course, that clients will limit claims in this way; any client who brings action will probably base his claim on his total capital loss. PPL can be reasonably confident, however, that a court would regard a comparison with the fully-hedged position as the appropriate starting point. As discussed in reviewing conclusion 8, a court would then reduce the difference between the fully hedged and actual position by an appropriate allowance (say, 20 per cent) to reflect the fact that PPL was not operating with perfect hindsight. This reduces the potential liability to approximately $10 million, but with potential claimants affected by the matters discussed in reviewing conclusion 9. Shrewd exploitation of these difficulties, as discussed in the next section, should keep the loss to PPL at something like

30 to 50 per cent of this potential liability, that is, between $3 million and $6 million.

SECTION D—RECOMMENDATIONS

PERSONNEL

My recommendations are straightforward and are essentially those made in section 3 of my letter of 22 October. You will recall that I recommended the appointment of a suitable executive to deal full time with these managed loans. That executive should have full authority over these loans, subject only to direct reporting to S. That executive should be supported by the relevant PMOs in New South Wales and the State managers. The State managers should be clearly directed:

- that so far as managed loans are concerned, they are to report directly to the chosen executive;
- that managed loans are to be given the degree of priority determined by the chosen executive.

It is important that the above be implemented as quickly as possible.

STRATEGY

PPL's strategy should have the following key elements:

1. Keep close and cordial contact (with as productive a business relationship as possible) with all potential claimants. This must be done by the chosen executive and by the PMOs and State managers who have the personal contacts. The South Australian State manager's efforts in this regard in Adelaide have demonstrated just how effective this can be in keeping the lid on PPL's exposure. It is very important that the State managers in Brisbane and Perth be directed to spend all necessary time in keeping up these contacts and business relationships and to do so as a matter of priority;
2. Avoid litigation at any reasonable cost;
3. Bring borrowers onshore as quickly as possible;
4. Any concessions given to borrowers should only be given in exchange for a complete release;
5. When particularly dangerous potential claimants come onshore, try and arrange this on the basis of a concession and a consequent release. My concern is that if these claimants come onshore without a concession, they may become bellicose once their reduced capital and higher interest rates start to bite;
6. Take all practical steps to avoid PPL's weaknesses being known outside PPL/Westpac boards and senior management.

Please don't hesitate to contact me if there is anything I can amplify.

With best wishes, (signed) B.P. Jones.

That is a long letter, but I make no apology for reading it into *Hansard*, because, although we are focusing on the State Bank, this issue has impinged on South Australians, particularly this question of foreign currency borrowing. I will now read a considerably shorter letter on the same subject from the same author to the same manager of Westpac dated 11 December 1987, as follows:

Dear Warwick,

DOES PPL HAVE ANY CRIMINAL LIABILITY?

WESTPAC'S CONDUCT OF MANAGED OCLs

I refer to my conference with you and others on 26 November. You asked me to write to you about some matters raised in that conference. These matters come into two categories.

1. Two matters relating to PPL's position:
   - whether PPL or its employees have been guilty of criminal conduct; and
   - whether it would be prudent for PPL to attempt to make recompense to managed borrowers to reflect deal switching and point taking.

   I deal with these questions in section A.
2. Four matters relating to Westpac's current forex trading activities, and in particular, their handling of managed accounts. I deal with these in section B.

SECTION A—DOES PPL HAVE ANY CRIMINAL LIABILITY?

A.1 POINT TAKING

There are two features of the relationship between Westpac and the managed borrowers which, in my view, preclude criminal liability.

A.1.1 PPL sold currency to managed borrowers as principal

It was the very essence of the contractual relationship between PPL and its managed borrowers that PPL owned the overseas currency that managed borrowers would acquire from it. The essence of all criminal offences involving dishonesty is the acquisition by A of B's property. It is difficult, in the sale situation described, to categorise the sale of property from A to B as criminal merely because:

- that sale takes place at a profit to A;
- the better legal view is that there is no contractual justification for taking that profit.

A.1.2 PPL's broad discretion

Under clause 1 of the powers of attorney, PPL was given total discretion in its right to sell currency to managed borrowers. The width of PPL's contractual discretion is such as to create profound difficulties in categorising a sale made pursuant to the exercise of that discretion is criminal.

Point Taking Summary

I adhere to the views expressed in my earlier letter as to the civil law problems created by PPL's point taking and deal switching. These problems are civil. For the reasons given above, I see no question of criminal liability.

A.2 Deal Switching

A thorough review of all the relevant documents and the interviews described in my earlier letter failed to provide any basis upon which one could hope to convince a jury beyond reasonable doubt that deal switching had occurred. As a matter of judgment, I believe that it probably did, but there is no basis upon which I, or a jury, could be satisfied beyond reasonable doubt.

A fortiori, there is no basis whatsoever for asserting deal switching with respect to any particular transaction or transactions, and this, of course, is a *sine qua non* of any criminal liability. It follows that the legal status of deal switching does not arise. If the legal status of deal switching did arise, there are two factors which cause me to be confident that no criminal liability is involved.

A.2.1 PPL's broad discretion

I deal with this in A.1.2 above.

A.2.2 Difficulties in establishing allocation of currency to managed borrowers prior to suspense account entry.

It is virtually impossible, when a suspense account is involved, to establish allocation prior to entry into the suspense account. If this is not established, there is no prospect of criminal liability.

A.3 Should PPL try to recompense for point taking and deal switching?

A.3.1 Point Taking

My clear recommendation is 'no'. I say this for the following reasons:

i There is no basis upon which we can establish what point taking took place with respect to what managed borrowers.

ii Even if I was not correct, any approach to managed borrowers would disclose a breach of contract which vitiates the exclusion clause in the power of attorney.

I strongly recommend that PPL reflect its proper concern about this in the relative generosity with which it approaches settlement discussions.

A.3.2 Deal Switching

As I indicated in A.2, there is no basis for making any assessment of any loss suffered by anyone as a result of deal switching. There is thus no basis upon which recompense could be approached and disclosure of this to managed borrowers would be even more serious than disclosure of point taking.

Section B—Matters relating to current Westpac Forex operations

B.1 Point Taking

I confirm my advice that I doubt that Westpac could establish a contractual right to sell currency to managed borrowers at prices any higher than that available in a free market. Given this, I think it unwise for any points to be taken unless there is a clear written agreement with the client which covers this. It would obviously be unwise to approach the former PPL clients to seek this agreement, and it therefore follows that no points should be taken from former PPL clients.

B.2 Establishing the Market Price by Seeking Quotes

This is a related issue. Unless there is an agreement to the contrary, managed borrowers are entitled to buy at market price. This market price must be established by seeking quotes in the market and dealing with those offering the most favourable quote. If that quote happens to be from Westpac, well and good, but Westpac must be able to establish that Westpac sought, and accepted, the most favourable quote.

B.3 'Parking'

PPL sometimes 'parked' transactions in the suspense account in order to circumvent Reserve Bank limits. I have no reason to believe that Westpac is 'parking' transactions for the same purpose. I stress that it is very important that it not do so.

B.4 Conservative Hedging Policy

I am most concerned about recent losses suffered by the three former PPL managed borrowers during the recent slide of the $AUS against the Swiss Franc. These borrowers were largely unhedged. I think it important that the former PPL managed borrowers be kept fully hedged, unless and until there is a clear

strategic appreciation of the $AUS against the relevant currency. A fully hedged client may not like the interest rates, but he is suffering no losses and he can't sue. A policy of ruthless conservatism is called for.
With best wishes, Yours sincerely, B.P. Jones

I make a brief comment on those matters that I have read into *Hansard*. It is common knowledge that there were enticements to borrow offshore in foreign currencies. Unfortunately many South Australians went into that line of business, and it was a very painful experience.

I raise it at this time because of the way it was dealt with by Wespac. What happened subsequently is, at the very least, subject to critical analysis and, from evidence and discussion, reflects a banking procedure that I think all fair-thinking South Australians would regard as inappropriate in the role of banking. I raise this matter because I believe that the terms of reference, as moved by my colleague, although they relate specifically to the State Bank, should be able to embrace aspects of banking practice, which, even if the State Bank at this stage is not involved in them, are identified as areas where banking needs to have either legislative direction or more open accounting. I would like to raise other matters at another time, and I seek the indulgence of the Council to conclude my remarks later.

Leave granted; debate adjourned.

LOCAL GOVERNMENT ELECTIONS

Adjourned debate on motion of Hon. J.C. Irwin:

That this Council calls on the Minister for Local Government Relations to allow council elections in the cities of Woodville, Hindmarsh and Port Adelaide to be held in May 1991.

(Continued from 13 February. Page 2873.)

The Hon. J.C. IRWIN: I resume my remarks, which I commenced last Wednesday, when I moved this motion calling on the Minister for Local Government Relations to reverse her decision not to hold council elections in Woodville, Port Adelaide and Hindmarsh in May this year. In discussing this matter it is necessary to go back to some relevant background on recent amalgamation proposals. The Mitcham amalgamation saga took two years, from December 1987 to February 1990, to finalise. The 1989 council elections were in the middle of that period and were not postponed for the affected areas of Mitcham and Happy Valley.

The Henley and Grange saga took from February 1988 to July 1990, and the 1989 council elections held in the middle of that period were not postponed for the affected areas of Henley and Grange, Woodville and West Torrens. In August 1989 a review committee was set up by the Minister which recommended, in July 1990, new guidelines for the Local Government Advisory Commission and advised that it should be independent—a point still not taken up by the Minister and addressed by me in some detail in a motion late last year.

Old business before the commission, started well before the memorandum of agreement was signed, should be completed. Everything other than ward reviews should be put on hold until local government has decided its own future, and that includes the future of the commission. It really makes a nonsense of the principle of handing back to local government the responsibility for its own future and still having the heavy hand of the Minister for Local Government Relations on the driving wheel. Her capacity to interfere in one way or another has been well documented by me previously.

The Local Government Advisory Commission is very relevant to the motion and will, I predict with the Minister's interference, continue to hamper amalgamation proposals until sorted out by the negotiating team. It is easy to observe a certain haste in getting the present proposal over a few hurdles and up and running as soon as possible as funding for the Local Government Bureau is cut by half in July 1991. The Local Government Advisory Commission is still in the bureau, and it has been reported that the decision was expected by the commission on this amalgamation proposal by 1 July this year.

In October last year a report on the reform of local government, written by a number of chief executive officers, was published. On 19 December it was reported in the *Advertiser* that an amalgamation bid by Woodville, Hindmarsh and Port Adelaide was given preliminary consideration on 18 December by the Local Government Advisory Commission after referral from the Minister of Local Government. Following my questions to the Minister last week, I thank her for providing me with some correspondence regarding the request from the three councils' joint steering committee for the elections to be postponed.

It appears that way back on 3 December 1990 the Minister received a proposal from the three councils for amalgamation and that she referred the proposal to the commission before 18 December, as addressed previously. I have not seen the initial proposal from the three councils that was submitted to the Minister. I would appreciate her telling the Council exactly what depth of consultation was carried out by the joint steering committee and how much of phase 1 of the commission's own guidelines were carried out. I know for a fact that all members of the three councils do not have a thorough understanding of the policy issues which form the basis of the submission, and I know also of quite a few bodies within the three council areas which have not yet been consulted. This is the very first time that the Minister has used her power to go direct to the commission without a petition from electors with at least 20 per cent showing community support for a proposal.

The Hon. Anne Levy: Nonsense!

The Hon. J.C. IRWIN: I will respond to that in a minute. One would have thought that that, together with other factors, would be a very basic requirement, namely, to have that 20 per cent support from the community, for a proposal to be successful.

The Hon. Anne Levy: The Act stipulates that I have to send a proposal to the commission as soon as I get it, and that is what I did.

The Hon. J.C. IRWIN: Certainly the Act envisages two ways to get to the commission, through the Minister. One is through the petition mechanism and the other is on the Minister's own initiative. After lengthy consultation and debate in Parliament these conditions were put into the Act, for very good reason. I have to say that the Mitcham Hills proposal went to the commission via the Minister of Local Government of that time because of a technicality. There was, however, approximately 20 per cent community support from the Mitcham Hills area. I suppose that would indicate *prima facie* support from that area for the proposal to go ahead. In both the Mitcham and Henley and Grange affairs, the Minister referred the proposals back to the commission for further consideration. I accept that these referrals were made. So, technically in this case it is not the first time but, looking at it in any other way, it is the first time that a brand-new proposal has been put to the commission without that 20 per cent backing from electors.

The Hon. Anne Levy: Nonsense!

The Hon. J.C. IRWIN: Well, the Minister can outline all the other times that proposals were put off without the 20 per cent backing from the electors.

The Hon. Anne Levy: Put them off?

The Hon. J.C. IRWIN: No, put them off to the commission.

The Hon. Anne Levy: Any proposal that I get is sent straight to the commission. The commission has about 20 proposals before it.

The Hon. J.C. IRWIN: All right, well you can outline them. In this case the Minister is ignoring a basic necessity for achieving change, namely, community support in the form of a petition.

The Hon. Anne Levy: When I get a submission I have to send it on.

The Hon. J.C. IRWIN: Well, you go back and read the Act. The committee of review proposals for consideration of proposals was taken up almost exactly by the commission and published in October 1990. Phase I of the new proceedings for considering boundary change proposals outlines seven steps, involving extensive consultation prior to a proposal and investigation report going to the Minister requesting that the proposal go to the committee. One would think that that is a quite basic ingredient to take account of before the Minister rushes something straight off to the commission. It must be remembered that the 20 per cent requirement still remains in the Act as one way to approach the commission through the Minister.

It should also be borne in mind that the extensive phase I consultation procedure adopted by the commission, which came out of the review process, was to ensure that high level of community support and consultation prior to the phase 2 stage, which is the lodgement of a proposal. Thus, I shall read into *Hansard* the phase I process, because these procedures are important. They came from a lengthy review process involving people like the chair of the commission, who I believe had the best interests of local government at heart and in mind, when they came down with their conclusions. These are the new procedures for the consideration of boundary change proposals which came out of the review process and which were published by the commission in October 1990:

Phase I—Formulation of Proposal

Step 1

Council and/or community has ideas for structural change and asks for guidelines from LGAC.

Was this step taken? Further:

Step 2

Proponent(s) carries out preliminary investigation and determines whether to proceed.

Step 3

Proponent(s) sends notice of intent and preliminary investigation report to LGAC, affected councils and other bodies (for example, unions, residents' groups, key business groups).

Again, I ask: was this step taken? Further:

Proponent(s) has preliminary discussions with elected members and senior staff of affected councils and other bodies as appropriate (for example, unions, resident groups, key business groups) to explain proposition and to explore joint approaches, alternative propositions or modifications. The LGAC will encourage investigations to be carried out jointly by affected parties. The commission can assist parties to discuss and resolve acceptable joint arrangements.

Was this done? Further:

Proponent(s) determines whether to proceed (with or without the support of affected parties). If proposition is abandoned, reasons explained to the community.

Step 5.

Plan for detailed investigation and consultation prepared using LGAC guidelines and discussed with LGAC staff (and others as appropriate).

Was that done? Further:

Proponent(s) determines when in-house investigation or consultants are to be used. (If elector proposition, proponents may seek resources/support from councils, business or resident groups).

In some cases, the LGAC may consider it appropriate that proponent(s) lodge a formal proposal with the Minister (see phase I, step 1) prior to detailed investigations and consultations.

I ask whether this course of action was taken. If it was, why were the preliminary steps neglected. The Minister is obviously satisfied with the course of action now in place. Will she table the documents on which she made her decision to go direct to the Local Government Advisory Commission? The final two steps are:

Step 6

Investigation report prepared.

Step 7

Investigation report discussed with affected councils. Consultation carried out with affected communities, staff and others as appropriate.

Proponent(s) considers results and determines whether to proceed, abandon or modify the proposition. If the proposition is abandoned, reasons explained to community. If it is to proceed, proponent(s) determines details of the proposal for the making of proclamation . . . of the Local Government Act.

That is the end of phase I, and we then go to phase II, where the commission takes it further. In a press release of 24 January 1991, the Minister announced a suspension of the May council elections for the areas of Woodville, Hindmarsh and Adelaide. She said:

The suspension of the elections will ensure some consistency in the membership of the three councils while the proposals are being considered by both the commission and residents.

These words were uttered by the Acting Minister of Local Government, Mr Rann, on behalf of the Minister and the Government. It is a pity that the Minister for Local Government Relations has been inconsistent. I have already cited the examples of Mitcham, Happy Valley, Henley and Grange, and Woodville and West Torrens, which did not have their elections suspended, despite the fact that those elections occurred in the middle of commission hearings. The press release states:

The move follows a request by the three councils while the proposal for their amalgamation is being considered by the Local Government Advisory Commission.

I would like to see evidence of the councils' motions which supported this. Of course, councillors have a reluctance to go to the people. So do we as politicians, and we here cannot suspend our elections whilst, say, a royal commission is in process. How dare a Minister tell the people that they cannot exercise their choice every two years in judging how councillors, alderman and mayors have performed on their behalf over the preceding two years. This proposal is in such an infant stage, with maybe a long run ahead, that it serves no purpose at all to suspend council elections for up to a year. That may well expand to a much longer time than one year. The people should be able to judge their council in May this year on its performance over the past two years, and indeed that would include the decision taken in the three councils presently under discussion to pursue an amalgamation proposition. It is obvious from the early stirrings in the three council areas that the people are restless about the future of their local government. The editorial in the *Advertiser* of 15 February 1991 stated:

The headlong rush by some local government bureaucrats to create a supercouncil this year combining Port Adelaide, Woodville and Hindmarsh is in danger of trampling on a radical of democracy—that governments represent the wishes of the people rather than using the people as rubber stamps.

Alarm bells should have rung when the State Government let the three councils defer the regular local government elections, due in May, until the merger is sorted out.

But the merger process is proceeding when there is little evidence that the people of the three areas have made informed and collective decisions to merge their councils. And there is little evidence that such a merger, although a buzz concept of local

government in the entrepreneurial 1980s, would give the economies of scale claimed by the bureaucrats whose empires would be expanded and further shielded from scrutiny by citizens.

There may, in fact, be arguments that small councils, sharing resources and privatising operations, could be more efficient. At least they would be less remote from their ratepayers and so more accountable.

There is no suggestion that the merger will come about without a vote ultimately, although on past experience of politicians and bureaucrats that is likely to be little more than a cynical chimera of consultation after the fact.

It would seem healthier to have the councils proceed with elections in May. The merger would undoubtedly be a key issue; and the type of candidates elected—localist or expansionist—would give an early guide to the feelings of ratepayers about having this merger thrust down their throats. Sticking to the democratic process could, in the long run, spare much angst and expense.

The Minister will no doubt try to justify her actions in suspending elections by citing the example of the three country councils that have had their elections suspended while propositions affecting their areas are before the commission. The small country councils are the two Jamestowns, Spalding and Truro. Their proposals were well and truly in the commission pipeline before the 1989 council elections were due. The two Jamestown councils started their hearings before the commission in 1987-88, and were completed early in 1990. The new council commenced operation as a whole earlier this year. Spalding started in 1988 and is still not complete. Truro started in 1988 and is still not complete. There may have been justifications for these suspensions, but they certainly cannot be used to justify the present suspension.

Since the three councils and the compliant Minister are in a headlong rush to orchestrate the early part of this amalgamation proposal, why are they so keen to avoid the early indications from the people they serve? The *Advertiser* editorial states:

The merger would undoubtedly be a key issue; and the type of candidates elected—localist or expansionist—would give an early guide to the feelings of ratepayers about having this merger thrust down their throats.

We keep hearing this paranoid reaction from the Government and the Minister about the turn-out at local government elections, and the number of people willing to put themselves up for election. There is now this obvious issue in three largish metropolitan council areas, and you go all out with great haste to squash it. I wonder why? So much for consistency!

Another scenario needs to be considered. In Port Adelaide the elected Mayor has retired, and nominations will close on 15 March for that position. If need be a poll will be held on 6 April. Anyone nominating must have served at least one year as a councillor or alderman. If a present councillor or alderman wins the position of Mayor with or without a poll another vacancy will be created which must be filled. If one or more councillors from any of the three council areas retires, there will be a need for more by-elections. There is the potential for a messy and costly situation of around about $10 000 for each by-election. There is no doubt that a full election in May would be a far better arrangement for the Minister to consider. There also could be retirements in the two other council areas.

Certain matters have come to my attention which make me wonder where the multifunction polis looms as a factor in the forward thinking of the Government, and ties in with this amalgamation proposal. If the MFP does proceed we have not been told about the long-term self-government of the population that will make up this area. Will it become part of the already large and established Salisbury council, or will it become part of the proposed amalgamated council? Is this part of some of the behind the scenes manoeuvring? It would fit the pattern of this Government to think that it could tack the MFP on to a large amalgamated council and hide a lot of its costs in a very large population stretching, as it might, to West Lakes.

My motion simply calls on the Minister for Local Government Relations to reverse her decision about not having council elections in Woodville, Port Adelaide and Hindmarsh and allow those normal elections to proceed in May this year. I have shown that recent metropolitan amalgamation proposals have not had council elections suspended. I have shown that where elections have been suspended in country areas their proposals have been well and truly in the commission pipeline before that suspension—not a matter of months. In the absence of a petition of electors, as called for in the Local Government Act, the Minister has taken for granted that there is widespread community support. Surely the most basic ingredient for success has been ignored. Unless the Minister can come up with a lot of evidence that she has been convinced by those three councils' joint steering committee that there is enormous evidence from the population in that area, I will have to say again that that very basic ingredient for success of amalgamation proposals has been ignored. If the Minister continues to ignore it, I will continue saying that the chances of success in a major amalgamation are lessened every time the people are ignored right from the beginning.

I have argued that the electors have a basic right to judge the performance of their councillors every two years, and that the Minister has no moral right to interfere with that democratic process. I have argued that the Local Government Advisory Commission should not hear this proposal until its very existence has been accepted by the local government community itself through its negotiating process. It is no good the Minister using it up to the end of June this year when it is being funded by the Government when after June of this year it will be half funded by someone other than the Government. It is not good enough. I will argue until I am blue in the face that if amalgamation proposals are to have any chance of success ministerial interference must stop. I urge members to support the motion.

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

SMOKING BAN

Adjourned debate on motion of Hon. M.J. Elliott:

That this Council:

1. endorses the decision of the Joint Parliamentary Service Committee to prohibit smoking in certain areas under its jurisdiction and calls on all members to abide by the terms and spirit of the decision;
2. declares its support for the long-term introduction of a smoke-free environment throughout Parliament House; and
3. prohibits smoking in and about the lobbies, corridors and other common areas of Parliament House under its jurisdiction.

(Continued from 21 November. Page 2052.)

The Hon. R.J. RITSON: In speaking to this motion, I want to begin by indicating that I concur with all the sentiments expressed therein. Certainly, it would be an ideal situation if the day came when no-one smoked. I recognise from the very outset the right of people who want a smoke-free environment to have one, and I do not think that this is disputed by anybody in this Council. Maybe it is, but I doubt it. So, I hope that the time of the Council is not taken up with lengthy debate on health aspects and health demerits of smoking, since, as far as I am aware, that is

universally conceded. Mr Acting President, there is so much conversation surrounding me on all points that it makes life very difficult.

The ACTING PRESIDENT (Hon. T.G. Roberts): Order! There is too much audible conversation.

The Hon. R.J. RITSON: The questions of the health demerits of both active and passive smoking are not in contest here. As far as I know, they are agreed by all in the Chamber. So, I want to make my remarks particularly about why there was a need to bring this motion before the Council, and indeed whether there is a need to make passing reference to the mechanism whereby it came before the Council—a fact that I actually regret very much and doubt that was necessary.

In doing so I want to observe that there are two main legs to the resolution. The first one is that this Council endorses the rules of the Joint House Committee. The Joint House Committee, as members know, is a statutory committee. It has its own Act of Parliament and its own powers. In my experience—over 11 years in this Chamber—I have seen its powers exercised gently and effectively. On this subject, I recall that when I first entered this Council about half the members smoked; there were ashtrays on all the tables in the diningroom and all the tables in the library. Progressively we have seen that situation erode to the point where no-one smokes in the diningroom; no-one smokes in the library; and people generally do not smoke in their respective Party rooms.

It is a source of some regret that the JPSC has been unable to enforce its house rules, which after all are the rules by which we as members regulate ourselves in the private and domestic aspects of our lives in this Council. It is a cause of great regret to me that these private and domestic aspects of our lives and our work in this Council have been brought before the public on to the floor of the Chamber, when indeed the Council could be better spending its time debating matters of State and public welfare, rather than debating our own private affairs in this expensive forum.

I must say that the ability of the JPSC to regulate the affairs of the shared facilities of this Council was in fact seriously weakened by the mover of this resolution when the rule about introducing strangers to the inner lobbies was flaunted and publicised for a political purpose. Indeed, no sanctions were exercised against that member, because perhaps politically he would seem to be a martyr. I think that was the beginning of the end of the authority of that committee, which seems now to have made a reasonably unenforceable rule—that is, the question of no smoking in the bar—and it is because of that that the matter has now been elevated to the floor of the public Chamber.

However, I see a certain set of double standards regarding the position of the Democrats, who were the ones that really broke the back of the authority of the JPSC with some of their public stunts in the inner lobbies—a double standard on their part in both breaking the back of the authority of that committee and then bringing a motion into the Council to endorse that committee. However, such is the nature of politics that nothing is sacred, and we find ourselves with this woolly resolution that we somehow endorse the committee which has its own statutory authority independent of this Chamber.

The other limb of the committee has a couple of little branches, but one is that the vague, pious and certainly easily agreed with long-term hope that the Council be a no-smoking area. I assume that that is synonymous with the hope that no-one smokes, rather than an expectation that there will come the great day that smokers will no longer be able to become members of Parliament.

In principle, the prohibition of smoking is great, but when we look at the authority that this Council proposes in banning smoking in the lobbies, it intends to supplant the authority of the President with the authority of this motion. Maybe the Council can do that, but it is foolish to do so in any instance, because it sets in concrete the matter in the words of the motion and really ties the hands of the President.

The principle of the President's exercising the authority of the Parliament over domestic aspects of rooms, accommodation and general behaviour in our workplace has a very practical purpose, namely that, if the Council seeks to direct the President instead of leaving him with that flexibility, whenever it wishes to change something, the Council will have to meet as a Parliament and pass a resolution. It seems to me that this is a very vague aspect of the motion. I do not know what are the other common areas of Parliament House. I do not know where the lines are drawn on the floor in the basement or on the lower ground floor. The ground floor is a little easier because there are different coloured carpets that symbolise areas under different control.

It is foolish of us on any matter, regardless of smoking, to pass by resolution a binding direction to the President which is vague. Will we have disputes and come back and pass another motion to amend this one? I do not know, but I do wish that the honourable member had paid the President enough respect as a person to trust his judgment and allow that matter to evolve in the same way as the evolution in the past has occurred; that is, the increasing cultural pressures to reduce smoking and to confine it to certain parts. All that happened without resolutions, and my colleague the Hon. Mr Burdett might have something to say about that.

The other aspect on which I want to comment is this—and I learnt it from a former member of this Council; there are two reasons for doing anything politically, namely, the good reason and the real reason. Concerning the anti-smoking movement, there are good reasons (and I have already agreed with the good reasons) why ideally no-one should smoke, and specifically, people who object to smoke are entitled to a smoke-free environment. If one believed in the good reasons, in the best possible non-adversary way, one would simply arrange for those two criteria—at least for the smoke-free environment critieria—to be achieved.

There is a real reason for some people's behaviour, and that is a neurotic reason. In particular, people who have successfully given up smoking feel (sometimes quite rightly) that they are superior to those who are still trapped with this drug, and they set out to punish them because it makes them feel better. In some places, the achievement of a smoke-free environment is characterised by self-satisfied non-smokers relishing the discomfort of smokers because, if any provision at all has been made for smoking, it is in an old-fashioned dunny 100 metres out the back or in some other quite punitive place. That is a thread of behaviour based on a neurosis—at least as neurotic as the smoking habit—which evidences itself socially in some establishments that have become non-smoking except for a smoker's cage in Siberia.

In the back corridors of this place, I have detected that sort of behaviour, even here where we might like to think that we are wiser than collections of workers in other buildings. I am sure it is a universal by-product of this. I am very disappointed that all this has been brought before the Council, even though you will get no argument from me

about the provision of a smoke-free environment for those people who want it. You will get no argument from me about the health hazards of smoking and, at least qualitatively, the hazards of passive smoking. Having said that, I will not oppose this motion—

The Hon. T.G. Roberts: You already have!

The Hon. R.J. RITSON: No, I have not. I have expressed great regret because of the agendas and because of the real reasons, but the fact of the matter is that what we see in print are the good reasons. However, the Council should very seriously consider whether it should bind the day-to-day discretion of its Presiding Officer by resolutions, the resolutions not containing within themselves any detail or any guidance as to how to administer these instructions. That is a very bad precedent.

The other problem is the question of sanctions, and I remind the Council that this resolution would also bind the civilian users, the non-parliamentary visitors to this place—our constituents. The question arises as to how to punish them should they break the rule. Indeed, the only avenue open to us, as we have no by-law structure to use as sanctions, would be to raise the question of privilege and call them before the Bar to be reprimanded, fined or imprisoned for the duration of the Parliament for smoking. If we are not prepared to exercise sanctions against our visitors for smoking, by calling them to the Bar, there is precious little else we could do.

I do not think that people should make rules in a way that they are impracticable to reinforce. We really ought to have been mature enough to sort out our domestic matters in private, behind those doors, and with goodwill, and we would have obtained the same result. Having said that, I indicate that I am not prepared to oppose this motion because, although I understand the bad reasons why it came to be, it is the good reasons which are in print. Other members may not agree with me, regardless of whether it is about smoking or sucking jelly beans. There are problems, perhaps legal, perhaps practical, in relation to the question of the authority of this Council and with respect to enforcement.

All of that is because the authority of the JPSC, our statutory committee that regulates us, was undermined by the Democrats' publicity stunts in the inner lobbies and because we were not prepared to give a little time for discussions amongst ourselves and with the President to achieve this result. I am not saying that I support the resolution but, if there is a division, I will not oppose it.

The Hon. R.I. LUCAS (Leader of the Opposition): If there is anyone in the Chamber who—

An honourable member interjecting:

The Hon. R.I. LUCAS: No, I am not a reformed addict, but I spent 17 years closeted in a very small room in a Housing Trust home breathing my father's smoke. I have never smoked but, if passive smoking can kill, I might well be a good candidate for an experiment some way further down the track. If lung cancer gets me, after those 17 years in Mount Gambier, I think I would be a good example of passive smoking.

I agree with the Hon. Dr Ritson in that I, too, wish that this matter could have been resolved without recourse to debate in Parliament. It is indicative of the priorities of Government and its members that the member for Walsh has taken up the time of Parliament to discuss whether we should open or close doors and the member for Hartley and the Democrats have set the Government's agenda as to whether or not we should smoke inside Parliament House.

When one looks at the priorities of this Government and the matters with which members wish to take up the time of both Houses of Parliament in debate—as I said, the opening and closing of doors or whether or not to smoke—it is a fair indictment of this Government's lack of momentum and activity after some 10 years. However, I do not want to be diverted into those matters as I have only a short time in which to address a number of matters related to this resolution.

Obviously, the issue before us is a controversial one with potentially many differing views in this Chamber. In addressing the matter I distinguish two important questions. First, we all have personal viewpoints or preferences in relation to smoking and whether or not we like it or whether or not we will tolerate someone smoking next to us, whether it be in an enclosed space such as this Chamber or at Football Park or Adelaide Oval where someone sitting next to us or in front of us lights up and we spend two hours inhaling their smoke.

We all have opinions on the question of passive smoking. I do not necessarily agree with the recent court decision that it is conclusive one way or another that passive smoking causes lung cancer. A lot of evidence indicates that and a lot of evidence argues that it has not yet been proved. It is difficult to prove the causality of one behaviour pattern or one aspect of smoking or passive smoking to lung cancer or some other lung-related illness. There is certainly no question in my mind that a number of other things of lesser importance than lung cancer, such as respiratory problems, are caused for people when they are required by work or other reasons to exist in a smoke-filled atmosphere for long periods.

However, as I said, the question of causality is a difficult one and I do not intend to examine all the arguments for and against it. Many pieces of literature argue that causality can be proved and many pieces of literature from eminent scientists and statisticians argue that causality has not yet been proved. So, that is the first question: it is a personal viewpoint and a personal preference.

The second question is an important one and affects the question of legal liability and occupational health, safety and welfare laws. Obviously, the recent court decision should ring warning bells for any employer. Parliament is an employer. We have a responsibility to staff—not just to members of this Council. It is not just members who are trying to sort out things for themselves, but our actions affect the health and welfare of staff. For example, I refer to staff who work in the bar or in any other area of Parliament House. If others are smoking and if a problem with passive smoking is proved, perhaps some way down the track those members of staff would have legal recourse against the Joint Parliamentary Service Committee if they were to pursue a health-related problem in relation to the effects of passive smoking.

So, the second aspect of the honourable member's motion is important, and we must err on the side of caution in relation to the question of legal liability. We do not know where we will be 10 or 20 years down the track. Whilst I hoped that we could have resolved this matter without recourse to Parliament, and whilst I hoped that, as the Hon. Dr Ritson indicated, members could have sorted this out honourably in Parliament, we have to address this second question of legal liability and the effects of what we do on members of the staff.

I want to address some aspects of the motion and to raise some questions. I know that it is probably not proper in the course of debate to direct questions to you, Mr President, but I hope that, having listened to my contribution,

that you might respond in any manner of your choosing, if you saw fit, not by entering the debate but perhaps by circulating your opinion to members of the Chamber.

In relation to paragraph 1 of the motion to prohibit smoking in certain areas, endorsing the decision of the Joint Parliamentary Service Committee, I note that some concern has been expressed to me by members of staff about the decision of the Joint Parliamentary Service Committee in relation to the Blue Room. Particularly since the recent court decision, some members of staff—and they are not isolated—have raised the question with me and other members as to why, when they eat their lunch or morning or afternoon recess in the Blue Room, they should have to endure a smoke-filled environment. So, questions are already being raised about that decision of the Joint Parliamentary Service Committee.

Paragraph 2 of the motion proposes that the Council declare its support for the long-term introduction of a smoke-free environment throughout Parliament House. I have some concerns about that proposal. I share the view, and the Hon. Mr Elliott might also support the proposition, that members should be able to smoke in their own offices if they choose to take that risk. If that is Mr Elliott's view, I am not sure how that fits in with paragraph 2 of this motion, and I would be interested in his response to that matter before this motion is debated again. I take it that he is proposing the introduction of a completely smoke-free environment, with no smoking anywhere within Parliament House, as exists in schools and Government offices. I do not object to providing smoking rooms or smoking lounges for smokers.

The Hon. M.J. Elliott: We haven't enough rooms as it is. What are you talking about?

The Hon. R.I. LUCAS: That is something you might take up with the Government. I do not have any objection to smoking rooms or lounges, or something like that, for those who smoke, and those who want to go to that room will know that smokers will be there.

The Hon. Carolyn Pickles: What if it gets in the air-conditioning?

The Hon. R.I. LUCAS: The Hon. Ms Pickles is obviously arguing against allowing smoking in a smoking room because it might get into the air-conditioning. I am not competent to respond to that. It is an important question, and perhaps engineers or someone—

The Hon. T. Crothers interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —will need to address that question. All I want to do now is raise some questions and seek leave to continue my remarks at another stage. Personally, I think there are problems with paragraph 2. If the Hon. Mr Elliott's view is as I think it is—that he wants to allow members to continue to be able to smoke in their rooms—then paragraph 2 would not appear to allow that, and it might need some amendment. Paragraph 3 seeks to prohibit smoking in and about the areas under the jurisdiction of the Council. The Hon. Dr Ritson touched on some legal aspects of that, and I would be interested in the President's view as to whose responsibility it is—whether it is competent for the Council in effect, to take upon itself the decision to prohibit smoking. It may well be that we ought to be urging the President or expressing an opinion to him, all the while accepting that it is his decision. I would have thought that if we have the power to direct the President to ban smoking we also have the power to direct him on the employment of his staff and what salary he might pay them at any particular time, and on a whole range of administrative decisions that the President currently takes and we are quite happy for him to take.

The drafting of paragraph 3 raises some important flow-on questions, and I would be interested in the President's response, if he chooses to do so, as to where this would leave those important questions. If we take it upon ourselves to make decisions in this area, are we opening up a can of worms in a whole range of other areas in relation to administrative decisions that we accept the President currently takes? Also, I would be interested to find out from the President or from officers of the Parliament—and I have never understood this and I think that now is as good a time as any to find out—what areas of Parliament House, detailed on a map, the Legislative Council believes come under its jurisdiction. I have heard all sorts of arguments: that the Legislative Council has ceded control over this committee room, that it has transferred something under its control and that something has been given to us in lieu thereof. I would be interested to know what, in the Legislative Council area—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —is under our control, particularly lobbies and corridors. I, too, would like to know what are the common areas of the Parliament, and what common areas are under the jurisdiction of the Legislative Council. Perhaps they are the Legislative Council committee rooms, the interview room opposite, the Legislative Council lounge, the toilets in the Legislative Council half of Parliament House or the Party rooms that are under the control of individual Parties. Are they common areas of the Parliament in which we would prohibit smoking? Under paragraph 3, would we be talking about individual member's offices?

The other area that I will not touch on at the moment is in relation to penalties. As the Hon. Dr Ritson indicated, I guess that there is not much, in the end, that we can do other than expressing views and laying down our own rules, and if people choose not to follow those rules then, in practice, I guess that there is not too much that we can do or, indeed, should do about it. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

REHABILITATION OF OFFENDERS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to encourage the rehabilitation of offenders by providing that certain convictions will become spent at the expiry of prescribed periods; to regulate the disclosure of previous convictions; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to give effect to what this Government regards as a significant and highly desirable reform.

Background

In 1974 the Law Reform Committee of South Australia submitted to the then Attorney-General its 32nd Report

'Relating to the Past Records of Offenders and Other Persons'. That report was principally a commentary on and elaboration of an English report of 1972 entitled 'Living it Down—The Problem of Old Convictions' prepared by a committee set up by Justice (the British Section of the international Commission of Jurists), the Howard League for Penal Reform and The National Association for the Care and Resettlement of Offenders.

In November 1984 the Attorney-General's Department published a detailed discussion paper on 'Rehabilitation of Offenders: Old Criminal Convictions' and sought and obtained comments and submissions from various interested persons and authorities. A preliminary draft Bill was attached to that discussion paper. The response to the discussion paper was most pleasing and there was no doubt the proposals inherent in the Bill received strong support and encouragement.

Since then, a number of developments have taken place in other Australian jurisdictions which have given added impetus to the formulation of this Bill. Thus, for example, the Australian Law Reform Commission published a discussion paper (No. 25, 1985) on 'Criminal Records' followed by a final report on the topic, The Law Reform Commission of Western Australia published a report on 'The Problem of Old Convictions' in June 1986. In September 1987 the Attorney-General's Department of Victoria published a background paper on 'Spent Convictions'.

In April 1986, the Queensland Parliament passed the Criminal Law (Rehabilitation of Offenders) Act which provides particular forms of protection for persons convicted of less serious types of offences, where the conviction is more than ten years old and no subsequent serious convictions have been incurred. Further, Western Australia has enacted the Spent Convictions Act 1988 and a Federal program entitled the Spent Convictions Scheme came into operation in July of last year.

The Bill follows many of the proposals in the new Federal scheme in order to maintain as much uniformity as possible for ease of understanding and administration. For instance, the Bill only applies to convictions which attract a sentence of imprisonment not exceeding 30 months or a fine not exceeding $10 000. The question of recognition of relevant laws of other jurisdictions has also received the attention of the Standing Committee of Attorneys-General and is the subject of specific provision in the Bill (see Clause 4 (1)).

The Bill

The heart of the reform that this Bill represents can, I think, best be described in the words of the English Justice Committee Report (to which reference has already be made):

> Much of the crime committed in this country is the work of a group of people, sometimes called 'recidivists', who spend most of their adult lives in and out of gaol, undeterred and unreformed. They present society with an apparently intractable problem, but they are not the people with whom we are concerned . . .
>
> We are concerned instead with a much larger number of people who offend once, or a few times, pay the penalty which the courts impose on them, and then settle down to become hard working and respectable citizens. Often, their offences are committed during adolescence, which is a period of emotional instability in even the most normal people, and can sometimes be delayed if they are 'late developers'. There may have been a spate of thefts, breaking-in, driving away other people's motor cars, street corner violence, or hooliganism. When the phase is over, many of these people grow out of the need to behave delinquently. Mostly, they marry, find work and settle down, and never offend again.
>
> . . . they have done, over a number of years after their delinquent phase, all that society can reasonably expect from its respectable citizens. But for rehabilitation to be complete, society too has to accept that they are now respectable citizens, and no longer to hold their past against them. At present, this is not the case, for the rehabilitated person continues to be faced with great difficulties, especially in the fields of employment and insurance, and in the courts.

Therefore, what this Bill tries to achieve is a better balance between the demands, strictures and sanctions imposed on an offender by society and his or her honest and genuine claims to rehabilitation and recognition as a worthy contributor to that society.

Generally speaking, a person's conviction will become and be deemed to be 'spent' if, in the case of adults ten years, and in the case of children five years, elapse during which period the convicted person is not convicted of a further offence—or, at least, of a further serious offence. If a conviction is 'spent' a person cannot be required to divulge information relating to the conviction or the circumstances surrounding the conviction.

There are to be a number of important exceptions to the general prohibition against publishing information on spent convictions, most notably exceptions relating to the proper administration of justice.

Moreover, the integrity and essential privacy of information relating to spent convictions is to be assured by prohibitions against the improper, unauthorised or malicious disclosure of such information, on pain of penalty.

The concept of a spent conviction is, moreover, extended by virtue of clause 3, to include considerations relating to:

- the fact that the person in question committed the offence;
- the fact the person in question was arrested for or charged with the offence; or
- the fact the person in question can avail himself or herself of the provisions of the Bill itself.

In summary, therefore, the main features of the Bill are:

- to apply only to a conviction which attracts a sentence of imprisonment not exceeding 30 months or a fine not exceeding $10 000.
- to provide that admission to certain professions is excluded from the provisions of the Bill. Further, persons employed in the care and supervision of children and the mentally impaired are excluded from the Bill as are proceedings before a court or tribunal in order to enable the proper administration of justice.
- to provide that convictions will become spent if a (serious) conviction-free period of ten years (for adults) or five years (for children) elapses;
- to provide that a rehabilitated person is protected from the need to furnish information (even on oath) relating to a conviction that has become spent;
- to enable spent convictions still to be adduced in proceedings before a court or tribunal, where justice requires this to be the case;
- to regulate the circumstances in which it is lawful to disclose the existence of a spent conviction;
- to create a tort of malicious disclosure of a spent conviction, for which a rehabilitated person may be compensated in damages.

The Bill applies to convictions recorded within or outside South Australia either before or after the commencement of the Rehabilitation of Offenders Act 1991.

Generally speaking, if a person is convicted of another offence during the ten (or five) year rehabilitation period that relates to an earlier conviction, then time will stop to run and will wholly recommence following the later conviction. In other words, there will be no partial credits for time running: a person must have had a completely conviction free ten (or five) year period before a conviction becomes spent.

A Particular Concern

Perhaps the matter of greatest concern to respondents to the Attorney-General's Department's 1984 discussion paper was the question of suitability of certain classes of offenders

to some types of employment. It was a matter that also gave the Law Reform Committee cause for concern:

> It is however true that every exception involves to that extent a retreat from the overall policy recommended in this report and for that reason one member would wish that there be no exceptions; on the other hand other members feel that some areas are of particular delicacy and although each case raises its own questions of policy and discretion in general they support the following exceptions. In order to be placed on the roll of medical practitioners or dentists, in order to be admitted to practise as a barrister and solicitor, in order to be registered as a teacher under the Education Act 1972 it is necessary in each case that the person should be a fit and proper person. Hitherto that has meant a disclosure of prior convictions. It may well be that in all of those three cases at least and possibly in some others, the public interest requires the full disclosure of all convictions to the registering body.

Clause 4 of the Bill, the Government feels, will enable the sorts of problems adverted to by the Law Reform Committee, and others, to be dealt with both sensitively and sensibly. In other words the approach proposed in this Bill should assuage those fears and concerns.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 sets out the various definitions required for the purposes of the Bill.

Clause 4 relates to the scope and application of the Act. It is proposed that the Act apply in relation to convictions recorded within or outside the State either before or after the commencement of the measure. However, the Act will not apply if the convicted person is sentenced to imprisonment for an indeterminate term or for a period exceeding 30 months, or is ordered to pay a fine exceeding $10 000. Furthermore, the Act will not apply in a number of cases set out in clause 4 (3).

Clause 5 sets out the provisions by which an offence may be regarded as 'spent'. Basically, it is proposed that an offence will be regarded as spent if, in the case of an offence committed by an adult, ten years, or, in the case of an offence committed by a child, five years, have elapsed since a particular day without further conviction for another offence.

Clause 6 provides that the Act will bind the Crown.

Clause 7 regulates the disclosure of spent convictions, or circumstances surrounding spent convictions. It is proposed that, except as provided by the Act, a person cannot be lawfully asked to disclose information relating to a spent conviction or a circumstance surrounding a spent conviction and a person can provide information without disclosing the fact that he or she has been convicted of an offence the conviction for which has become spent. The provision will extend to situations where the person must give the information on oath or affirmation, or by statutory declaration. Evidence tending to prove a spent conviction or circumstances surrounding a spent conviction will only be able to be introduced into proceedings before a court or tribunal by leave, and leave will only be granted in specified cases.

Clause 8 provides that a person (other than the rehabilitated person) who discloses the existence of a spent conviction or circumstances surrounding a spent conviction is, subject to specified exceptions, guilty of an offence. The exceptions include disclosures made with the consent of the relevant person, disclosures made under the authority of any Act, disclosures made in the course of official duties by a person in custody of an official record, and disclosures made in law reports or materials produced for educational, scientific or professional purposes.

Clause 9 relates to offences under the proposed Act. Proceedings for an offence will only be able to be commenced with the authority of the Attorney-General.

Clause 10 will allow a rehabilitated person to seek compensation for any loss suffered as a result of another person maliciously or recklessly disclosing the existence of a spent conviction or circumstances surrounding a spent conviction.

Clause 11 is a regulation-making provision.

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

PHARMACISTS BILL

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

CHIROPRACTORS BILL

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

ADJOURNMENT

At 6.7 p.m. the Council adjourned until Thursday 21 February at 2.15 p.m.