LEGISLATIVE COUNCIL

Tuesday 5 March 1991

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 113, 119 to 124, 126 to 130, 132 to 138 and 149.

TOURISM PROMOTION

113. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism:

1. Is the Minister aware that following the domestic pilots dispute, other Australian States provided or were allocated substantial funds by the Australian Tourism Commission to attract interstate visitors?

2. In the face of this marketing activity by other States, why has Tourism SA this year failed to advertise interstate on television, the most effective advertising medium?

3. Is the Minister satisfied that our level of international promotion this year compares favourably with that of our competitor States?

The Hon. BARBARA WIESE: The replies are as follows:

1. The honourable member is not quite correct in her assertion that other Australian States were provided or were allocated funds by the Australian Tourism Commission following the domestic pilots dispute. In fact, an amount of $31.25 million was allocated by the Commonwealth Department of the Arts, Sport, the Environment, Territories and Tourism to a national recovery plan. Of this, $18.5 million was allocated to the ATC which was spent entirely in international markets on generalised promotion of Australia as a destination. Of the remaining $12.75 million, $5 million was spent by DASETT on a cooperative domestic advertising campaign, and $7.75 million on direct grants to those States most severely damaged by the dispute, namely Tasmania, Queensland, the Northern Territory and Western Australia. It is presumably to this last amount that the honourable member has referred in her question.

2. South Australia did participate in the domestic tourism recovery program coordinated by DASETT which I mentioned in my answer to the first part of this question. This involved some $130 000 of interstate television advertising. However, Tourism SA has elected to expand magazine and newspaper advertising in lieu of television advertising this year. This has been decided on the advice of our advertising agency (Young and Rubicam) that more effective targeted marketing can be achieved with the funds available. Our print program is scheduled to commence in April and run for the remainder of the calendar year. I have also recently announced a cooperative media advertising campaign which will include some television coverage interstate.

3. It is extremely difficult to compare the levels of the various States' international promotion because of the different approaches to it taken by them. Although of course I would like to see more funding available for both international and domestic promotion, the present economic climate requires especially careful assessment of competing funding requirements. My priority is to ensure that our existing allocation, by careful and focused spending, is used to its maximum effect.

That has resulted in very significant increases to the international component of our budget, particularly in the key markets of South East Asia and Japan. The budget for our Singapore office, which is responsible for promotion in South East Asia, has been increased by 43 per cent this financial year, and the Tokyo budget doubled. This has enabled us to achieve very significant increases to the amount of South Australian tourism product available in these markets and the number of wholesalers carrying it. Unfortunately, visitor statistics for the last half of 1990 are not yet available to measure our performance, but preliminary figures for the first six months of the year are encouraging.

TANDANYA

119. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: As the 1989 Business Plan prepared for the Aboriginal Cultural Institute by Peat Marwick Hungerfords provided differing attendance scenarios ranging from 50 000 to 160 000 people—

1. On what basis did the board assume and Cabinet accept attendance figures of 90 000 in the first year of operation?

2. Did Treasury officials have misgivings about the 90 000 attendance figure as the basis for assessing funding requirements which were communicated by memo to the Department for the Arts and, if so, will the Minister table such advice?

3. What were the initial annual attendance forecasts to the year 1992-93, commencing with 90 000 in 1989-90, and what are the revised annual forecasts to the year 1992-93 following attendances of only 14 000 in 1989-90?

4. What are the attendance figures for July-December 1990 and what income has been generated from this source?

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

1. Tandanya assumed an attendance level of 90 000 was possible in its first year of operation, based on estimates quoted in Peat Marwick Hungerfords' business plan. Cabinet has never accepted that figure.

2. Based on comparative statistics supplied by the Department for the Arts relating to visitor numbers at Carrick Hill, Birdwood Mill, the Constitutional Musuem and the Maritime Museum, Treasury recommended, and Cabinet accepted, a visitor level of 45 000, which is half that estimated by the consultants.

Many discussions have taken place between officers of the Department for the Arts and Treasury concerning this matter but I am not aware of any memorandum containing specific details. I am therefore unable to table any memorandum but, in view of the fact that both departments were party to the decision, it does not appear to be particularly relevant.

3. The annual attendance forecasts to the year 1992-93, as proposed by the Peat Marwick Hungerford business plan, were as follows:

1989-90	1990-91	1991-92	1992-93
90 000	120 000	140 000	150 000

As mentioned previously, the anticipated visitor level for 1989-90 was revised to 45 000. As there were only 14 000 visitors in 1989-90, 15 000 visitors have been forecast for 1990-91. Revised forecasts for 1991-92 and 1992-93 will be determined by the outcome of the Tandanya review.

4. Attendance figures for the period July-December 1990 were approximately 7 000, generating an income of $20 000.

120. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: Will the Minister table within the current session of Parliament a copy of the 1989 Business Plan for the Aboriginal Cultural Institute prepared by Peat Marwick Hungerfords, and, if not, why not?

The Hon. ANNE LEVY: There were in fact two business plans prepared by Peat Marwick Hungerfords for Tandanya: the first 'Interim Business Plan' in August 1988 and the second 'Business Plan for the Retail Outlet and Food Outlet' in April 1989. As those plans were commissioned by the Tandanya board, prior to the transfer of Tandanya to the Arts portfolio, they are not my property and consequently I must seek the board's agreement before I table them. I will pursue that matter and table those reports as soon as I am able.

121. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the review of Tandanya's operations following 12 months of operation:

1. Which company won the consultancy contract and what was the tender price, and will this cost be met by the board or the Department for the Arts?

2. What were the terms of reference?

3. Does the Minister and/or the board propose releasing the report acknowledging the public interest in the financial status of the centre?

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

1. The review of the operations of Tandanya was proposed by the Minister of Finance and the Board of Tandanya in July 1990. It was a joint undertaking between the Arts Department, Treasury and the Office of the Government Management Board. Membership of this review team was extended, in early November, to include a member of the Tandanya board of management.

2. Terms of Reference:

- Interview individual members of Tandanya Board and staff, and other interested persons, to gather information and views concerning Tandanya's current operations and future direction.
- Facilitate group discussion and planning concerning Tandanya's basic aims and objectives, its corporate strategies, and its marketing activities.
- In the light of these aims and objectives, reassess the organisation's financial and staffing requirements and the effectiveness of its use of these resources, including the use of trainees.
- Assess the organisation's management arrangements and decision-making processes, including the role of the Board.
- Undertake an assessment of the financial viability of the organisation's enterprise activities (including the Tandanya Foundation) and their impact on the organisation's other programs and activities.
- Set performance criteria so that Tandanya can monitor its progress towards its objectives.
- *Undertake all of the above in relationship within the context of the establishment of the Aboriginal Cultural Institute since the initial approval of the project by the State Government in July 1987 including the comparison of the Institute to other cultural assets and models.

*Term of reference added at Tandanya's request.

3. Release of the report will be subject to the decision of the Minister of Finance and the board of management of Tandanya who initially requested the review.

122. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the office accommodation at Tandanya—

1. Does the area include 'lettable accommodation space for compatible tenants' as envisaged in the board's submission to the Parliamentary Standing Committee on Public Works on 26 October 1988 and, if not, why not?

2. If so, what is the size of the area, how much of the area has been let, who are the tenants and what rent has the centre received to date?

3. In either 1989-90 or 1990-91 has the board's budget estimates of income made provision for rental generated from letting accommodation space and, if so, what was the sum in each instance?

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

1. Yes, the area does include 'lettable accommodation space for compatible tenants'.

2. The size of the area in question is 108.75 square metres, which is currently used by the Aboriginal Lands Trust. After the board's submission to the Parliamentary Standing Committee on Public Works on 26 October 1988, negotiations were held with the Aboriginal Lands Trust, the State Office of Aboriginal Affairs, and the Centre for Aboriginal Studies in Music. On 10 October 1989, the board gave approval for the Aboriginal Lands Trust to take up tenancy within the Tandanya facilities. The Lands Trust is trustee of the title of the Tandanya building and it was therefore agreed by the board that rental on the Lands Trust tenancy area would be waived, on the condition that the Lands Trust cover all outgoings associated with that tenancy.

3. The board's budget estimates of income for 1989-90 and 1990-91 made no provision for rental generated from letting accommodation space.

123. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: As Tandanya's structure incorporates a large workshop area at the south-east corner of the centre—

1. Are artist workshop programs being conducted in the area as originally proposed?

2. If so, what programs are being conducted, including the duration of the programs and the number of participants and are products being developed for sale in the retail outlet?

3. If not, why not?

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

1. Various artists have participated in activities of the workshop area. Although as yet no formally structured programs have occurred, the workshop has been used spasmodically by visual artists, for example, Ian Abdulla, and artists from Ernabella.

2. The Pitjantjatjara people of Ernabella in particular, have developed numerous 'punu' (wood carvings) in the workshop area which have been sold in the retail outlet.

3. Refer to 1 and 2 above.

124. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to training programs at Tandanya—

1. What training positions were created in 1989-90?

2. What form of training was provided in each instance?

3. How many training positions are available at present and of this number, is each position filled?

4. What is the turnover rate of trainees during the period of traineeship?

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

1. The following training positions were created in 1989-90.

Core Staff Trainees:

1 Trainee Exhibitions Officer
1 Trainee Publicity Officer
1 Trainee Production Manager
1 Trainee Marketing and Foundation Officer
2 Trainee Attendants

Enterprise Staff Trainees:

1 Trainee Cafe Manager
1 Trainee Retail Manager

2. Training differed for each position, as the majority of training was gained 'on the job'. Some trainees undertook various outside courses, as well as those management and marketing courses organised by the Institute.

3. There are currently no trainees in positions at Tandanya, however I understand that funding for three positions is still being negotiated with the Commonwealth Department of Employment, Education and Training.

4. Two out of the eight trainees resigned and did not complete their training.

126. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the retail outlet at Tandanya—

1. What is the board's policy in terms of the pre-purchase of stock *vis-a-vis* consignment and commissions?

2. What funds were both allocated and spent on the pre-purchase of stock in 1989-90 and what are the figures for 1990-91?

3. For the period July to December 1990 inclusive, what was the forecast operational expenditure and what is the net income?

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

1. The board of management is committed to assisting and promoting Aboriginal artists, through its exhibition programs in every practical way. The retail outlet is a self-supporting unit within Tandanya and, as such, is more commercially-orientated. It still has a role in promoting Aboriginal artists, however, and it strives to market a balance of stock promoted by the institue together with commercial stock which has a greater profit margin and turnover. In addition to its exhibition stock, the retail outlet handles stock which has been purchased for resale and stock which has been left on consignment. It does not sell any stock by commission. There is no set budget for purchase of stock as the shop is, in many ways, still endeavouring to establish its market niche and clientele. Consequently, it simply purchases stock as required. Stock carried by the retail outlet at any one time is limited to approximately $20 000-25 000 and the 'mark up' on sales varies considerably averaging about 100%. Stock is left on consignment for a set period, usually three months, and if sold the vendor receives two-thirds of the sale price with the shop retaining the other third.

2. As explained previously, no budget is set for the purchase of stock. Expenditure on stock during 1989-90 was approximately $135 000 and based on sales levels to 31 December 1990, purchases for the 1990-91 financial year are expected to be in the order of $160 000.

3. Total expenditure on purchase of stock for the period July to December 1990, was $90 000 and income from sales in that period totalled $128 000.

The figures quoted are the best available at this time although, as mentioned in replies to several previous questions, Tandanya's accounting systems are currently being rigorously reviewed and these figures may change slightly as a result of that review.

127. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the performing arts facility at Tandanya—

1. What were the operating costs in 1989-90 and the projected costs in 1990-91?

2. How many days and evenings was the theatre booked during 1989-90 and in the first half of 1990-91?

3. What revenue has been generated from rental of the theatre during 1989-90 and the first half of 1990-91?

4. Has a resident Aboriginal performance company been established and, if not, what are the plans for the establishment of such a company in the future?

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

1. Tandanya's accounting system has not been cost centre based and consequently it is not possible to accurately identify operating costs for individual areas or activities. That is being corrected, but at this time I am unable to provide details of either the cost of the theatre's operation in 1989-90 or the estimates for 1990-91.

2. The theatre is used for daily film screenings and exhibitions by Tandanya and, after its opening in October 1989, was booked by other organisations for eight days and 32 nights in the 1989-90 period. In the first half of 1990-91 the theatre was used by other organisations for 17 days and 20 nights.

3. From the accounting information available, I believe the revenue from the theatre in 1989-90 was approximately $3 500 with a further $2 300 generated in the first half of 1990-91.

4. In June 1989 the Tandanya board commissioned the arts consultancy firm Ramsay and Roux to examine the establishment of a resident Aboriginal performance company within Tandanya. The board resolved, on the basis of that report and economic climate, to defer establishment of that company until other Tandanya activities were more firmly established.

128. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the retail outlet at Tandanya—

1. What was the forecast income and expenditure for 1990-91 and what are the actual income and expenditure figures for the period July-December 1990?

2. At any stage has the board or management investigated the joint development of the 'enterprise activity of the retail outlet' with the South Australian Museum and, if so—

(a) What was the outcome?

(b) If not, does such a possibility remain an active option?

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

1. The retail outlet at Tandanya was intended to be self-supporting and consequently no forecast of income and expenditure was included in 1990-91 budget discussions. Actual income and expenditure for the July-December 1990 period was:

	$000's
Retail sales	128
Costs of goods sold	90
Gross profit	38
Sundry income (being training subsidy)	18
	56
Less operating expenses (being salaries, freight, etc.)	62
Loss to-date	−6

2. Some preliminary discussions have taken place with the former shop manager of the South Australian Museum which lapsed when that person resigned. A jointly developed retail outlet could be an option if clear benefits for both

parties can be established. That possibility will be considered and, if it seems desirable, further discussions will be held with the South Australian Museum.

129. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: What progress, if any, has the Aboriginal Cultural Institute made on developing a plan to establish a wholesale tourism marketing company to take people to Aboriginal lands and/or to implement Aboriginal guided tours, options initially seen as very important training and development areas for Aborigines?

The Hon. ANNE LEVY: The Aboriginal Cultural Institute is currently considering a wholesale tourism venture. The proposal is in discussion phase only at this stage. It is hoped that later a working party will be established for this venture, which will assess the menu of Aboriginal assets, consider package options and test the market concept through inbound tourism.

130. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage:

1. Has the Aboriginal Cultural Institute established a library comprising specialist Aboriginal material in the form of pamphlets, magazine articles and the like?

2. Has a specific person been designated to undertake this area of work?

3. What are the actual or forecast recurrent costs of such an operation?

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

1. The Aboriginal Cultural Institute is at present investigating the possibility of setting up a Resource Centre in the existing members' lounge which currently houses a heritage photo collection. The proposed Resource Centre will house a book library, a video library and a cassette library, all consisting of Aboriginal culture, lifestyles of different communities, music, language, art and craft, dreamings and mythology. It will have lending facilities and a comfortable study area.

2. It is proposed that an Education Officer will oversee the Resource Centre and possibly be located within that area. The Marketing Officer will be responsible until an Education Officer is appointed. Initially, the Resource Centre will be set up by Tandanya with the assistance of the Libraries Board of South Australia, Shirley Peisley and Garth Agius (both Aboriginal library workers), Margaret Lehmann (ACI foundation member and Libraries Board member).

3. It is hoped grants from the Education Department and the Libraries Board will be forthcoming after submissions have been made seeking Resource Centre funding. Discussions are taking place with the Aboriginal library workers to finalise budget estimates for the centre.

ABORIGINAL HERITAGE ACT

132. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: With the formation of the Department for the Arts and Cultural Heritage, is it proposed that administration of the Aboriginal Heritage Act will be transferred to the new department from the Department of Environment and Planning and, if not, why not?

The Hon. ANNE LEVY: It is not proposed to transfer administration of the Aboriginal Heritage Act from the Minister for Environment and Planning to the proposed Minister for the Arts and Cultural Heritage. The Department of Environment and Planning uses its large network of National Parks and Wildlife Service officers throughout the State to administer the Act. This provides an effective and efficient means of liaison with Aboriginal communities, which would not be readily achievable if the Act were transferred to another Minister. The South Australian Museum (a Division of the proposed Department for the Arts and Cultural Heritage) is regularly involved and consulted on these matters, but it is appropriate for administration of the Act to remain with the Minister for Environment and Planning.

SURPLUS RAILWAY HOUSES

133. **The Hon. DIANA LAIDLAW** asked the Minister for Local Government Relations: In relation to the following 10 dwellings to be or recently transferred from Australian National to the State Transport Authority—

1. Six at Bordertown to be transferred as required by the Railways Agreement (South Australia) Act 1975;
2. One at Hamley Bridge which is within the station building; and
3. Three at Peterborough;

does the STA plan to utilise the dwellings or to sell them, and if the latter, when is it proposed that they will be sold and will the funds be retained by the STA?

The Hon. ANNE LEVY: The State Transport Authority (STA) disposes of all surplus railway houses which Australian National returns to it under the terms of the Railways Agreement (South Australia) Act 1975 in the following manner:

1. Sitting tenants are given a first right of refusal to purchase at current market value.

2. Government departments/agencies and local government are given an opportunity to purchase by circularisation.

3. Should no offers be received under steps 1 and 2 above, the houses are then sold on the open market by tender or auction.

4. Current market value as determined by the Valuer-General is used as the basis for price in all transactions.

Surplus railway houses are sold as quickly as possible by the STA, however sales are dependent upon the condition of the houses, survey requirements and market demand. The six houses at Bordertown have been transferred to the STA; however, all are in poor condition and market demand is very low. A similar situation exists at Peterborough with market demand, though some houses there are in reasonable condition. The Hamley Bridge house requires a survey prior to its sale. This house is in good order and disposal should be completed within six months. Funds from the sale of surplus railway houses are retained by the STA and used to part fund its capital works program.

SALISBURY RAILWAY STATION

134. **The Hon. DIANA LAIDLAW** asked the Minister for Local Government Relations: Recognising that the Salisbury railway station is one of the busiest in the suburbs—

1. Why has the passenger subway been closed and on what date did this occur?

2. Was this passenger subway included in the Salisbury Interchange improvements in 1985 and, if so, at what cost?

3. Which organisations were involved in the closure of the underpass?

4. What was the cost of the closing, filling, repaving and landscaping of the Salisbury railway station underpass?

5. Is it intended to close other railway station subways in the metropolitan area?

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

1. The older western and central sections of the Salisbury subway were in poor condition and extensive repairs or complete rebuilding would have been necessary in the near future. In addition, the STA has considered and responded to the concerns of the public regarding security in subways. The subway was closed on 5 November 1990.

2. The western and central sections of the subway were originally constructed in 1965. The eastern walkway was remodelled in 1985 to accommodate the construction of the interchange. The remodelling was carried out together with the overall platform upgrading. No dissected costs are available.

3. The engineering work associated with the closure was carried out by STA employees. The following organisations were advised prior to the closure and invited to comment.

(a) Salisbury Council—no objections.

(b) Australian National—no objections.

4. The cost of the engineering work was $40 000.

5. In response to recent public concerns about security in subways, the STA is reassessing its station upgrading programs to include subway closures where this is practicable. The only viable alternative is the installation of at-grade pedestrian crossings and these must satisfy safety criteria such as sight distances, adequate ramps and access, etc. because all new pedestrian crossings must accommodate the full range of customers likely to use them including people in wheelchairs. Ramped overpasses with satisfactory grades would be prohibitively expensive.

TRAM REFURBISHMENT PROGRAM

135. **The Hon. DIANA LAIDLAW** asked the Minister for Local Government Relations:

1. How many trams have been refurbished since the present scheme began in 1986 and how many remain to be done?

2. How many of the refurbished trams are in regular service, as it is noted Tram 361, the first to be refurbished, is little used due to continuing electrical problems?

3. What is the estimated completion date of the refurbishment project?

4. What is the estimated life of 62 year old trams after refurbishment?

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

1. Automatic slack adjusters and roller bearings have been fitted to all bogies, and new battery boxes, converters, transponders and pantographs have been fitted to all trams. Since the refurbishing began in 1986, the bodies of five trams including the restaurant tram have been completed. 17 trams remain to be completed. Two of these are currently being refurbished at Regency Park workshops, one being 50 per cent complete. Work on the other only recently commenced.

2. Three refurbished trams are in regular service. Tram 361 has been completely checked out electrically; however, no explanation has been found for the problems being experienced. The tram will not be used on a regular basis until the problems are rectified.

3. The estimated completion date for refurbishment of the remaining trams is March 1996, based on three trams being completed each year.

4. Tram life will be extended by about 10 years.

STA CUSTOMER SURVEYS

136. **The Hon. DIANA LAIDLAW** asked the Minister for Local Government Relations: Does the STA conduct regular customer surveys, and—

(a) If so, when was the last survey conducted, how many people were interviewed and will the Minister table a copy of the questionnaire and the results?

(b) If not, why not?

The Hon. ANNE LEVY: No. the STA does not conduct regular customer surveys. It undertakes surveys as needed in relation to specific projects and to monitor performance.

(a) Not applicable.

(b) The main customer data collection activities are:

- attitude and awareness surveys of the metropolitan population, conducted in 1983, 1985 and 1988;
- surveys of passengers needed for specific projects, the most recent being travel surveys for network modelling currently underway on a sector by sector basis. This commenced with the north-west sector in 1990, and an attitude survey to obtain customer views on bus design including such items as air-conditioning and step and floor heights of buses for the current bus tender:
- ongoing passenger counting using data from the Crouzet ticketing system and manual surveys in order to monitor trends, report performance and identify needs for service changes.

A copy of the questionnaire used for the north-west sector, together with a preliminary report, is available should the honourable member request it. The data is being used in network modelling, the results of which will be available later in 1991 for the north-west sector. Data from surveys conducted in the southern and northern sectors late in 1990 is still being processed.

RAILCAR CONTRACT

137. **The Hon. DIANA LAIDLAW** asked the Minister for Local Government Relations: In relation to the contract for the fifty 3000 class railcars involving total estimated funds of $142.9 million:

1. What are the financial arrangements and do such arrangements involve overseas finance?

2. Has the finance been arranged by the South Australian Government Financing Authority or through some other arrangement recommended by Treasury?

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

1. Provision for the purchase of the railcars has been allowed for in the STA capital budget. No specific financing arrangements have been made.

2. Any finance package which may be sought will be arranged through the South Australian Government Financing Authority.

STATE TRANSPORT AUTHORITY

138. **The Hon. DIANA LAIDLAW** asked the Minister for Local Goverment Relations:

1. How many sale and lease-back arrangements have the STA and the South Australian Government Financing Authority negotiated with third parties?

2. What are the names of the various third parties and which countries are involved?

3. What terms and conditions have been negotiated?

4. What part and proportion of the STA bus and rail fleet are subject to such lease-back arrangements?

5. What part and proportion of the STA bus and rail fleet are subject to such lease-back arrangements?

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

1. There are three sale and lease-back arrangements involving STA and SAFA and third parties.

2. Third parties:

(a) Fourteen 3000 Class Railcars (Germany)
Deutsche Bank Australia Ltd (DBAL)
Deutsche Bank (DB)
Deutsche Bank Exporting (DBX)

(b) Six 3000 Class Railcars (Japan)
Misawa-Van Corporation
Tohoku Misawa Homes Co. Ltd
Mukaiyama Developer Co. Ltd
Bank of America

(c) 77 Mercedes Busway Buses (Germany)
Daimler-Benz AG
Deutsche Bank AG

3. Terms and conditions are commercial in confidence and details should remain confidential. These financing arrangements involve finance leases which provide finance for the STA at margins below funding rates normally available from Australian lenders.

4. Twenty railcars of a fleet of 131 are subject to this type of lease arrangement and 77 buses of a fleet of 723.

DIRECTOR, ARTS PROGRAMS

149. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: In relation to the appointment of Ms Jo Caust as Director, Arts Programs, Department for the Arts, is it correct:

1. That Ms Caust was an applicant when the position was first advertised in June 1990 but at that time was not selected as one of the three persons to be interviewed for the position?

2. That, following a decision in September by the Director of the Government Management Board to recall the position and appoint a new selection panel, this time comprising Ms Anne Dunn, Ms Caust was not only selected for interview but subsequently gained the position?

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

1. Ms Josephine Caust was an applicant for the position of Director, Arts Programs, when it was first advertised in June 1990 and was selected for interview together with four other applicants.

2. The decision to recall the position was made in August 1990 by the Commissioner for Public Employment and advertised in September with an entirely new selection panel (apart from the Chief Executive Officer, Department for the Arts). The panel constituted by the Commissioner included Anne Dunn, Malcolm Grey QC, Len Amadio and himself. Ms Caust was interviewed, along with four other applicants and was selected for appointment to the position of Director, Arts Programs, Department for the Arts.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—
National Crime Authority—Report, 1989-90.
South Australian Occupational Health and Safety Commission—Code of Practice for the Safe Handling of Timber Preservatives and Treated Timber.
Rules of Court—Local Court—Local and District Criminal Courts Act 1926—Defaults.
Occupational Health, Safety and Welfare Act 1986—Regulations—Synthetic Mineral Fibres.

By the Minister of Tourism (Hon. Barbara Wiese)—
Australian Agricultural and Veterinary Chemicals Council—Report, 1989-90.

By the Minister for Local Government Relations (Hon. Anne Levy)—
Regulations under the following Acts—
Clean Air Act 1984—Elizabeth and Kensington and Norwood Backyard Burning.
Planning Act 1982—Development Applications.
Technical and Further Education Act 1975—Private College Licensing.
The Flinders University of South Australia—By-laws—Parking Expiation Fee.
Metropolitan Taxi-Cab Act 1956—Issue of Licences.
Public Parks Act 1943—Disposal of Parklands at West Beach.
Corporation By-laws—City of Tree Tree Gully—
No. 1—Permits and Penalties.
No. 2—Streets and Public Places.

NATIONAL CRIME AUTHORITY

The PRESIDENT: I refer to previous statements that I have made recently concerning resolutions passed by the Council with respect to the National Crime Authority and advise that Mr Justice Stewart, Mr L.P. Robberds, QC and Mr P.M. LeGrande, who were seeking advice as to whether they should appear before the Council, have all now declined the Council's invitation.

NATIONAL CRIME AUTHORITY: OPERATION HYDRA

The Hon. C.J. SUMNER (Attorney-General): I seek leave to lay on the table the report of the National Crime Authority on Operation Hydra conducted under South Australian reference No. 2 and dated 19 February 1991, and also a copy of a ministerial statement by the Premier, the Hon. J.C. Bannon, given this day in another place.

Leave granted.

MINISTERIAL STATEMENT: OPERATION HYDRA

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

Leave granted.

The Hon. C.J. SUMNER: I wish to make some comments of my own on the Operation Hydra report which has just been tabled by the Government. I will not canvass all the issues, but there are certain matters I wish to refer to, given my personal involvement. What the report reveals is quite terrifying. It is hard to believe that it could occur in any civilised society which has a commitment to fundamental principles of civil liberties. It reveals defects in the functioning of two of the fundamental institutions in our free society—parliamentary privilege and freedom of the press. Both are essential to the proper functioning of our democracy, but their abuse can undermine it. These privileges and freedoms carry with them a corresponding responsibility to use those powers with care. Their abuse can do untold damage to innocent persons.

Much has been said and there have been many examples of the abuse of privilege in this Parliament in recent years. I will not dwell on those except to note that the question of parliamentary privilege is being examined by a select committee.

I do wish to spend some time on the role of the media. It is important to note that Hydra was an investigation essentially into allegations made in the media, and particularly in the Chris Masters Channel 10 *Page One* program 'Suppression City' of 6 October 1988. Masters' thesis, stated

quite explicitly and not qualified in any way, was as follows (and I quote directly from the program):

In Adelaide, the test is far simpler, here the corrupters survive on blackmail. The power to blackmail guarantees that the door stays open. And when brothel keepers have the power to blackmail, they have power to deal drugs with impunity. An obvious starting point for that local inquiry would be the insidious practice of blackmail we revealed tonight.

It is hard to think of a more serious allegation to make about public officials including police, politicians and lawyers. In an interview with Keith Conlon on 6 October 1988, Masters stated (in relation to the program 'Suppression City'):

... What we've got to be confident that essentially we are correct. That the argument is sound. And I am confident that that's the case.

Another journalist still employed in Adelaide, Jayne Anderson, was Masters' researcher for the *Page One* story. After *Page One* folded, Masters returned to the ABC and Anderson was also employed by the ABC *7.30 Report* in Adelaide. On 11 December 1989 she revived the blackmail allegations on the *7.30 Report,* as follows:

Indeed in South Australia there exists a scenario disturbingly similar to that explored in Queensland. It has, in the past, involved a powerful brothel keeper with connections with the top of the Police Force. Honest police, dishonest police and an uninformed public, but in South Australia there's the additional stench of blackmail and cover up.

We also know the Power tapes did have the potential to blackmail, the police have admitted as such, but as for whether the tapes might unlock the secrets of South Australia, in the same manner as the Lewis diaries unlocked the secrets of Queensland, is a matter of guess work.

This was the same program in which Anderson and the ABC defamed a well respected retired Police Commissioner, J.B. Giles. The story on the Power tapes is fully examined in the Hydra report. The conclusion is worth quoting:

The tapes and computer discs contain no information of interest or relevance to the issue of blackmail; the tapes certainly do not include recordings of clients with prostitutes.

However, to return to the original source of the blackmail allegations—the *Page One* 'Suppression City' story—Hydra reveals the allegations as completely baseless. But, it is instructive to look at the sources for the story. While there was some additional material that Masters had collected and made available to the NCA, the 'witnesses'—so-called—put forward on the program were a prostitute (called Hecate in the Hydra report) and a brothel keeper called Williams. Both of these individuals are dealt with at length in the Hydra report.

Hecate is described by other prostitutes as a bit of a 'fruit loop', unreliable and always stoned, and her evidence was not corroborated by them. It raises the question of why only Hecate was relied on by Masters and not other prostitutes. I need do no more than read from the *Page One* story and the Hydra report to make my point:

Page One

Masters: Do you know there were high level clients, people like politicians, lawyers, policemen?

Hecate: Yes.

Masters: Could you presume there are tape-recordings of these people?

Hecate: Yes.

I ask members to compare that statement with the NCA Hydra report, which is as follows:

Paragraph 5.93

The NCA's investigation into these allegations is set out in chapter 2. In this context, however, it is worth recalling that Hecate stated in evidence to the authority that she had made that [allegation] up in order to impress the reporter, Jayne Anderson, who was very keen to have a sensational story.

Paragraph 5.94

When asked 'What did you exaggerate about the tapes?' Hecate replied, 'Well, their existence. There were tape—there were tape recording machines in an office, but they were just used to play music.'

Paragraph 5.95

When asked why she had perpetuated the untruth by repeating the story when she spoke to NCA investigators, Hecate replied. 'Because I still had contact with Jayne at that time and I wanted, I didn't want her to know that I had exaggerated to her.' Hecate later added in this regard ... 'I thought she'd find out that I'd lied to her ... I thought she had contact with the NCA ... I just didn't want her to find out I was lying.'

I now turn to Geoffrey Peter Williams. Paragraph 5.98 of Hydra is as follows:

During the *Page One* program, Williams stated that vice operators:

> ... videotaped clients with ... ladies, because of their influential background or because they are ... could be an asset to that particular operator.

Masters—How do you know that it's done?

Williams—I've been involved with some of the biggest operators here in South Australia.

Masters—What do they do with this information?

Williams—They use it to blackmail, if they have to.

Masters—Do they blackmail?

Williams—If they want to get someone, yes they do.

Again, there is no equivocation, there is no doubt. It is presented as undisputed fact.

Williams is dealt with at length in the Hydra report. It clearly reveals that Williams did not at any time have any direct knowledge of the allegations made in the *Page One* story. Indeed, Williams was unable to recall the identity of any of the persons who had provided him with the information and admitted that it was just gossip, and that he had never said he had known of the tape (Paragraphs 5.99 and 5.100). I quote directly from paragraph 5.100 as follows:

Williams was unable to recall the identity of any of the persons who had provided him with this information. In answer to the proposition put to him that the information was in the category of ... gossip from some of the people that worked there, Williams replied, 'Yes, I've never ever said that I know—I never said that I've known of a tape myself.'

Williams is still in the prostitution industry. It is instructive to refer to a recent police report. Following police attention to a brothel run by Williams and the arrest of a person on 28 October 1990—only late last year—Williams rang the Port Adelaide police station. During the course of the conversation, he made a series of allegations. He said he was meeting with the NCA and was going to give it all the details of corruption within the South Australian Police Department. After making abusive accusations about senior police, he said:

As soon as the Grand Prix is finished, I'm going to spill my guts to everything and I've made arrangements with Andrew Male. I can't understand why the NCA have laid off Sumner. He's been involved since 1976.

This indicates that the allegations continue to be made. Commonsense would normally dictate that police ignore these abusive ramblings, but, in the environment of allegations about police taking inadequate steps to deal with police corruption, police resources had to be deployed to investigate the matter. They indicated that he was only sounding off because of the police attention given to his brothel (another phenomenon revealed by the Hydra report).

I will let others judge the credibility of Williams as revealed in the Hydra report. Masters has subsequently told me I was not the person who had allegedly been blackmailed, but that begs the question as to whom, if anyone, he was referring to in the *Page One* story.

The other person I wish to mention and who is dealt with extensively in the report is Patty Walkuski. Walkuski and her associates have been one of the main media sources of allegations relating to prostitution in South Australia during the 1980s. She has become a darling of the media. Indeed, one journalist is writing a book about her. One could be

excused for thinking that the ABC, the *Advertiser*, and Andrew Male in particular, are nothing more than her unpaid press agents.

Hydra reveals Walkuski for what she is—a devious liar. Walkuski is identified as the source of the allegations about me, but, in evidence to the authority, admitted she was in no position to have first-hand knowledge of whether or not I had been a client. Yet it is this person that most media outlets have put forward as a credible witness on topics relating to the vice industry during the 1980s. I can only hope that the media might be less enthusiastic about doing so in the future.

The allegations raised by the Opposition regarding my association with Malvaso and my role in his prosecution are dealt with extensively. Rather than indicating any impropriety, the report confirms that I dealt with this matter properly at all times.

The Hydra report also deals with the theme of prominent persons involved in improper activities. In the past two decades in Adelaide, two other events have given rise to similar allegations, namely, in the Duncan case and the so-called 'Family' case. There seems to be a morbid desire of the Adelaide citizenry or media to find one of its prominent people in comprising circumstances. I have knowledge of both these matters. The rumours about who was present on the Torrens the night Dr Duncan died or who was in the so-called 'Family' have been quite unfounded. Likewise, in Hydra the allegations of links between politicians and prostitution and organised crime have now been found to have no substance.

The Hydra report has recommended and the Government has accepted that an independent Director of Public Prosecutions (DPP) be established in South Australia. I have consistently taken the view that the preferred system in our parliamentary democracy is for there to be an Attorney-General elected to Parliament responsible for prosecution policy. In August 1988 I made a detailed ministerial statement in Parliament about the role of the Attorney-General. I did this because of my increasing concern that the role of the Attorney-General was not properly understood in Parliament and by the public. In particular, the special role of the Attorney-General in the administration of justice in our constitutional structure was not understood. I particularly referred to the independent non-political role of the Attorney-General in the criminal justice system. Regrettably, this fell on deaf ears. It was only a few months later that the Opposition, including the shadow Attorney-General, Mr Griffin, launched its politically motivated attack on me in my role as Attorney-General in relation, as members will recall, to the Malvaso prosecution. The result is the current recommendation.

It is ironic that most calls for an independent DPP have arisen because of suggestions of possible improper political interference in decisions relating to prosecutions. In this case, however, the findings are that I as Attorney-General acted properly. However, it was the political attacks on me and the failure of the Opposition to recognise the important non-political role of some functions of the Attorney-General which have led to this recommendation. The result will be that the Attorney-General will be at arm's length from prosecutions and the same direct access to him by members of Parliament will no longer be available. This, in some ways, is regrettable, but an inevitable consequence of the manner in which the Opposition sought to attack me and its failure, despite my ministerial statement of August 1988, to appreciate the special constitutional role of the Attorney-General.

It is also worth noting that one of the early allegations about my involvement in corruption and criminal activity, referred to in appendix B of the Hydra report, was the front page article in the *Sunday Mail* on 24 May 1987 by investigative journalist Dick Wordley. Although not naming me, the allegations were, in my view, criminally defamatory. They arose out of information I was giving to the NCA about a document which Al Grassby had given to me regarding the Mackay murder. Again, no attempts were made to check the facts, and an extraordinarily damaging story about me was printed. It kicked off the allegations which eventually culminated in allegations of my association with alleged Mafia figures.

The allegations that related to my association with Grassby and the Griffith Italians, to my association with Malvaso and to my alleged association with Labozzetta and villas in Italy occurred only because of my knowledge of the Italian language, my association with the Italian community and my visits to Italy. The Mafia regrettably is part of the social structure of many nations, including some parts of Italy, but allegations about the Mafia still cause considerable hurt to the great majority of law abiding Italians in Australia. The allegations have to be lived with, but false allegations only serve to smear the name of the whole Italian community. It is extraordinary that these Mafia allegations against me were raised by the Opposition only a few weeks after the visit by the Italian President Cossiga to Australia and after it had been announced that I was to receive an honour from the Italian Government.

The Hon. M.S. Feleppa: Shame.

The Hon. C.J. SUMNER: It is a shame. There could not have been a greater affront to the Italian community. The Italian community is often forced to live with allegations about the Mafia, but it should not have to tolerate false allegations which discredit it or, in my case, attempt to discredit someone because they speak Italian and love Italy. The attempts to link me with the Mafia were classical guilt by association tactics. I did not go to Plati, but what would have been wrong if I had, except for the mischief that could be made by attempting, because of any visit to Italy and any knowledge of the Italian language, to associate me with the Mafia.

What Hydra reveals is quite frightening for any person in public office, particularly those involved in law enforcement. It could happen to anyone here. Indeed, the report refers to one other politician who could have suffered the same fate as I did because of false allegations. Regrettably, I think it happens regularly to our Police Force. They are sitting ducks for false allegations from criminal elements, which in turn undermines their capacity to do their jobs. Resources used to check false allegations are not available to pursue the real criminals. While there may be some corruption in the South Australian Police Force (as in every other police force), there have now been three substantial NCA reports, Operations Ark, Hound and Hydra, which have all found no institutionalised corruption. This was always the position of the South Australian Government.

Regrettably, the notion of widespread corruption in the South Australian Police Force in 1988 was a creation of Opposition politicians with an axe to grind for their own electoral purpose and an uncritical media. The herd mentality developed by the media, particularly in 1988, was astonishing. In the continual pursuit of a better story, few actually stood back and critically examined what was happening. This in itself is an indictment of the functioning of our free press. Some journalists resisted the temptation to join the herd and I hope they take some solace from the findings of this report.

To conclude, Hydra is a significant report. It reveals a pattern of behaviour by criminal elements and their relationship with the media which should be of great value to the South Australian community. It reveals the sort of sources sometimes relied on by the media to create their stories. It is chilling to think that the same thing could happen to anyone in public office. Since the Dick Wordley *Sunday Mail* story in May 1988, life for me and my family has been a nightmare. And it did not stop, despite my taking the totally unprecedented steps of declaring myself as the person and offering a defamation free zone to the media and the Opposition. The Opposition resumed its attack in Parliament. Only two months ago, an ABC journalist, after questioning me about crime prevention prior to my addressing a packed meeting at Port Augusta, then went on without warning to ask questions again about statutory declarations from prostitutes alleging my involvement with them. This occurred in a foyer full of people and within earshot of any who cared to listen.

My ministerial and parliamentary colleagues have been supportive and I thank them, particularly the Premier, John Bannon and the Minister of Transport, Frank Blevins. At the time of the attack on me in October/November 1988, hundreds of South Australians responded, and their support was a source of great comfort. In particular, I would like to acknowledge Ray Whitrod (who suffered similar smears in Queensland) and the Victims of Crime Service. Ray Whitrod actually accompanied me on one of my visits to Sicily. I also convey my gratitude to my staff, both personal and Public Service, who have been supportive and loyal at all times within their respective responsibilities. The only person in the Opposition I would like to thank is the Hon. Dr Ritson. He was the only member of the Opposition to express any concern to me about what was happening. Although his Party loyalty properly prevented him from making a public statement, he at least has come out of this affair with his credibility intact.

Finally, the effects of the smear that was perpetrated against me, and which is fully documented in the Hydra report, are publicly known. However, the impact of such allegations on a member of Parliament's family are horrendous. In my case, I can only apologise to my wife and children for the fact that I chose politics as a career and thank them for their love and support. We hope and pray that the nightmare is over.

SUB JUDICE PRINCIPLE

The PRESIDENT: The *sub judice* principle, as enunciated in the House of Commons, is that, subject to the discretion of the Chair and the right of the House to legislate on any matter or to discuss any matters of delegated legislation, matters awaiting the adjudication of a court of law, either in its criminal or civil jurisdiction, should not be brought forward in questions or debate. Parliament has voluntarily accepted this convention or principle.

Although the *sub judice* principle is sometimes justified on the basis that Parliament must not set itself up as an 'alternative forum', this form of words serves only to conceal the main issue—which is the risk of influencing the outcome of judicial proceedings. However, the principle should not apply 'unless it appears to the Chair that there is a real and substantial danger of prejudice to the proceedings'. I emphasise that in all circumstances the application of the principle should be at the Chair's discretion.

With respect to the proceedings before a royal commission, there is in Australia some flexibility to allow for variations in the subject matter, the varying degree of public interest and the degree to which proceedings appear to be prejudged. Rules on the application of *sub judice* to royal commissions now seem to be on the basis as to whether they have the potential to adversely affect persons who may be under scrutiny.

In this case I have to consider the nature of the inquiry and whether the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons, and whether there is likely to be a real and substantial risk of prejudice to pending or prospective criminal or civil proceedings. But in the last analysis, members themselves should be aware of the responsibility they too bear when raising such matters, and I ask that members be ever mindful of their actions.

QUESTIONS

STATE BANK

The Hon. R.I. LUCAS: My question is to the Attorney-General. Does the Royal Commissioner have the power to investigate whether the Treasurer should have exercised his powers under section 15 of the State Bank Act to better inform himself about the financial position of the bank and to make proposals on the administration of its affairs in the light of its mounting financial difficulties raised in questions in this Parliament over a two-year period; if so, will the Treasurer precisely identify the relevant term or terms of reference; if not, will the Government take immediate steps to extend the terms of reference so that they cover in full the Treasurer's actions and inaction and the vital issues of ministerial responsibility and accountability?

The Hon. C.J. SUMNER: The Government believes the terms of reference adequately cover the situation relating to the relationship between the Government and the bank. The term of reference No. 1 is quite comprehensive. It deals with the relationship between the bank and the Government and, without limiting that, it deals with any proposals made by the Treasurer pursuant to section 15 (4) of the Act, that is, any proposals that the Treasurer could have put to the bank in relation to its operations—not, I might add, to direct the bank, because that is not possible, but it is possible for the Treasurer to put suggestions to the bank. So, that particular matter is covered—any directions under section 15 (4). It deals with any other proposals, recommendations or suggestions made by the Government to the bank relating to the affairs of the bank or the State Bank group.

So, whether or not they are formally done under section 15 (4) is not the only criterion; it also refers to any other proposals, recommendations or suggestions put by the Government to the State Bank group; the reporting arrangements that existed between the bank and the Government, and the information given by the bank to the Government pursuant to those arrangements; and the nature and extent of the communication between the bank and the State Bank group on the one hand and the Government on the other. These are all matters which I believe cover the issue raised by the honourable member and other members opposite.

It is particularised further as to whether the communication between the bank and the State Bank Group, on the one hand, and the Government, on the other hand, relating to the financial position of the bank and the State Bank Group, the investments, loans, advances or accommodations made or proposed to be made by the bank and the State Bank Group and generally as to the administration of the affairs of the bank and the State Bank Group in relation

to those matters. So, they are all matters that are within the terms of reference as far as those terms of reference cover the relationship between the bank and the State Bank Group. Further—and this is important—it deals with whether there was any inadequacy and, if so, the nature and extent of the inadequacy in the communication between the bank and the State Bank Group, on the one hand, and the Government, on the other hand.

Whether or not the Premier should or should not have done certain things will depend, first, I imagine, on an inquiry into what powers the Premier had to do anything in relation to the State Bank. Clearly, that is one of the areas that the Royal Commissioner will have to inquire into because, as members opposite know, during the debate on the State Bank Act when it was established there was a lot of talk about the Government being properly at arm's length from the bank. The bank was given its charter under the Act to act commercially and to attempt to deal in a way which was competitive and which achieved a profit—but it was given a charter under the Act.

It was specifically not provided that the Government could direct the bank in relation to any of its operations. However, as has been said, it can make suggestions, and that will be a subject of the inquiry. So, the first issue that will have to be determined—and of course this will be a matter for the Royal Commissioner—is whether, and what, legal power existed for the Premier to deal with the bank and to make any directions or suggestions to it. It will then, no doubt, examine the question of whether the Premier could have made suggestions—and that is part of the legal question that is outlined: did the Premier have the legal power to direct the bank and to make suggestions? I think it is fairly clear that the Premier does not have the power to direct the bank but that he does have the power to make suggestions.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, whether the Premier should have is a matter that will have to be considered in light of whatever information is provided as part of that term of reference. The Royal Commissioner has not been directed to make a finding on that matter. Obviously, that question will be the subject of argument, but the terms of reference are such as to enable that question to be one of the matters upon which the Royal Commissioner can report if he sees fit.

The Hon. K.T. GRIFFIN: My questions to the Attorney-General are as follows:

1. Is he satisfied that both the Royal Commissioner and the Auditor-General will have adequate power to hear evidence, compel witnesses to attend and answer questions and produce documents in other parts of Australia and overseas?

2. Will he indicate what steps will be taken to ensure that the operations of the State Bank Goup and the prudence of those operations in other parts of Australia, New Zealand, New York, London, Singapore and Hong Kong are adequately and properly investigated by both inquiries?

The Hon. C.J. SUMNER: This is one of the more extraordinary propositions put up by members opposite about the Royal Commission. Apparently, they want to have a travelling circus.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: They want to have a whole jamboree of lawyers travelling around the world investigating the State Bank in New Zealand, London, Paris, New York, Moscow and anywhere else they see fit to travel.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. C.J. SUMNER: In my view that is a fairly silly proposition.

The Hon. K.T. Griffin interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The proposition put by the Hon. Mr Griffin—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order. The honourable Attorney-General.

The Hon. C.J. SUMNER: The proposition put by the Hon. Mr Griffin regrettably—

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. C.J. SUMNER: The proposition put by the Hon. Mr Griffin regrettably displays ignorance of the legal situation.

The Hon. K.T. Griffin: You tell me how they are going to give evidence in New Zealand.

The Hon. C.J. SUMNER: That is the problem; that is exactly the problem.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That is the point that I am making.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. C.J. SUMNER: A royal commission could take evidence in New Zealand if it wished but it could not compel witnesses within New Zealand. It could go to Moscow and take evidence about the activities of the State Bank in Moscow, under glasnost, but it could not compel witnesses in Moscow or in Paris, New York or London. I would have thought that the Hon. Mr Griffin would be fully aware of that fact, had he bothered to check the legal position. It is difficult enough to get evidence taken overseas under the existing arrangements that are in place, let alone having a royal commission with powers to compel witnesses overseas. In order to achieve that situation, the Federal Government would have to enter into some treaties or arrangements with overseas governments. It may be necessary in those countries for special legislation to be passed overseas. I can imagine the Westminster Parliament in London being delighted with an approach from the Hon. Trevor Griffin to pass legislation specifically to enable the South Australian Royal Commission into the State Bank to compel witnesses to attend—

The Hon. K.T. Griffin: You haven't done your homework, have you?

The Hon. C.J. SUMNER: I have certainly done my homework.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. C.J. SUMNER: Of course, the notion of New York, London, Paris, Stockholm or wherever is really a tactical ploy put up by the Opposition so that it can then accuse the Government, if it does not cover all those areas, of having a royal commission that is limited. Obviously, there are difficulties with a royal commission compelling witnesses in overseas countries. Obviously, the Royal Commissioner or the Auditor-General will have access overseas to State Bank employees and documents. If it appears—

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: Both. If it appears that there are difficulties with some of the overseas operations—serious difficulties—that matter will have to be addressed when that position arises, but to suggest that we should start negotiations immediately with the Commonwealth Govern-

ment to set up some kind of international treaties or arrangements with all of those foreign governments so that our royal commission can go overseas and compel witnesses to attend before it is extraordinary. We will cross that bridge when we come to it.

As far as the situation within Australia is concerned, two Bills have been prepared which deal with that position as best as we possibly can on the legal advice that is available to us, and they will be introduced in the House of Assembly today. It is not absolutely clear that a South Australian royal commission can compel witnesses to attend interstate, but we have done what we can by the use of the service and execution of process legislation and the issue of a warrant by a magistrate to try to overcome that problem.

If the honourable member has any brighter ideas, I am sure that he can put them forward when the Bills come before the Upper House. But, insofar as we have, we have dealt with the situation within Australia. So far as overseas is concerned, we will have access obviously to State Bank documents, the property of State Bank and, presumably, to those employees of the State Bank. If it appears that there are problems in particular jurisdictions we will address that at that time.

The Hon. DIANA LAIDLAW: I ask the Attorney-General the following questions. Is the Government's decision to divide the State Bank inquiry between the royal commission and the Auditor-General—with the in-camera inquiry of the Auditor-General to be much more comprehensive than the royal commission—not an attempt to hide from the public evidence about failures in bank and Government administration which contributed to the bank's losses? Also, what assurances will the Government give that the protection of confidentiality will not extend to any body or company in receivership, liquidation or in any other way in default of financial obligations to the State Bank Group? I ask that in order to ensure that issues such as the prudence of the bank's lending to groups such as Equiticorp, National Safety Council, Qintex, Hookers and a range of interstate property investments which have now collapsed, can be fully and publicly investigated?

The Hon. ANNE LEVY: On a point of order, Mr President, I think the honourable member is explaining a question but does not have leave from the Council to do so.

The PRESIDENT: I do not think the honourable member did seek leave. However, I will let it through. The Attorney-General.

The Hon. C.J. SUMNER: The answer to the first question, if I understood it correctly—it was a bit garbled—is 'No'. The answer to the second question is that the Auditor-General will conduct his inquiry as an audit. However, he will have powers to summons witnesses and conduct hearings if he feels that that is necessary.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No, they will be hearings conducted as Auditor-General. He will produce a public report and, if there are matters which are on the public record relating to companies that are already in liquidation where there would be no difficulty with breaches of customer confidentiality, no doubt he will have the option to report in public on those matters.

SELECT COMMITTEE ON COUNTRY RAIL SERVICES IN SOUTH AUSTRALIA

The Hon. G. WEATHERILL brought up an interim report of the select committee and moved:

That the interim report be printed.

Motion carried.

WASTE INCINERATORS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Local Government Relations, representing the Minister for Environment and Planning, a question about waste incinerators.

Leave granted.

The Hon. M.J. ELLIOTT: A company called National Waste currently operates a medium temperature incinerator at Cavan which is used to burn, among other things, hospital and medical waste. The company has been given planning approval to establish a medium temperature incinerator at Wingfield. I have recently been told that another incinerator, given planning approval by the Enfield Council up to four years ago, is now under construction at Wingfield and is almost certain to obtain a licence from the Waste Management Commission.

This incinerator is being built to burn sludge from the Hopkins Liquid Waste Disposal treatment process which, I have been told, currently goes into general landfill. Neither the proposed incinerator nor the one under construction has been the subject of an environmental impact statement. Recently the Waverley-Woollahra muncipal waste incinerator in Sydney, which burns waste of a similar nature to that being burnt in the incinerator currently operating at Cavan (and the one given approval for Wingfield), was found to be putting out unacceptably high levels of dioxins and furans.

The *Sydney Morning Herald* reported in late January this year that 'measures adopted at the plant to reduce emissions included increasing the combustion temperature and eliminating hospital and quarantine waste'. The Waverley-Woollahra incinerator was reported to be the only remaining large-scale plant of its kind in the Sydney metropolitan area. My questions are:

1. In the interests of public safety, will the Minister order environmental impact statements into both the incinerator currently being constructed at Hopkins Liquid Waste Disposal and the Wingfield National Waste incinerator, construction of which is foreshadowed?

2. What monitoring has been done of emissions from the existing incinerator at Cavan for a range of potentially toxic compounds, including but not only dioxins and furans?

3. What are the results of such testing?

4. Can the Minister assure residents and workers in the suburbs near Wingfield that it is safe to have two medium temperature incinerators in the Adelaide metropolitan area?

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

STATE BANK

The Hon. J.C. IRWIN: My question is to the Attorney-General. Will he identify the term, or terms, of reference which will allow both the royal commission and the Auditor-General to examine all activities of all the State Bank Group's off balance sheet companies which contributed to the group's current financial position? If he is unable to do so or the royal commission experiences difficulty in investigating these activities because the terms of reference are too narrow, will the Government give an assurance that it will immediately extend the terms of reference?

The Hon. C.J. SUMNER: They are not too narrow, Mr President. This matter was specifically covered in the terms of reference. The subsidiaries are included. Indeed, we will provide in the legislation that, if there is any doubt that certain companies may not be included in the terms of reference, they can be prescribed, listed by regulation, under the State Bank Act. The definitions section of the terms of reference provides:

> Operations of the bank or bank group has the same meaning as in section 25 of the Act, as amended from time to time.

This refers to section 25 of the State Bank Act. It is intended to amend that. We believe that the definition of 'subsidiary' does cover the off balance sheet companies. But, if it does not they can be picked up by a list, in a regulation, under the State Bank Act. That in itself will be automatically picked up by the royal commission.

The Hon. L.H. DAVIS: My question is directed to the Attorney-General. What assurances can the Government give that the former Chief Executive Officer of the State Bank group, Mr Marcus Clark, will give evidence to the royal commission of inquiry into the bank's losses?

The Hon. C.J. SUMNER: I do not know whether Mr Clark has indicated that he will attend; I assume he will. Obviously he is a central character in the whole matter and one assumes that he will return to give evidence in South Australia.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I have not made any approach to him—I do not know whether anyone else has—but he certainly has not indicated that he will refuse to appear in South Australia to attend the royal commission. Therefore, I anticipate, unless I am told anything to the contrary, that he will appear. As I have already explained, we have done what we can legally to try to ensure that interstate witnesses can be compelled to appear before the commission.

SUB JUDICE RULE

The Hon. R.I. LUCAS: Mr President, with your concurrence, I see leave to ask a question of you on the matter of *sub judice.*

Leave granted.

The Hon. R.I. LUCAS: You would be aware that on 12 February this year the President of the Senate ruled that the documents, now known as the Westpac letters, could not be tabled in the Senate as they were *sub judice.* You will also be aware that on 20 February this year the Hon. Mr Gilfillan (after some consultation, I understand, with you) read these letters into *Hansard.* Given the importance of these letters, the *sub judice* rule and some public statements that you have made about this matter, would you be prepared to clarify your reasons for your decision and thinking on this matter?

The PRESIDENT: Yes. It just so happens that, in anticipation of some questions being raised, I have an opinion on it. I consider that this matter was not *sub judice.* The decision is based on my judgment as President of this Council as to whether there is any likelihood of prejudice to any legal proceedings. This application of the *sub judice* principle is not an absolute principle of restriction imposed on debate in the Parliament, as there have been many instances in the past in this Council where debate has been allowed to proceed because there has been no real and substantial danger of prejudice to proceedings.

I believe that, unless there are strong, overriding reasons, members should never be inhibited from discussing matters of public importance in the forum which is Parliament. A select committee of the House of Commons reported in 1972:

> The fundamental responsibility of Parliament is to be the supreme inquest of the nation with the overall responsibility to discuss anything it likes.

The basis of the *sub judice* rule is to ensure the protection of the people, and, if a Presiding Officer feels there is prejudice, then the Presiding Officer should step in to prevent it. Obviously, it will always be a difficult job for a Presiding Officer to make running decisions as to whether transgression has occurred.

However, in an instance such as where a person is on trial before a court on a criminal charge, I would have no hesitation in ruling all matters pertaining thereto to be *sub judice,* as there is a real and substantial danger of prejudice to the proceedings, and the House could be seen to be setting itself up as an alternative court before a judgment was made.

The documents disclosed are the subject of a court action in another State by Westpac to achieve the suppression of the documents in question. I understand that there are no other proceedings in progress which could be prejudiced by the disclosure, nor would such disclosure affect their admissibility in subsequent legal proceedings. I believe that these proceedings have no relation to the sort of proceedings for which I would rule that the *sub judice* principle must apply. Should a permanent suppression be ordered, and even if *sub judice* had been held to apply in this Council, it would cease so soon as the proceedings had ended and, consequently, the documents could still be read in the Parliament.

However, I am of the opinion that in the final analysis a member must be fully aware of the enormous responsibility borne by that member when the member decides to exercise parliamentary privilege. As President, I am acutely aware of the responsibility placed on me for rulings I make on matters of *sub judice,* and I accept such responsibility accordingly.

HOUSING

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs, representing the Minister of Housing and Construction, a question on funding for housing.

Leave granted.

The Hon. I. GILFILLAN: The recent dramatic developments surrounding the estimated $1 billion loss by the State Bank has led to questions about future funding of housing strategies in South Australia. The Premier stated in another place that an amount of $970 million had been paid into a special deposit account to cover much of the shortfall in the bank's finances. This money was obtained as a result of the sale of the Government's Home and HomeStart housing mortgages by the Department of Housing and Construction to the South Australian Financing Authority.

There is a critical shortage of low-cost housing in South Australia combined with a record growth in waiting lists by those seeking housing assistance through the Government. In October last year the Superintendent of the Adelaide Central Mission, Ivor Bailey, wrote to the Housing Minister, the Hon. Kym Mayes, and stated in part that there were 'massive cutbacks in funding to the Housing Trust at a time of record waiting lists, together with a private rental market well beyond the financial reach of many'. Indeed, the Government's own Emergency Housing Office has seen a dramatic rise in inquiries in recent months and has assisted more than 150 000 households in recent years.

A financial dilemma now faces the Government through a combination of nation-wide recession, cuts in Commonwealth grants, huge losses by a number of State instrumentalities and a critical shortage in housing. I ask the Minister:

1. Is the Government planning to cut current funding levels to housing programs in this State and, if so, to what extent?

2. Can the Minister provide Parliament with an accurate assessment of the number of people on the waiting list for the Housing Trust, the Emergency Housing Office, the Housing Co-operative Program and the Community Housing Program?

3. Will the Minister provide details of future funding plans for housing in this State, including accommodation for aged people?

The Hon. BARBARA WIESE: I shall be happy to refer the honourable member's questions to my colleague in another place. In agreeing to do that, it should be stressed that the arrangements that have been made with respect to the moneys relating to HomeStart and other housing projects to address the State Bank situation will in no way have any impact on the housing program as such.

The question of future funding for housing will be determined in the usual round of budget discussions, as would be the case with funding of every other Government program. I am sure that the Minister of Housing and Construction will be able to provide further information on that question and the other matters relating to housing for the elderly and other issues.

COORONG GAME RESERVE

The Hon. J.C. BURDETT: Has the Minister for the Arts and Cultural Heritage an answer to a question which I asked on 21 February 1991 about the Coorong Game Reserve?

The Hon. ANNE LEVY: Yes. The Minister for Environment and Planning advises that there has been widespread and lengthy consultation on the management of the Coorong dating back seven years. Three documents have been released during that time for public discussion and comment.

The Coorong consultative committee also facilitated the public consultation process. This committee is a body of citizens that represents a range of differing interests in the management of the Coorong.

The Minister for Environment and Planning has had meetings with interested groups, including the Field and Game Association, and discussed the Government's proposals for the future status of the Coorong game reserve and related issues, including duck hunting, and has sought their views on the issues.

EYRE PENINSULA

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Agriculture a question about the Eyre Peninsula project.

Leave granted.

The Hon. PETER DUNN: About 12 months ago an advisory council was set up to look into the ecological, economic and social impact on Eyre Peninsula of both the drought and the economic downturn. People on that committee represented local government, the State Government, the Australian Conservation Foundation and other interested parties from the area. The project was to cost approximately $57 000 and was to be run by Mr Smailes from Adelaide University and Dr Heathcote from Flinders University. Their task was to determine exactly what impact those factors were having on the area and then to apply the results to the whole peninsula.

A small project has already been completed in the Cleve area. The person in charge of that project is the principal officer for the Department of Agriculture based on the Eyre Peninsula (Mr Swincer). However, there appears to be a log jam somewhere, because the project was to be completed in under three years, and already one year has gone by and no money has come from either the State Government or Federal Government, as had been promised. The log jam appears to be at the State Government level. My questions to the Minister are:

1. Why has not the State Government honoured its promise to fund that part of the project, which it had promised to fund, given that local government has already put in $5 000 towards the project?

2. What proportion of the money will be Federal Government money?

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

FOSTER CARE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about foster care.

Leave granted.

The Hon. BERNICE PFITZNER: It has been reported to me that a mother of a four-month old foster child was having difficulty understanding the feeding of the child. This was noted in a chemist shop where the mother inquired about the milk formulation. She was under the impression that perhaps by increasing the strength of the milk it might be better for the child, who was at that stage looking very sickly. I understand that the main foster agency is the Department for Family and Community Services, but that there are other private foster agencies. In fact, I believe that this child is now in the Adelaide Children's Hospital with pneumonia. My questions to the Minister are:

1. What are the criteria for choosing foster parents for very young children, in particular, those under 12 months?

2. Are the criteria the same for both Family and Community Services and private agencies?

3. What follow-up mechanisms are put in place to ensure surveillance of adequate child care and, in particular, adequate child nutrition?

4. As I understand, there are different criteria and follow-up mechanisms for the fostering of Aboriginal children and, as this particular instance involved an Aboriginal child and foster parent, what are the different criteria for the choice and follow-up of foster parents?

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

Ms DUNN

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about the Director of the Department for the Arts and Cultural Heritage.

Leave granted.

The Hon. DIANA LAIDLAW: Since the Minister's submission to Cabinet seeking the appointment of Ms Dunn as head of the new Department for the Arts and Cultural Heritage my telephone, both at work and at home, has run hot with calls from a wide cross-section of the arts community alarmed about the Minister's insistence on appointing Ms Dunn to this position and angry at her shoddy treatment of Mr Len Amadio, now the former Director of the Department for the Arts, who has loyally served the interests of the arts in South Australia for some 20 years.

A number of callers have asked if the Minister has a hearing problem and, if not, why has she defiantly ignored statements delivered at a 500-strong public meeting held in mid-January expressing no confidence in both a report on the future of the library and information services in South Australia and in Ms Dunn, as the author of that report.

The Hon. L.H. Davis interjecting:

The Hon. DIANA LAIDLAW: As the Hon. Mr Davis indicates, the Minister was at that meeting, hence the question. For the sake of brevity, I will merely quote the sentiments expressed to me by Mr Hugh Stretton, who said that the report was ambiguous, unclear, illiterate, quite professionally and grossly incompetent and, in many respects, dishonest. He also went on to state that whoever wrote the report should be decisively excluded from any influence or authority—either direct or indirect—over our State Library service. Of course, the amalgamated department would ensure that libraries come under the umbrella of the Department for the Arts and Cultural Heritage.

Other callers have referred to the controversies that have bitterly divided local communities during the period when Ms Dunn, as Director of Local Government, advised the Minister on a range of local government affairs, namely, Stirling, Mitcham and Happy Valley and Henley and Grange. I have been advised by Mr Andrew Strickland, Chairman of the Government Management Board, that the Minister, in seeking to fill this position, had the option of advertising both with the Public Service and publicly or arranging for the conduct of an executive search for a suitable appointee. My questions to the Minister are:

1. Why did she not choose to pursue either option prior to recommending Ms Dunn's appointment to this position?

2. Will the Minister clarify remarks made by a senior member of Mr Bannon's staff that six of the 13 members of Cabinet voiced opposition to the appointment but did not pursue their opposition because to do so would have amounted to a vote of no confidence in the Minister by her own Cabinet colleagues?

The Hon. ANNE LEVY: I will deal first with the question of six of the 13 Cabinet members voicing opposition. That is a complete furphy and I do not have the faintest idea where it comes from, although I notice that it has been repeated in the media.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: Can you tell me from whom it came?

Members interjecting:

The Hon. DIANA LAIDLAW: I will not do that.

Members interjecting:

The PRESIDENT: Order! The exchanges across the Chamber will cease.

The Hon. ANNE LEVY: I presume, Mr President—

Members interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order. Exchanges across the Chamber will cease.

The Hon. ANNE LEVY: I presume that I and the other Cabinet Ministers know more about what happens in Cabinet than does anyone not present at a Cabinet meeting. I can assure members that the appointment of Ms Dunn was a Cabinet decision and certainly did not involve a vote of seven to six. Votes are not taken in Cabinet. There was Cabinet agreement to the recommendation that I brought forward.

With regard to the other remarks that the honourable member has made, I am surprised to hear that her phone has run hot with people concerned about this issue. My phone has run hot with people supporting the appointment of the CEO of the new department and congratulating the Government on the appointment. I can assure the honourable member that a number of these people have passed on their comments to other people in the media or at least have told me that they have done so. I certainly do not have a hearing problem. I hear the honourable member's frequent interjections only too well, and I wish that I did not have to hear them.

In regard to the report to which the honourable member referred, I certainly was at that meeting and I heard Mr Hugh Stretton make those remarks. Neither he nor anyone other than Ms Laidlaw has named Ms Dunn as the author of that report and I will certainly not name her as the author of it, here or anywhere else.

The Hon. Diana Laidlaw: Nobody wants to claim credit for it.

The PRESIDENT: Order!

The Hon. ANNE LEVY: As to the question of why it was chosen not to advertise the position, I point out to the honourable member that such positions can either be advertised or appointed on the recommendation of Cabinet. In fact, it is more common not to advertise. If the honourable member is interested, I have obtained some figures regarding this matter. Since the GME Act was passed by Parliament in 1985 there has been a total of 27 chief executive officers appointed to administrative units within the Public Service. Eleven of those appointments were made following advertisements and 16 were made without advertisements. Furthermore, a number of chief executive officers were appointed prior to the GME Act being passed, and still hold those positions. There are 15 such people of whom six were appointed following advertisements and nine were appointed without advertisements. Far from being unusual not to advertise, it is the rule rather than the exception to appoint someone without advertising the position. I do not recall any member of the Opposition complaining about the other 16 chief executive officers who were appointed without advertisement. Why they should suddenly complain about one particular person, where the common procedure has been followed, is hard to understand unless one attributes motives which are probably not very respectable to the person who puts forward such questions.

A large number of people have supported the appointment of Ms Dunn to the position of Chief Executive Officer of the new Department of Arts and Cultural Heritage, including prominent people in the arts from all over Australia. In case people are unaware of the fact, I point out that Ms Dunn is currently the Acting Chair of the Australia Council and has been Deputy Chair of that body for the past two years and is very well known in art circles not just in South Australia but throughout the nation.

I am grateful to the people who have expressed their support for her appointment and, without mentioning names, I can assure members that numerous comments have been made about carping criticisms of the appointment from those who have supported Ms Dunn's appointment.

CONFLICT OF INTEREST

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

Leave granted.

The Hon. J.C. IRWIN: Over the past few years I have asked a number of questions relating to the conflict of interest provisions of the Local Government Act. In February 1990 the Minister stated that a committee was working on the conflict of interest provisions. The 1989-90 Annual Report of the Department of Local Government stated that the Conflict of Interest Review Committee was still meeting and would report to the Minister at the end of 1990. I am constantly being advised by council chief executive officers and others that there is an intolerable situation when councillors blatantly break the conflict decisions and others may break them inadvertently. A recent example raises another interesting question regarding the whole process surrounding the Unley council's approval to demolish a building. This has gained much publicity recently and it also raises a fundamental question relating to the conflict of interest.

Has the Conflict of Interest Review Committee reported to the Minister yet? If not, why not? Does the Minister have a serious concern that a council may have a conflict of interest if it gives planning and building approval to its own projects? Was this matter dealt with by the review committee?

The Hon. ANNE LEVY: The review committee reported to me at the end of December and I have released that report. The report has been sent to the Local Government Association for comment and its opinion regarding legislation that may result from it.

The committee found that the general framework of regulation regarding conflict of interest in local government is appropriate but it recommended a number of changes to the legislation and to assist members to have a better understanding of the provisions in order to improve the current situation.

To summarise, some of the main recommendations were: that members of a council should have the discretion to address a meeting to provide information not otherwise available to a council where a conflict of interest is involved; furthermore, that a council should have the power to resolve whether an interest is trivial or shared in common, and so not mean that a particular member is debarred from taking part in deliberations or voting; that the chief executive officer should be permitted to withhold information and reports from a member of a council if that member has declared a conflict of interest; and that members of a council should be prohibited from personally acting in a professional capacity in legal proceedings against a council. Some of those recommendations would, of course, require legislative change.

The committee also made recommendations with respect to the register of interest that council members are currently required to provide. It suggested that it should be called the register of returns and that the register should be accessible to all electors of a council. It further suggested that, given the recommendation concerning access, the return of a retiring member of a council should be kept in the register for only a limited time after that member's retirement and that the penalty for the offence of lodging a false or misleading return should be increased to correspond with other penalties with respect to conflict of interest.

The committee also recommended that a handbook should be prepared for elected members to assist them to understand better the provisions of the Act. Some of the difficulties experienced in councils result, the committee feels, from a lack of understanding of the provisions in the Act, not from any deficiency in the Act itself. Furthermore, the committee has prepared a first draft of this handbook which, obviously, is now open for consideration. While I have referred this matter to the Local Government Association for its comment, I have not yet had a response from it regarding the report.

The Hon. J.C. IRWIN: As a supplementary question, I remind the Minister of the last part of my question regarding the example of a council giving planning and building approval to itself to develop. No-one else can do that except a council, it seems. Was that addressed and will it be addressed as a very grave conflict of interest?

The Hon. ANNE LEVY: As I recall—it is a few months since I read the report—that matter was not addressed; the question the committee was looking at was in regard to the conflict of interest that a particular member of council may have between his or her duties as a councillor and his or her personal interests. That is what is usually understood by 'conflict of interest'. The question of a council having an interest in the matter as a council is not a conflict of interest as normally understood, and I think that in planning terms a council cannot give planning permission on a matter in which it is a proponent of a development, and that must be referred to the planning commission. It could be regarded as a conflict of interest where the council cannot be both the planning authority and the proponent, but such a matter does not come within the definition of 'conflict of interest' as considered both in the Act and by the committee.

AUTISTIC CHILDREN

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about autistic children.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that South Australia's only specialist school for autistic children is threatened with closure as a result of Federal and State Government funding cuts over the past few years. Mr Brian Whitford, executive director of the Autistic Children's Association, recently said:

> ... the association's centre school would close at the end of this term unless $100 000 could be found.

Mr Whitford went on to say:

> State and Federal funding combined was running at only 45 per cent of the 1987 level, if inflation and the sharp rise in demand for the association's services were taken into account.

Last week, most members would have received a letter, too, from a grandfather of a three year old lad who was autistic, seeking help from all members on both sides of the Chamber as follows:

> The early intervention program and the special school are so important to these small children. It's the difference between some of them going on to a near normal life as self supporting members of society, or being dependent all their lives.
>
> My daughter would welcome you to spend a day with her and her family to experience first-hand the stress, strain, frustration and love that is an integral part of every day for a family that has an autistic child. Please, please help us to lobby the Education Department for a reversal of their decision to cut funding this year. These children can't afford it, and they can't ask for help themselves.
>
> Autism knows no boundaries; parents can be millionaires or paupers. Autism has no politics, and with this in mind I am sending a copy of this letter to all members of Parliament. I can only hope and pray that some will listen and give their help.

My question to the Minister is: will the Minister and the Government review the Education Department's decision

in relation to assistance for autistic children to see what might be done in the very near future to prevent the closure of the school and the special programs for autistic children in South Australia?

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

MINISTERIAL STATEMENT: STATE BANK

The Hon. BARBARA WIESE (Minister of Tourism): On behalf of the Attorney-General I seek leave to make a ministerial statement on the State Bank.

Leave granted.

The Hon. BARBARA WIESE: Her Excellency the Governor yesterday appointed the Hon. Samuel Joshua Jacobs, QC, as Royal Commissioner to inquire into certain matters relating to the State Bank. The terms of reference for the royal commission will allow it to work in tandem with the Auditor-General's inquiry into the bank. The Auditor-General's inquiry will proceed with revised and broadened terms of reference.

Since the Premier announced on 12 February 1991 that the Government had decided to establish a royal commission into the affairs of the State Bank the Attorney-General and his officers have been developing terms of reference and an appropriate framework for the royal commission to proceed. This process has involved the consideration of representations and suggestions from the Leader of the Opposition and his colleague the Hon. Trevor Griffin, the Speaker and the Deputy Speaker of the House of Assembly, and the Australian Democrats. Paramount in the Government's considerations has been to empower the commission to undertake thorough and unfettered inquiries, while at the same time not prejudicing the ongoing operations of the bank and protecting the privacy of bank customers and therefore the viability of the bank itself. These imperatives are of course difficult to achieve simply by using the conventional royal commission framework.

By its very nature a full blown royal commission would have adverse consequences on the operations of the bank. Royal commissions are as a matter of convention conducted along the adversarial lines with counsel representing the various parties making submissions, calling witnesses and examining and cross-examining witnesses. A royal commission examination of financial transactions, which are often complex and may involve a number of parties and agents, is therefore likely to be protracted.

The impact of a protracted inquiry on the bank is likely to be twofold. First, management and staff would be distracted from the important task of rebuilding the bank. Secondly, individual and corporate confidence in the bank may be undermined by a prolonged investigation and one which may require their affairs to be disclosed in a relatively public manner. Advice has been sought from various sources including Crown Law, Treasury and JP Morgan on the impact of an inquiry into the State Bank. The consensus of advice is that a conventional royal commission is likely to cause considerable difficulties for the bank.

Mr J. Sabatini of JP Morgan advises that there are significant risks to the ongoing operations of the bank in holding a full public royal commission into the bank's operations. Mr Nobby Clark, the new Chairman of the State Bank Board, has also expressed his concerns about the impact of a royal commission. At a press conference following his appointment Mr Clark said:

> The important thing is we have an ongoing business to conduct and one would hope the requirement of the commission is such that they recognise that we have an entity that is based on confidence and worked through people.

Accordingly, the inquiry into the State Bank will be conducted by both a royal commission and an Auditor-General's inquiry pursuant to section 25 of the State Bank of South Australia Act. The Government believes that the establishment of two cooperative inquiries is the most responsible means of conducting a thorough investigation into the bank.

The terms of reference for both the royal commission and the Auditor-General's inquiries address all major concerns expressed by the Opposition. The royal commission will examine those aspects of the State Bank's affairs which can be dealt with in a relatively open forum and which will not adversely affect the bank's future operations. The Auditor-General's inquiry will examine matters, including private transactions and bank policies and practices, that are more appropriately dealt with by specialists, in camera.

The Royal Commissioner will have access to periodic reports by the Auditor-General, so he can consider all relevant material in its full perspective, when arriving at his findings. The Royal Commissioner may, of course, take any other material into consideration as he sees appropriate.

The royal commission terms of reference will examine:

- the relationship and reporting arrangements between the Government and the bank group;
- what the appropriate relationship and reporting arrangements should be between the Government and the bank in view of the Government guarantee contained in the Act;
- the nature, extent and adequacy of communications between the Government and the bank;
- whether the board exercised proper supervision and control over the Chief Executive Officer, operations of the bank and the bank group and whether the Act should be amended in any relevant respect;
- whether the board properly discharged its function under the Act and whether the Act should be amended in any relevant aspect;
- whether any matter should be subject to further investigation or the instituting of civil or criminal proceedings.

The Commissioner will also be required to, as far as possible, protect information which can be properly regarded by the bank as confidential and avoid interfering with the ongoing operations of the bank. The Government will, of course, be receptive to any recommendations if, during the course of his inquiries, the Commissioner forms the view that the terms of reference should be expanded or otherwise changed. The final report by the Commissioner is expected to be completed by 1 March 1992.

As indicated earlier, the Government intends to recommend to the Governor that she reappoint the Auditor-General with revised terms of reference pursuant to the State Bank Act. That recommendation will be made to Her Excellency following the passage of amendment to the State Bank of South Australia Act, which I will outline later. Under the revised terms of reference the Auditor General's inquiry will examine:

- the events and matters which caused the bank's financial difficulties
- the processes which led to the bank entering into transactions which resulted in material losses or the bank holding significant assets which are now non-performing
- whether those processes were appropriate

- what procedures, policies and practices were adopted by the bank in the management of its assets which are non-performing and if they were adequate
- whether adequate procedures were in place for the identification of non-performing assets
- whether external audits of the accounts of the bank were appropriate
- whether the operations, affairs and transactions of the bank were properly supervised by the bank's
  - Directors
  - Chief Executive Officer
  - Officers and Employees
  - Directors, officers and employees of the State Bank Group
- whether information given by the Chief Executive Officer was timely, reliable adequate and sufficient to enable the board to discharge its functions under the Act.

While the investigation of the Auditor-General will be undertaken in private, the Government intends to release the recommendations, findings, and any other material which is not considered confidential to the bank or its customers. Interim reports are expected from the Auditor-General as soon as within six months.

Under their respective terms of reference, the royal commission and the Auditor-General are empowered to seek and obtain advice or assistance as they consider necessary on banking, accounting and auditing practice. In addition, the royal commission will have attached to it counsel assisting (Mr John R. Mansfield, QC), his junior, executive and secretarial services.

The Auditor-General has engaged Messrs Clayton Utz, solicitors, as consulting legal advisers to assist him with respect to the legal matters relating to his investigation. The firm is recognised for its extensive banking experience. It has significant experience in acting in major inquiries, investigations and royal commissions. The firm has recently been retained by the Royal Commission into the Tricontinental Group of Companies in Victoria and it is currently acting for the Electricity Commission and the Housing Commission of New South Wales in connection with separate public enquiries. Other legal support, including counsel, will be included at appropriate stages of the investigation.

With respect to banking matters, the Auditor-General has engaged Mr R.J. McKay, the former Chief General Manager of the National Bank in South Australia, as a banking consultant to advise him on matters relating to banking practice. Mr McKay has extensive experience in retail corporate and international banking.

With regard to auditing and accounting matters, Mr MacPherson is currently holding discussions with major auditing firms in South Australia with a view to engaging such resources as are necessary.

To ensure the royal commission and the Auditor-General have sufficient powers to undertake their inquiries and summons witnesses, the Government will later today be introducing legislation into this Parliament to amend the Royal Commissions Act and the State Bank of South Australia Act. Amendments to the Royal Commissions Act will deal with confidentiality, better defined records to which the commission has access, and secure the attendance of witnesses located interstate.

Amendments to the State Bank of South Australia Act will facilitate the integration, where appropriate, of the inquiries of the Auditor-General and the royal commission; clarify the powers of the Auditor-General with respect to former bank directors, employees and other persons; enforce attendance of interstate witnesses; and better define the operations of the bank and records to which the Auditor-General has access.

Consideration has been given by the Government to the question of whether, and, if so, to what degree, the inquiries may need access to persons or documents currently overseas. While this issue may pose a theoretical problem, the Government believes that it is unlikely to cause major difficulties for the inquiries.

Documents relating to transactions conducted overseas can be obtained through the bank under the existing powers of the royal commission and the Auditor-General. Any other issues involving evidence which may be located outside Australia will be dealt with as they arise in consultation with the Federal Government, which alone exercises external affairs powers.

In conclusion, recognising that reflection and introspection are a part of the rebuilding process, the Government has put in place another important measure in dealing with the difficulties of the State Bank. Together with measures already taken, including the indemnification of the bank's losses and the appointment of a new Chairman and board, we can all look forward to seeing a new State Bank emerge.

MINISTERIAL STATEMENT: RURAL SECTOR LOANS

The Hon. BARBARA WIESE (Minister of Tourism): I seek leave to make a further ministerial statement.

Leave granted.

The Hon. BARBARA WIESE: I wish to advise the Council that the Rural Finance and Development Division of the South Australian Department of Agriculture has taken steps to reimburse funds received by the division from accounts which have been overcharged interest arising from loans, the majority of which were approved between November 1971 and March 1973.

One of the guidelines behind providing concessional loans to the rural sector under the various Commonwealth-State agreements was the requirement that, during the course of the loan, interest rates charged on farm loans be ultimately increased to the commercial rate where it was deemed by the State authority that the borrower had the capacity to pay.

Following advice from what was then the Rural Assistance Branch, approval was given by the Minister of Agriculture on 23 August 1984 to conduct reviews on individual loan accounts and increase interest rates accordingly. The first of the interest rate reviews was conducted in 1985 where farmers with loans advanced under various Acts, including the Rural Industry Assistance (Special Provisions) Act 1971, were notified that it was the intention of the Rural Assistance Branch to increase the interest rate applicable to individual loans subject to appeal by the client on grounds of hardship.

Clarification was subsequently sought from the Crown Law Office on the validity of reviewing interest rates on these loans, following a query from a client of the Rural Assistance Branch affected by the increase in interest rates. It was the opinion of the Crown Solicitor that a higher rate of interest should not have been sought from mortgagors who were given farm build-up or debt reconstruction loans approved under legislation covering advances made under the Rural Industry Assistance (Special Provisions) Act 1971 and who had been advised of certain conditions in their letters of approval and mortgage documents.

Officers of the Rural Finance and Development Division have investigated the extent of the matter and have found

57 loan accounts which had been overcharged interest on their loans. the dollar value of overpayments at this stage amounts to $246 000 and forgone interest to clients over this period amounts to around $86 000, making a total of approximately $332 000.

There is no concern with mortgage documents prepared after 1973. Various refinements to mortgage documentation have occurred since that date, among which was to give the Minister power to review interest rates on client loans. There appears to be no legal doubt about the ability of the Minister to vary interest rates on loans approved after March, 1973. In addition, since 1986, all mortgage documents are to be read in conjunction with a letter of offer where the terms and conditions of the loan are detailed.

While it is regrettable that a mistake was made in the first place, arrangements have now been made to reimburse these 57 clients. These reimbursements are being funded from past surpluses generated by rural lending and as such there will be no impact on the Consolidated Account.

MINISTERIAL STATEMENT: MIDDLE EAST TRADE DEVELOPMENT GROUP

The Hon. BARBARA WIESE (Minister of Tourism): I seek leave to make a third ministerial statement.

Leave granted.

The Hon. BARBARA WIESE: The Minister of Agriculture in another place advises that, following the cessation of hostilities in the Gulf, the Government is to set up a Middle East Trade Development Group. As members will know, South Australia's exports to the Middle East region had been running at some 21 per cent of our total exports, as against a national figure of some 5 per cent prior to the outbreak of the war. Most of these exports are agricultural. The trade embargo against Iraq and the war itself seriously disrupted this trade and particularly affected sales of wheat, barley and live sheep from South Australia. At a time when our rural sector is undergoing considerable difficulties, the Minister of Agriculture is anxious that South Australia get back into the market area as soon as possible.

To this end a South Australian Middle East Trade Development Group is being established. The formation of this task force will have a dual purpose in ensuring that South Australia's vital interests in this region are protected, while at the same time underpinning and supporting recently announced initiatives by the Federal Government. It will have the following objectives:

- to assess the post-conflict situation in relation to export opportunities for South Australian companies
- to take or recommend initiatives for future trade development in the Middle East
- to analyse and disseminate trade inquiries and market intelligence from the Middle East
- to develop and facilitate contacts with companies and organisations in the Middle East of long-term interest to South Australian exporters of goods and services.

It is the Government's hope that not only can we restore the trade that this State has lost because of the war but that we can also broaden the range of our exports. South Australia already has a good reputation in the region as a reliable supplier of agricultural and manufactured products and as an appropriate source of technology, consultancy services and project management expertise for economic development.

The task force will consist of representatives from the private and public sectors with particular expertise in Middle East trade. It will be headed by Mr Hugh McClelland, Director, Agricultural Development and Marketing, Department of Agriculture, who was the Australian Trade Commissioner, Algiers for four years (1979-82) and who has travelled extensively in the region, including in the Gulf States. Mr McClelland is also a member of the executive committee of the Australia Arab Chamber of Commerce and Industry, South Australian Chapter. The Minister of Agriculture expects that the membership of the group will be finalised shortly and I anticipate that it will quickly commence its work in the interests of South Australia.

FREEDOM OF INFORMATION BILL (No. 2)

Adjourned debate on second reading.

(Continued from 19 February. Page 3016.)

The Hon. M.J. ELLIOTT: The Democrats will be supporting this legislation. On at least three occasions I can think of we have supported the Opposition's moves to introduce freedom of information legislation into this Parliament. But, having said that we will be supporting the legislation, I indicate that we have a number of concerns about the Bill that is now before us. The Bannon Government's move towards freedom of information in South Australia has been slow, despite having promised FOI legislation to the electorate for the past eight years.

Currently Victoria is the only State where an FOI Act exists in effective operation, although New South Wales has legislation about to begin—perhaps it has begun by now—and the Federal Government has administered its own Act since 1982. In that context, South Australia is a considerable way behind in developing the notion of increased accountability of Government.

Freedom of Information is not a popular idea throughout Governments of the world, with only a handful of nations having legislated FOI Acts by the close of the 1980s. The United States of America is perceived by many as being at the forefront of freedom of information legislation following the passing into law of the United States of America FOI Act in 1974. Indeed, it is the United States legislation on which the Australian Federal Government's Act of 1982 is based.

However, it is worth noting that freedom of information has existed in some form in a number of other countries for much longer than in the United States. Specifically, the public of Sweden has had the right of access to Government documents since 1766, a period of 224 years. It has existed in Finland since 1951 and in Denmark since 1964. Norway first introduced it in 1967 and it spread to France, the Netherlands and parts of Canada throughout the 1970s.

Evidence suggests the various forms of freedom of information legislation in place throughout Scandanavia, most of which are based on a revised version of the Swedish model, have been very successful and have gained widespread acceptance from the public without impeding the workings of Government to any significant degree. That has not been the case in the United States, where the penchant for litigation has led to thousands of working hours spent dealing with FOI requests, subsequent denials of access and the consequent recourse to legal action. Interestingly, in the United States of America more then 80 per cent of requests for information come from private corporations seeking details about competitors and the remainder is primarily from the media, while the general public's demand for access is insignificant in relation to the number of requests received.

Throughout Scandanavia, on the other hand, the office of Ombudsman deals with FOI complaints and reviews, yet it

is estimated that just 5 per cent of the Ombudsman's workload is required to fulfil its FOI duties. The indication throughout Scandanavian countries is that current FOI legislation works, with information flowing freely to interested parties with little recourse to complaint.

It was not until 1973 and the Government of Gough Whitlam that Australia began to consider seriously freedom of information, and it was under the Fraser Government in 1982 that an FOI Act was finally passed federally. The Victorian Act which came into existence the following year was based largely on the Commonwealth Act which, in turn, was a substantially re-written version of the legislation passed in the United States of America in 1974. It is upon this background that the proposed freedom of information legislation is being presented in 1990 by the Bannon Government to the Parliament of South Australia.

A number of arguments can be developed as to why we need freedom of information legislation. The primary aim of the Australian Democrats is to ensure the proper functioning of democratic Government and the enhancement of civil liberties. The role of the Government can be viewed in two ways. First, the election of the Government of the day provides it with a mandate from the masses to govern. This means that the effective control of the State is placed in the hands of the Executive and decisions are made without further recourse to public debate. It is assumed by Government that it has the trust of the electorate and that it is therefore functioning as an extension of the will of the people.

The alternative view is that the ability to govern effectively can only be democratically achieved by informing the public fully of the decision making process. This is done by making information about the process freely available to the community, and freedom of information legislation can do this if it is constructed in a wide-ranging manner. The deliberate non-disclosure of information often leads to trouble for Governments, after they have been found to be involved in what is popularly known as a 'cover-up'—and, boy, do we see some of that in this place.

In addition, an FOI Act can be effectively used to enhance the notion of civil liberties for each member of the community. People must have the right to know if information about them is being kept on file by any agency, and they have the right to know whether that information is accurate. Admittedly, there are sensitive areas, such as police investigations into criminal matters, but these must be well defined through a narrow field of exemptions, not a blanket exemption for an entire department and virtually every document it holds. Within these parameters a watchdog organisation is needed to ensure that the way information is compiled sits within the terms of reference of the freedom of information legislation. This does not mean that the watchdog needs to know what type of information is being kept in confidential files, simply the methodology being used.

It is worth examining the legislation that we have before us. I have a rather lengthy list of concerns about the way that it has been structured. Clause 3 provides:

(1) The objects of this Act are to extend, as far as possible, the rights of the public—

(a) to obtain access to information held by the Government:

That is a noble goal and one that we would all say we believe in. Yet, clause 20 (1) provides:

An agency may refuse access to a document—

(e) if it is a document that came into existence before the commencement of this section.

In June 1984 the then Federal Attorney-General, Senator Gareth Evans, stated publicly that the most important aim of any freedom of information legislation:

... is to improve the quality of decision making in the public sector... by keeping people informed of the decision making process... by throwing the spotlight of public scrutiny on government mistakes in the past to ensure they are not repeated in the future.

It is worth noting that the Commonwealth FOI Act provides for public access to documents dating back at least five years from the time of the enactment of the legislation. The South Australian proposal does not include such a provision, putting it at odds with its own stated objectives. This view was supported by Jan Heath, President of the South Australian Branch of the Australian Library and Information Association, who, when she responded to the draft document that was released in July 1990, said:

Access to retrospective documents is desirable...

Her organisation has called for the deletion of clause 20 (1) *(e)* on these grounds. The South Australian Council for Civil Liberties is of a similar view and publicly called for retrospective access at meetings on the FOI Bill in 1989.

The Senate Standing Committee on Constitutional and Legal Affairs dealing with freedom of information, stated in 1979:

The essence of democratic government lies in the ability of people to make choices, about who shall govern, or about which policies they support or reject. Such choices cannot be properly made unless adequate information is available.

That is a view which is supported by former Prime Minister, Malcolm Fraser, who has stated that both 'people and Parliament must have the knowledge required to pass judgment on the Government'. More than any section contained within the Act, section 20 (1) *(e)* is the greatest impediment to free and open access by the public to Government. Section 20 (1) *(e)* should be deleted, or I shall later suggest a possible amendment which will make it workable.

It is worth noting that in Victoria, in the first four years of the FOI Act, the Auditor-General's Department received a total of just 31 requests for access to documents, while the Director of Public Prosecutions received only 15 requests over a two-year period. It certainly indicates that some Government agencies will not be flooded with requests.

The first clause that causes me some concern is clause 4—'Interpretation.' The question is which agencies will be covered. The Bill provides for certain agencies to be exempt from the operation of FOI. These are listed in schedule 2. This is also the approach adopted by most other FOI Acts. An alternative approach, however, is found in the Bill which was introduced into the Tasmanian Parliament by Dr. Bob Brown in his FOI Bill of 1990. That Bill covers all agencies, which are defined as departments, local authorities and prescribed authorities. The last category covers all conceivable bodies established, funded, managed or administered by an arm of executive or legislative Government, and includes all the agencies proposed to be exempted from FOI under the South Australian Bill.

As a matter of principle, the Act should exempt from disclosure only certain types of information and not whole agencies. Granting general immunities is unsound because it undermines one of the main objects of the legislation, namely, improved accountability of government. The Act's potential for use leads to improved record keeping because of the possibility that legally enforceable requests for information may be made.

Also, an obligation to keep records which are open to the public leads directly to better decisions being made. Exempting an agency from potential scrutiny creates opportunities for abuses to occur or to remain undiscovered and uncorrected, and this is unacceptable. It is far better to rely on a combination of document exemptions and the good sense

of the appeal bodies to ensure that harmful disclosures are not made.

Two arguments are often raised in defence of the exempt agency approach: first, small agencies will be swamped with requests for information. Two points can be made here. First, the size of an agency is not necessarily an indication of the types of information held and the desirability of making that information available to the public. Secondly, FOI history in other States shows that predicted demand for information is always greater than actual requests. For example, the South Australian Bill seeks to exempt the Auditor-General, but in Victoria the Auditor-General received a total of 31 requests in the four years from 1984 to 1987. That is hardly a flood. Secondly, some agencies, by their very nature, deal mostly with documents which are exempt already (for example, legal professional privilege) or would be made exempt under FOI.

Giving these agencies exempt status saves them the time and money involved in continually refusing access. This argument relates to many of the agencies sought to be exempt from the South Australian Bill, such as royal commissions, the Attorney-General (criminal matters only), the payroll board, the Solicitor-General, the Crown Solicitor, Crown Prosecutor, the Ombudsman (investigative functions), Police Complaints Authority (investigative functions), and Public Trustee (executorial functions).

In providing blanket protection to an agency, the Bill ignores the fact that these agencies often have administrative and policy making roles which should be open to scrutiny through FOI. Again, experience does not bear out the waste of time and resources argument. For example, the Victorian Director of Public Prosecutions received a total of 15 requests during 1986 and 1987. Of those, four were granted in full and seven in part. There are perhaps two points there. First, there were not many requests and, as it turned out, most were granted and, as such, they must have been reasonable. As stated before, the administrative and policy making roles of these agencies ought to be covered. A combination of clearly defined exempt document guidelines, a sensible public who will not waste time applying for documents which they know are exempt and an effective appeal mechanism will cover all these problems.

The next section to which I wish to pay attention is clauses 9 to 11 in relation to the publication of certain information. This is an important part of the Bill. In summary, it requires each agency to publish an information statement containing descriptions of structure, functions and FOI procedures and types of documents held. Clause 9 outlines the information to be included in an information statement or summary. A couple of additional matters could be added to make the clause stronger. These include, first, a statement listing all boards, councils, committees and other bodies constituted by two or more persons which are part of or have been established for the purpose of advising the agency and whose meetings are open to the public or the minutes of whose meetings are available for public inspection. This is similar to section 6 (*1*) (vii) of Bob Brown's Bill.

A second inclusion could be that, if an agency maintains a library or reading room that is available for public use, there should be a statement of that fact, including details of the address and hours of opening of the library or reading room. Once again, Bob Brown had a similar clause, section 6 (1) (viii), in his Bill.

I now move to the question of access to documents, namely, clause 13, relating to applications for access. Paragraph *(d)* states that applications must contain such information as is reasonably necessary to enable a document to be identified. This provision could be used to obstruct requests. Some requests will legitimately involve discovery of more than one document. We should distinguish vexatious or unreasonable claims from those which legitimately or unwittingly catch lots of documents. I will refer to this further when I look at clause 18.

Clause 14 relates to the time for dealing with applications. Subclause (2) requires applications to be dealt with as soon as practicable and in any case within 45 days after they are received. Experience interstate shows that the statutory time limit approximates the average time of dealing with requests. In other words, the longer one gives them, the longer they take. Given that the speed at which information is made available will be a major indication of the usefulness of the Act, 30 days would be a better limit.

Clause 17, relating to advance deposits, causes concern. It is proposed that fees will be determined by the Minister or the agency to which the request has been made, and that is not acceptable. I shall touch on that matter again when I look at clause 52 in relation to FOI fees.

Clause 18, relating to the right of agencies to refuse to deal with certain large or time-consuming applications, gives an agency the power to refuse to deal with an application if it looks as if the work involved would 'substantially and unreasonably divert the agency's resources from the use by the agency in the exercise of its functions'. This approach is fraught with danger. The aim of protecting agencies from the unreasonable requests of the vexatious few could be achieved in other ways. Giving the Minister or the bureaucracy the power to avoid politically embarrassing requests on the grounds of economy should be avoided.

It should be noted that, first, complex requests are most likely to come from members of Parliament, journalists and community activists and would comprise a relatively small proportion of requests. Secondly, time spent by staff determining the political sensitivity of documents and trying to avoid disclosure will add to the cost of the FOI process, but the applicant should not be penalised. Thirdly, FOI is not a research short cut. If the information is available elsewhere, that is what the applicant should be told. FOI applies only to documents not otherwise available. The fact that it happens to be a lengthy document should not matter.

Fourthly, 'substantially and unreasonably' is a subjective term. For example, 100 pages of personal information might be deemed okay, but 100 pages of embarrassing material may not. Fifthly, the pre-FOI standard of disclosure is zero. Therefore, what is voluminous now may appear reasonable later when the system has been operating for a while.

Sixthly, if the Government limits resources to FOI staff and systems, this will ensure that resources will be diverted from normal agency activities and thus give a legitimate excuse for refusal. Seventhly, is it necessarily the applicant's fault that a request catches a large amount of information? Clause 18 (2) allows an applicant to reduce the scope of his or her request where the agency has advised that it will be refused on economic grounds. The agency is obliged to assist the applicant in this task.

The Bill is silent as to how long the agency has to come to this decision. Unless a time limit is set, there is potential for the application to take several months to get through the system. The following procedure would speed up the processing of applications. Any decision that a request is too much of a drain on resources must be made within five working days of the request being received. If the applicant refuses to reduce or limit the scope of the request, then either the application should be processed or the Ombudsman could be called in by the agency to determine the

matter. Interstate experience is that negotiation between applicants and agencies solves most of these problems.

Clause 19 deals with the determination of applications. After 45 days, if an application has not been granted, it would be regarded as having been refused. As I argued earlier, the 45 day limit should be shortened to 30 days in line with clause 14 (2). Clause 20 relates to refusal of access. Paragraph *(a)* of subclause (1) deals with exempt documents. These are covered within schedule 1, but I will refer to them now, first, as a matter of general principle. In considering any exemptions, the first question asked should be, 'How will these documents harm an essential public or private interest?' The most useful exemptions are those which focus on content and not form. It is better to ask 'What does it say?', rather than 'Where does it come from?' Looking at the schedule itself, I have some reservations about the level of restrictions provided to Cabinet documents and Executive Council documents, although I understand the concerns involved. However, I will not dwell on those at this stage.

Clause 5 deals with documents affecting inter-governmental or local governmental relations. I suggest that the test of prejudice should be upgraded from 'could reasonably be expected to cause damage' to 'could reasonably be expected to seriously prejudice relations'. There is a difference between the two; I think that as it is currently worded it is too much of an easy cop out. The public interest test needs clarification. In particular, the Bill should state what factors are to be excluded by the reviewing body. The factors that have been applied in other jurisdictions include whether the document might be misunderstood or misapplied by an ill-informed public, whether disclosure will lead to unnecessary confusion and debate, and the bureaucratic seniority of the Government's creator. These are the types of factors that should be explicitly excluded from consideration.

Paragraph 8 of the first schedule, dealing with documents affecting the conduct of research, is far too broad. If, for example, taxpayers' money is spent on a survey to find out what people think of the operation and efficiency of the STA, the results should be available for access, whether or not they are glowing or damning.

Paragraph 9 refers to internal working documents. This should be confined to documents that are a part of the decision-making process rather than the general terms 'consultation' or 'deliberation'. Clause 10 deals with legal professional privilege. I suggest the addition of the following words to subclause (2), 'or solely on the ground that it was created or prepared by a lawyer, whether or not that lawyer was within the State service or otherwise'. This would overcome the misconception of agencies that anything prepared by a lawyer is privileged.

Paragraph 14 of the first schedule relates to documents affecting the economy of the State. I am concerned by the breadth of this, although I am not quite sure that I have come up with an alternative wording at this stage. Clause 16 deals with documents concerning the operations of agencies. Subclause (1) *(a)* (iv) is particularly dangerous. It is similar to a Commonwealth exemption that was cited in 52 per cent of refusals in 1985-86. It is an exceptionally broad exemption, which could be subject to abuse and, on the figures coming from the Commonwealth experience, not only could it be abused but also it appears that it has been abused.

Clause 20 refers to refusal of access. Paragraph (1) *(e)* deals with prior documents. The main issue here is the retrospectivity of the legislation. As it is worded, the agency has the right to refuse access to a document that came into existence after the commencement of the Act. The main reason for not allowing access to prior documents is a flood-gates argument, which suggest that agencies will be swamped with requests for old documents that are difficult to access. Old documents were created and filed without reference to the possibility of the public later having a right of access to them. Accordingly, the value of making older documents available is set off against the supposed economic cost of accessing those documents.

Two points need to be made. First, in relation to the flood-gates fear, it has not been substantiated in other jurisdictions. Secondly, the new information and storage retrieval systems that FOI encourages should incorporate all information held and not just new documents. It should be noted that any limit on the accessibility to prior documents is purely arbitrary. That said, a useful and workable scheme would be for documents up to 10 years old to be available immediately and documents up to 25 years old to be made available, for instance, in two years, when the system is up and running, so that not all the requests come in at once—not that we would expect that many.

Subclause (3) deals with restricted documents and ministerial certificates. I will refer to those when I deal with clause 45 of the Bill. Clause 25 deals with documents affecting inter-governmental or local governmental relations. I have already made comments about this in relation to clause 5, and the same comments apply.

In relation to clause 26—documents affecting personal affairs—I ask how this ties in with the defamation laws. Is it reasonable to suggest that FOI should protect the reputations of the dead while common law does not? Clause 29 of the Bill refers to internal review.

It is appropriate that this be the first level of appeal. The cost of appealing decisions under this provision should be set out. It is not appropriate for the agency to be setting the fee for a review of one of its own determinations. It should be stated that the person carrying out the review is not subordinate to the person who made the original decision. The application should not have to be addressed to the principal officer of the agency. This is an unnecessary formality which, if missed, could lead to the technical invalidity of the application.

Part IV of the Bill relates to amendment of agency records. I have no particular comment to make on this. Part V (sections 39 to 44) relates to external review. First, as a general comment, the role of the District Court could perhaps be better served by an administrative appeals tribunal, with appeals then lying to the Supreme Court and then, by leave, to the High Court. An administrative appeals tribunal would have the advantage of being quicker and cheaper than the courts, with legal representation being optional. Procedures tend to be less formal and preliminary conferences can be used to define issues ahead of or instead of a full confrontation.

Clause 39 refers to review by the Ombudsman. Why not allow the Ombudsman to question the propriety of a ministerial certificate? Currently, only the District Court can look at this. The Ombudsman will be unable to fulfil his or her tasks under FOI unless adequately resourced. This has been a problem for the Commonwealth officer. Perhaps a separate information commissioner could fill this role.

Section 42 refers to the procedure for hearing appeals. It is an undue restriction on the role of the court to provide that they are unable to overturn the Minister's assessment of what the public interest requires unless there are cogent reasons to do so. The court should be unfettered in this regard.

Clause 46 relates to ministerial certificates. These should be done away with or perhaps there could be a provision

for Parliament to be notified when a certificate is issued or when found, on review, to be improperly issued. At present, Parliament is only advised after appeal proceedings have been instituted.

Clause 53 relates to fees and charges. This is perhaps one of the most fundamental questions. There is a very real danger that fees can be used as a major obstruction to the availability of information. If fees are set high enough, people who wish to seek information may be costed out. The Act or regulations should set out guidelines for fees. At present, the Minister is to put guidelines for the imposition, collection, remittal and waiver of fees in the *Government Gazette*. What expenses should be reasonably charged for? Typically, charges under FOI have been levied for administration, application fees, search and retrieval, decision-making time, supervision of inspection, photocopying, other transcriptions or copies, and other services such as computer time. Of these, decision-making time is simply not justifiable, nor is any charge that results from the agency's inefficiency. The applicant should not have to pay for the agency's poor filing systems.

Indirect charges such as application costs of appeals also need to be considered. The Commonwealth charges fees of $240 and $360 for appeals to the Administrative Appeals Tribunal and the Federal Court respectively. Is the FOI Act an appropriate place to provide for these fees to be waived?

As a matter of principle, the FOI system should not be totally user-funded. Section 52 (2) *(b)* requires the Minister to take into account the costs incurred by the agency's meeting FOI request when setting fees under the Act. If fees are to be charged, there is no great objection to their being on a sliding scale according to complexity of volume. However, there should be a statutory maximum fee payable of, for example, $100 for any one request. It is worth noting that in a recent Victorian case a journalist was quoted fees of $13 000 for an FOI request. Clearly, fees can be a deterrent to applications and this is particularly the case in the Commonwealth jurisdiction where there was an 18 per cent decrease followed by an 8 per cent decrease in FOI requests over two consecutive years following the rise in fees. The total fees collected doubled over each of those years, showing the magnitude of the increases.

The Act should include provision for fees to be waived for categories of users other than the impecunious, particularly if the intended use of the document is of general public interest or benefit. In the United States this has been interpreted to include members of community groups and the media. A general 'not for profit' test may be applied to community groups but the media waiver should include the commercial media. The media, including the commercial media, are in a different position from other businesses as they are also our main source of information about the workings and decisions of government. In contrast, an insurance company seeking access to fire brigade reports might reasonably be expected to pay. A right of appeal should lie in respect of a decision not to grant a waiver of fees.

Problems may arise in defining categories of impecunious applicants and any guidelines should include all social security recipients or students receiving financial assistance from government. Members of Parliament should be exempt from fees. The Victorian experience shows that the Opposition is one of the biggest users of FOI. The criticism has been made that politicians exhibit a lack of concern for the size or resource implications of their requests. Nevertheless, pragmatism and principle dictate that the fees should be waived. Members of Parliament are responsible for keeping the Executive accountable, and taxpayers will foot the bill in any event. If waivers are not available, electoral allowances and other sources of public funds are, so it is better to save the administrative costs of fee calculation and collection and make the service free. It might also be one way of overcoming the farce that Question Time has become in Parliament where the name of the game for Governments is to avoid answering any questions.

Clause 54 relates to reports to Parliament. These reports are vital. Evidence of this is the way they have been watered down by the Commonwealth following public identification and investigation of exemption statistics. The particulars to be included in such a report should be set out and should include detailed statistics of applications and their fate and, in particular, the specific exemptions relied on when agencies deny access. Complaints to the Ombudsman and the results of those complaints should also be included.

It would appear that a number of problem areas are contained within the Bannon Government's proposed freedom of information legislation as presented to the House of Assembly in April 1990, and subsequently reintroduced with virtually no change, but the Government has made a commitment to FOI legislation and it is up to the Opposition Parties either to reject the Bill out of hand because of its inadequacies or to enter into some meaningful debate on the issue with the intention of amending the legislation into a workable Act.

Peter Bayne, writing in his book *Freedom of Information*, published in 1984, stated that an FOI Act:

> ... will enhance the ability of the citizen to challenge administrative action by providing more information about that action. Further and fundamentally, the Act should enable a citizen to evaluate governmental action which may not impinge directly on individual rights, and thus open to scrutiny and participation the policy-making process.

Any FOI Act, including the South Australian version, must underline the need to redefine the role of the Public Service in relation to Cabinet, Parliament, the courts and the public. It must also change the expectations of those in the Public Service by reinforcing the notion that they are accountable directly to the public.

The Democrats support the Bill in general, but we do have serious reservations about some of the clauses as they now stand. We will be moving a number of amendments in the Committee stage but, before proceeding to Committee, I would hope that the Minister will respond to the issues that I have raised in the second reading debate.

The Hon. DIANA LAIDLAW: I will make a brief contribution to this debate, as I have on numerous occasions on which my former colleague, Mr Martin Cameron, introduced the Bill and on the occasions on which the Government also introduced legislation on this matter. I commend both my colleague the Hon. Trevor Griffin and the Hon. Mike Elliott for a thorough analysis of this legislation and I agree with both that there are areas in need of improvement if we are to achieve in this State the fine objectives that proponents always suggest should accompany freedom of information legislation.

I have been involved in this issue since I was with the Young Liberals 20 years ago, and I certainly remember speaking on the matter before Young Liberal councils at national level. Resolutions at that time were subsequently accepted by the Prime Minister, Mr Malcolm Fraser, and they became Government policy and, finally, Acts of Parliament. I believe very strongly in the statement that freedom of information is vital as a means of improving the quality of decision-making in this State. It is also vital in improving accountability of the Executive to Parliament and of the Parliament to the people.

Very importantly, I believe, freedom of information legislation is absolutely vital in improving the public's perception of members of Parliament and government as a whole. As we all know, as members of Parliament we are not held in the highest regard in the community, and that is of some concern to me. I am also concerned that the manner in which one has to extract information—fight for it and obtain it by fair and foul means—does not help the image of politicians, nor people's confidence in the democratic system and the accountability of government.

I want to refer to just one recent example in this regard, namely, the Minister of Tourism's submission to the Government Agency Review Group. I have always understood that these submissions by various Ministers were not confidential documents; certainly, they have been provided to members of unions and can be obtained through those sources. Other Ministers have certainly been far more readily prepared to provide these documents, not only to shadow Ministers and the unions, but also to other people interested in and concerned about what the effect of award restructuring will have on the arrangements within the various departments. Certainly, the Minister's submission to the Government Agency Review Group, which submission she forwarded in November 1990, indicates that there is a possibility that, with award restructuring, the Minister will have to find from internal sources costs of $250 000 in the first year, rising to $450 000, which will necessitate substantial cuts—those are the Minister's own words—to what is a very small organisation.

I would have thought that that statement, plus the whole of the document, was extremely important public information for the tourism industry in this State, both for persons within TSA and for those in the private sector. Clearly, other people thought that was the case, because I did not actually seek a copy of this document, but one was forwarded to me. Because I could not copy the formal part of the submission—it was about 16 pages with 30-odd pages of adenda—and send it to every person involved in Tourism SA, and because the submission raised many questions and so I believed the Minister should provide further comment, I placed quite a number of Questions on Notice.

In the replies to those Questions on Notice—and I record my thanks to the Minister for them—the Minister indicated on a number of occasions that the document was confidential. That is certainly not my understanding of the status of these submissions and certainly it is not the understanding of other members of Cabinet. That is one issue about which I have some concern with respect to freedom of information. One Minister may deem a document confidential and another Minister may not, even when the source is the same. I believe that will have some relevance to the operation of freedom of information legislation. Irrespective of how we are to define the status of various documents, I believe it is important in this instance that such information is available to the tourism industry. Operators, for instance, who put a great many thousands and millions of dollars into ventures in this State and work tireless hours for their benefit and the benefit of the State in general, deserve to know what the Minister is contemplating for the future of Tourism SA and the industry as a whole.

Therefore, I not only asked those questions back in December, but I also forwarded those questions to a number of people in the tourism industry whom I have been pleased and proud to meet over the past year. When I received the answers to those questions from the Minister when Parliament resumed on 12 February, I forwarded the questions and then the answers to all those people. So, at all times I have kept those whom I have met within the tourism industry as informed as best I could about the Minister's proposals for TSA.

A number of the Minister's answers referred to the confidential submission. They also clarified a number of points which I felt was important because it showed that, in terms of market share and the like, South Australia was in a more promising position than the GARG submission had indicated. But I did not withhold those answers from the tourism industry, as the Minister had sought to withhold her submission.

The Hon. Barbara Wiese: Not in the least. When I discuss issues of significance to the tourism industry I communicate with people in a much more reasonable way than I think you did.

The Hon. DIANA LAIDLAW: It is a matter of degree, Minister.

The Hon. Barbara Wiese: And in a more honest way.

The Hon. DIANA LAIDLAW: That is a matter of opinion. The Minister has a staff of several highly paid individuals where I have one-fifth of a paid secretary. It is not always possible for me to put all the salutations and things on the top of letters and so on.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Telephone calls come straight through to me because I do not have a secretary to filter them as does the Minister. I have no choice. In fact, I have welcomed the advice I have received and in the arts field in particular they have appreciated the fact that someone is listening to what people are saying. I have been frank with people in the tourism industry by first alerting them to matters raised by the Minister in her GARG submission, which she later claimed was confidential and, therefore, I presume, she would never have wished the tourism industry to know about the information and proposals that she was contemplating.

The Hon. Barbara Wiese: That is not true, either.

The Hon. DIANA LAIDLAW: Why was it that on four occasions in the answers to these questions the Minister referred to the GARG submission as confidential?

The Hon. Barbara Wiese: That was because the GARG submission is one which outlines the range of possibilities. When possibilities become probabilities, that is the time to consult with relevant people about whether or not something will happen.

The Hon. DIANA LAIDLAW: That may be the Minister's interpretation.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: That is exactly why we need freedom of information legislation. The Government and the Minister, paid by taxpayers, might consider a whole range of proposals and then decide in their ivory tower that they will not proceed with this or that—variously of detriment or benefit to the industry. That is exactly why we need freedom of information legislation.

The Hon. Barbara Wiese interjecting:

The ACTING PRESIDENT (Hon. G. Weatherill): Order!

The Hon. DIANA LAIDLAW: It is very interesting to see how upset the Minister is. She has reason to be upset when she withholds such information from the industry. I have received a number of the letters that the Minister has sent to people in the tourism industry. Clearly, we have doubled up, because on 13 or 14 February I sent to people in the tourism industry the questions I had asked and the Minister's answers and she did exactly the same on 28 February.

I want to note my amusement at the Minister's statement that 'unfortunately Ms Laidlaw has used my frankness in an attempt to score political points'. I state very strongly

that, if I seek to provide information to people in the tourism industry from a report and the Minister does not wish to advise or consult with the tourism industry on a number of these proposals, I believe that the Minister could be accused of withholding important information from the industry—rather than her suggestion to me that I am simply seeking to score political points.

The Hon. Barbara Wiese interjecting:

The ACTING PRESIDENT: Order! Interjections are out of order.

The Hon. DIANA LAIDLAW: Mr Acting President, what could be more honest than putting questions on notice on the public record of this Parliament, sending those questions to people in the tourism industry and then sending the Minister's answers in full to the tourism industry as soon as I received them? What could be more honest than that? In one breath the Minister is accusing me of attempting to score political points and in the next sentence she has the audacity to say, 'I am enclosing copies of responses to questions raised in Parliament about the GARG submission so that you are fully aware of the facts.' If I had not posed those questions on notice from what the Minister now deems to be a confidential report, essentially, she is now saying that the industry would not now be fully aware of the facts. That is exactly why we need freedom of information legislation in this State. I am heartened to hear that both the Liberal Party and the Democrats agree that this Bill needs considerable amendment before it satisfies the public need and the public demand in this State for greater accountability on the part of the Government to taxpayers generally.

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

WATERWORKS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 February. Page 3016.)

The Hon. DIANA LAIDLAW: The Liberal Party is opposed to this Bill, and I will explain why. Like the Government, we acknowledge that the current system is unacceptable. Prior to the last State election, the then Leader of the Liberal Party (Mr Olsen) on 11 November in a policy speech stated:

> We will also review the water rating system and in the meantime divorce water rates from the annual lottery of property valuations. We will have an open inquiry into the methods of water rating, and until it has reported, we'll contain base water bills and the price of excess water so that any rises are no greater than the movement in average weekly earnings.

In an accompanying statement, Mr Olsen indicated that the current method of assessing water and sewerage rates on the basis of property valuations was 'archaic, flawed and unfair'. At that time, the Minister of Recreation and Sport (Mr Mayes) indicated publicly that he was most unhappy with the system of assessing water and sewerage rates and he called for changes to the system of valuing properties for determining such rates.

Under the present system of water charging by the E&WS, households are given an allowance of water based purely on the value of the property, and that allowance must be paid for whether or not it is fully used. It is generally agreed, as I have indicated—and this is agreed by the Liberal Party—that this system is unfair, particularly for people in units and townhouses who require much less water but who must pay according to property value. Similarly, people in higher valued properties have no incentive to save water. It is important that such incentive be accommodated within the assessment of water and sewerage rates, as we all know that South Australia is the driest State in the driest continent. It is in South Australia's interest that we have such a component in our water rating system. To her credit, the Minister of Water Resources sought to address this major problem of assessment soon after the last election.

She engaged Mr Hugh Hudson, a former Minister, to conduct an inquiry. However, it was not an open inquiry, as the Liberal Party had indicated it would implement, prior to the last election. We believed that it was important that such an inquiry be an open inquiry so that we gained a wide cross-section of views and interests in this State, as there are conflicting views and interests in this matter.

Also, it is important that the water rating system take account of not only water conservation practices but also the fact that we are seeking to encourage urban consolidation. Whether one is looking at it from a transport, sporting facilities, air pollution or whatever perspective, it is becoming increasingly important to advance this program of urban renewal and urban consolidation. Therefore, we would be seeing a tighter concentration of housing, units, town houses and the like closer to the city. That is desirable, but it does not fit in with the old method of water rating, and it certainly is a concern to us with respect to the proposed water rating system that the Government has advanced in this legislation.

We also believe that the system of water rating should take into account the policy that was endorsed by all political parties, at both State and Federal levels, of encouraging older people to stay in their homes for as long as possible, and not necessarily moving out of their homes and the area about which they have a knowledge of local facilities, where their friends and supporters reside and in relation to which they have many wonderful memories.

In assessing this Bill, we believe that the Government has ignored the two important social factors that I have just raised—that of urban consolidation and older people staying in their own homes. The new system that the Government proposes installs a minimum access fee of $100 which will entitle all households to about 136 kilolitres of water per year. But, for owners of properties valued at more than $111 000, there will be an additional 76c a kilolitre for every $1 000 the property is valued over $111 000.

The Minister has indicated that that threshold will be indexed, but that will be little consolation to people who currently have a house that is valued at $111 000, and I understand that some 60 per cent of houses in the metropolitan area are valued in the vicinity of $111 000 or higher. While the threshold will be indexed, I can assure members that in recent years the value of properties in many areas of metropolitan Adelaide has increased at a far greater rate than the rate of indexation. There is no suggestion that, if property values fall at any time, the Government will look at lowering that threshold accordingly. Certainly, it will not mind reaping the benefit of gains in property values that are well above the indexed threshold of $111 000.

For those reasons we believe very strongly that this measure is a property tax or a wealth tax. It is a tax that is a disguise for the so-called 'Robin Hood' tax that was mooted publicly some years ago when the Hon. John Cornwall—a name that always engenders some colourful memories—

The Hon. T.G. Roberts: Robin Hood has gone back to Sherwood Forest.

The Hon. DIANA LAIDLAW: Certainly, the Labor Party did not want him. He has gone to Sydney, although I understand he may be coming back to Adelaide. Perhaps

he is coming back to gloat at the demise of the Labor Party in this State because he certainly wished them harm, I suppose—what is the nicest way of referring to honourable—

Members interjecting:

The Hon. DIANA LAIDLAW: No, not like Mr Clyde Cameron. It's not like that. Anyway, I have been too easily distracted, Mr President. The former Minister of Health and Community Welfare, Dr Cornwall, did propose a Robin Hood tax. There was uproar at the time. Pressure was exerted on him by the Premier and the public generally to withdraw from such a tax. It is quite clear that the Labor Party did not seek to withdraw from the concept of a property or wealth tax. It is disheartening but perhaps not unexpected from the Government that it did not have the heart, the courtesy or the honesty to tell the electorate before the last election about its proposal for water rates and a tax on property.

The Minister in the other place has accused the Opposition of saying that this new system is wrong because we are trying to protect the wealthy. I can assure the Minister that many people in our community are blue collar workers who have used their superannuation to pay off their homes. Many people have come from other countries and have worked seven days a week in small business, and the goodwill from that business has been invested in property because it does not have a capital gains tax. In doing so they have believed that they were doing the right thing by themselves and their family. They are not wealthy people by any means. They have worked hard, diligently and in good faith to build up that asset and to make a nice home for themselves and their family. It is the very reason why they decided to leave their homeland—a big decision in the first place. The $111 000, which may seem a lot to some mean trade union officials and others sitting on the benches opposite, is not a great deal of money in terms of the inflation and rising property values of recent years.

The Liberal Party finds this system quite deplorable, and on that basis we will oppose it, although I acknowledge our acceptance of the need to change the current system of rating water use and water cost. However, the method that the Government now proposes in this legislation is totally unacceptable, bigoted and mean.

The Hon. M.J. ELLIOTT: The Democrats support the Bill. I have had a number of letters and phone calls from people who are concerned about the way in which the rate has been levied. I think they fail to recognise in those concerns that if the Bill is defeated they are essentially already being rated on property values because their water allowance directly relates to the value of the house.

Members interjecting:

The Hon. M.J. ELLIOTT: We already have a system which works on the basis of the value of the house. At least in the new system people have the option of using less water and saving money by doing so. Under the old system they paid for water whether or not they used it. Whether the Bill is defeated or not, the argument as to whether or not there should be a levy against the value of the house is not relevant.

Members interjecting:

The Hon. M.J. ELLIOTT: Without entering into that argument, it is not relevant to the Bill. If the Bill is passed, it will not change the fact that if someone has a more valuable house he will pay higher rates.

We need to look at what else the Bill does. For the first time, this Bill will give people a real incentive to save water. At present, if someone has a house of high value and he is given a large water allocation, whether he wants it or not, the reality is that he will say, 'As I am paying for it, I might as well use it.' That is not sensible for the State. Therefore, the Bill offers an opportunity for people to make a conscious decision to use less water and to be rewarded for that decision. That is a positive aspect about the Bill.

The Liberal Party has got so hung up on the value of the house argument that it has failed to pick up a very valuable aspect of the Bill. The Liberal Party may at some future time have an opportunity, as a Government, to address other questions, but in opposition the only thing that we can do is effectively to defeat the Bill, which is what the Liberal Party is proposing to do. Liberal members will be cutting off their noses to spite their faces if they are serious about wanting to save water in Adelaide; and they are not solving another problem about which they are concerned, namely, that more valuable houses are paying more water rates. The Liberal Party has not been very sensible about this Bill; members have not analysed it very critically at all.

The Democrats support the Bill because it has the capacity to save water. I shall be moving an amendment, which is already on file and which introduces the concept of a rising block tariff. The idea is that everybody will be entitled to a particular allocation of water, as is envisaged in the present Bill, anyway. From that point on, the proposal is that the more water one uses the more one pays and the rate remains the same. I believe that there should be blocks. For example, for the next 100 kilolitres there should be a certain rate; if one goes over that, one pays an even higher rate; and, if one uses more again, one pays a higher rate still. Such an increasing block tariff will put pressure on people who feel that they can afford to use lots of water and who will carry on using it. Therefore, it is a strong conservation measure in that regard. I shall be moving an amendment to put in a rising block tariff. It is the sort of thing that we should be using for electricity. At present we have the exact opposite with electricity; we have a decreasing block tariff, which encourages greater consumption and waste of resources. I believe that the Government, after discussions with those involved, may be more sympathetic to the rising block tariff, and I am pleased about that.

It is important that this Bill does achieve its goals—and I think that my amendment may increase its chances even more—of decreasing water usage. There are many hidden costs in water usage which we do not appreciate. A certain amount of our water comes from the Adelaide Hills. I think the figure is 60 per cent, but I may be wrong. However, a significant amount of our water comes from the Adelaide Hills area, which needs to be better protected if we are to ensure the quality of the water that remains. We also get a significant amount of our water from the River Murray, which is more expensive for the State to use. It is more expensive because of the cost of pumping. I am told that the marginal cost of pumping is about 8c a kilolitre. There is also the cost of water treatment, which is about 7.4c. The more water we use, the greater the cost that is being inflicted upon the State. Of course, we also have to face the possibility that, if we do not bring down the ceiling on water usage we shall face a bill for the cost of expansion of the system.

There is no capacity for getting extra water from the Adelaide Hills, so all extra capacity will come from the River Murray. That will also accelerate the time at which we must update and replace our equipment. There are many reasons why we should put a ceiling on water usage and, as much as possible, discourage the use of water from the Murray.

Another thing worth thinking about is that water from the Murray is very saline and that salinity accelerates the rate at which hot water services and other parts of our water system are corroded, and the cost to domestic and industrial users is great. The more River Murray water that we use, the greater will be the cost in terms of the impact of salt coming into our system. For many very good reasons we need to reduce our use of water.

This Bill will have the effect of reducing water consumption. The Democrats strongly support the Bill for that reason. The question whether or not there should be a rate against the value of a house is irrelevant in the context of this Bill, because, if it is defeated, we shall still have such a charge as a result of the way that the present system works.

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

EDUCATION ACT AMENDMENT BILL

Second reading debate adjourned on 21 February. (Page 3123.)

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Special provisions relating to rate of remuneration for part-time officers and employees.'

The Hon. R.I. LUCAS: I move:

Page 2—

Line 6—After 'affects' insert '—*(a)*'.

After line 8—Insert the following word and paragraph:

or

(b) the determination of any other claim made by or on behalf of any person who was at any time or is an employee under this Act, if that claim was lodged with the Department at its Central Office or an Area Office before the commencement of this section.

As I indicated in the second reading of the Bill two weeks ago, this is the only matter that the Liberal Party will pursue by way of amendment. The original contention of the Government, when the judgment in the Rossiter case came down in September, was that the potential ramifications of that decision were perhaps $25 million to $30 million. On reflection, the Government said that it might cost $20 million, and that figure has continued to be used by the Minister of Education and senior officers in the Education Department.

Again, as I indicated in the second reading debate, the Education Department has confirmed that, at the time of my second reading speech, only 16 claims had been lodged with the Education Department, nine of which totalled $100 000. Evidently, the other seven were non-specific in relation to the sums of money that were being claimed. As I understand it, or as was explained to me by senior officers in the department, they remembered that they had done contract work since 1983 and they thought that they might have been eligible to lodge a similar claim. However, they did not have any record of the sums of money that they felt they should claim. So, the total number of claims is 16, nine of which totalled $100 000 and the other seven were unspecified. The department's view was that it would not be significantly different from the average; that is, the sum would not be significantly different, on average, from the other nine claims, totalling $100 000.

I think I also stated in my second reading contribution that last November, when the Government first indicated that it wanted to debate this Bill and the Liberal Party indicated its preparedness to support consideration of the Bill in the Parliament at that time, the department advised me that there had been five claims at that stage, three of which, I think, added up to about $30 000. So, in the six or seven months since the judgment came down in September, one realises that the number of claims has really been almost negligible when one compares it to the worst case scenario painted by the Minister and the department of $25 million to $30 million originally, and now $20 million.

Certainly, it must have been a judgment that the Minister and the department made that they were not as concerned about the legislation now as they were in November because the Government chose not to press ahead with the legislation in November, even though the Liberal Party indicated its preparedness to consider the Bill during last year. It was a decision taken by the Government and the Minister—I am not sure at what level within Government or the Ministry, but it was certainly a Government decision—that it chose not to go ahead with the passage of the BillP
ber or December. It decided that it could wait and roll over until, obviously, March or April this year. Of course, that proves false the statements made by the Minister in relation to the amendment that we are discussing today. The Minister is saying—and I think I quoted his statement during my second reading contribution—that if this amendment is successful tens of thousands of potential applicants will swamp the Education Department for similar consideration to that given to Mr Rossiter. That is patently false; there is no evidence to justify that claim. Even the senior officers of the Education Department do not agree with that assessment made by the Minister of Education in another place. Certainly, the Institute of Teachers does not agree.

Again (and I used this sum in my second reading contribution) I state that the institute has had 40 or 50 queries that it thinks might result in applications for consideration along the same lines as the Rossiter case—and that is even though the Institute of Teachers leadership has been publicly advertising and advocating that teachers in a similar position to Mr Rossiter should consider their position and make inquiries of the Education Department.

So, for many months we have had the Institute of Teachers publicly exhorting teachers to look at the possibility of lodging similar claims, the Government and the Minister having made a number of extravagant statements to the press and the media about the potential cost of this decision, thereby attracting further publicity to this particular court decision. And, even after all that publicity generated by the Institute of Teachers, the Minister, the Premier and senior officers of the Education Department, we still had only 16 claims lodged up until two weeks ago.

I am not sure what the response of the Minister in charge of this Bill in this Chamber will be in relation to this amendment, and I will await it with interest. However, I warn her and the Government that there can be no substance at all (there is no evidence at all) for a similar claim that this amendment will mean tens of thousands of applicants descending on the Education Department to lodge claims. The amendment seeks simply to state that those people who have lodged claims with the department at this stage can have those claims considered. It does not mean that they will be accepted. It also means that perhaps over the next week or two, before the commencement of the operation of this provision, depending on how quickly that can be achieved—and I am advised that it may take a week or two depending on Executive Council and a few other things like that—a number of other applications, if they are lodged with the Education Department, can be added to the existing 16.

Finally, just because claims are lodged does not automatically mean that they will be successful. The Education Department has indicated to me that it will fight each and every case in the courts. That statement was made to me by the Director-General of Education (Dr Ken Boston) late last year and by Mr John Walker, who is head of the Personnel Section, both of whom said that they would contest each claim lodged with them. They also believe, as does the Institute of Teachers, that the Rossiter case is an unusual case in many respects and is not easily replicated by the experience of many hundreds of other contract teachers since 1983. As a result of that, many contract teachers have, in fact, chosen not to pursue claims with the department because they realise that the Rossiter case and this particular judgment does not establish an all-embracing precedent for all contract teachers since 1983. It is a specific case with specific detail that, as I said, does not easily replicate itself for other examples.

For those reasons I urge members to support this amendment, as it will provide those teachers with a just claim against the department as a readjustment of some inadequacies by the department, the Government or Crown Law, with an opportunity to continue to pursue that case and it will certainly not cost the Government $20 million or $30 million.

The Hon. ANNE LEVY: I strongly oppose this amendment, which would permit people to apply for a windfall gain, which is generally accepted as a windfall and which no teacher would have expected to receive. The reason why a great flood of people have not applied so far is that in November 1990 the Government made very clear that it would legislate to prevent a flood of applications being successful. So a large number of people would have taken the view that there was no point in making an application because the legislation would be passed.

The Hon. R.I. Lucas: Why would they do that?

The Hon. ANNE LEVY: I didn't interject when you were talking. Why don't you let me speak? The Government made it very clear that it was bringing in legislation and, consequently, it was pointless for people to put their names forward for what would be generally regarded as a totally unexpected windfall gain. The vast majority of teachers would not have contemplated that they might be entitled to such a windfall gain. The fact that only 16 teachers applied is a measure of the fact that the vast majority of teachers accept that the legislation will be passed and that such legislation will prevent these claims from being successful.

I understand that a number of teachers approached legal advisers, who were informed by the Education Department of the impending legislation. Consequently, they advised their clients that it was really rather pointless for them to apply.

The Hon. R.I. Lucas: The legal advisers to the department?

The Hon. ANNE LEVY: No, the legal advisers to whom people had gone.

The Hon. R.I. Lucas: They didn't give that advice to the Institute of Teachers.

The Hon. ANNE LEVY: I am talking about legal advisers to whom members of the teaching profession had gone. If the amendment is passed, it will mean that there will be a period of days, perhaps a fortnight, before the legislation can be proclaimed. There may well be a mad scramble by people wishing to lodge applications during that time to obtain a windfall gain and, even if only a small number of people make use of this opportunity, I really think that this Parliament should not be in the business of encouraging or permitting people to make windfall gains purely because they are quick off the mark, whereas tens of thousands of others will not make these windfall gains and whose case would be just as strong as those applying for claims. It seems to me to be irresponsible to accede to this amendment which would give this period for the sharper members of the profession to apply for windfall gains which neither they, the Institute of Teachers nor anyone else have ever suspected might be available to them. I do not think that is something which we, as a Parliament, should be encouraging.

It is interesting that the Hon. Mr Lucas said that the Education Department indicated that it will fight every one of these claims. Whilst obviously it would do so, it seems odd to me that we should be setting up a situation where the main beneficiary will be the legal profession. Obviously, these cases will involve a great deal of time and legal argument. I submit that the Education Department has better things to do with its resources than to pay lawyers to defend cases from people who would never have expected to make such a gain, for whom it would just be a windfall gain and who would be selected for that windfall gain to the exclusion of others who had not applied.

The Hon. M.J. ELLIOTT: There are conflicting matters at work in relation to the amendment we have before us in this clause. Effectively, this legislation is being used to alter an award, and we can ask the question whether or not conditions and entitlements can be altered retrospectively by the Government. Generally, I think people would take the attitude that legislation should be rejected on such a principle.

It appears at this stage that only a very small number of cases involving other part-time teachers are likely to emerge and very few of those are likely to be successful. The documentation alone, which is necessary in terms of timetables, pay slips, etc., make it most likely that in many cases documentation will simply not be able to be produced. Quite plainly, the Government is fighting a rearguard action following some incompetence in the Education Department. It did not appeal within the allowed time which is the appropriate way of dealing with this situation and it has now come to Parliament to be resolved using a sledgehammer to crack a nut.

The Rossiter judgment was on two grounds and fractionalisation of days not allowed in the award was only one of them. It may be true that there are some windfall possibilities, but I think the likelihood is that, in many cases, people will not be able to establish an entitlement. I must say that I was tempted for some time to consider the possibility of amending clause 2 such that this clause would work prospectively rather then retrospectively, but I am persuaded that perhaps there is a need to include a ceiling of some sort. If we assume that there are any people who are genuine in this matter, I would expect that they would have already made an application. There has certainly been ample warning that an attempt would be made to close off this avenue and, generally speaking, people have not come forward. As I said, in any event, regarding the people who have come forward (the Hon. Mr Lucas has said that there are 16), the likelihood is that most of them, if any, will still, for a number of reasons, be struggling to establish sufficient grounds.

In many ways, the problems have been created by the Education Department not being willing to carry out timetabling correctly. As I understand it, moves are now afoot to ensure that the causes of the problems will be tackled so that it will not happen again. As I said, I was tempted to amend this clause to make it prospective only but I am

attracted by the amendment moved by the Hon. Mr Lucas which limits to as much an extent as can be guessed that people are genuine about this matter and it is not for me to read their minds as to what they are up to. I believe that if they are genuine they would have applied by now and the options for further applicants would then be cut off. So, I will support the amendment.

The Hon. ANNE LEVY: I would like to make one further comment which, I hope, the Hon. Mr Elliott might consider. I have been told that Mr Rossiter, who undertook the case that led to the legislation, is describing himself as an expert in this matter; that, if the amendment is accepted, he will have an extremely busy fortnight advising hundreds of people how to put in claims; and that the number of claims will not be 16 but it will be vastly extended at the instigation of Mr Rossiter. I reiterate that, if a number of teachers would be eligible following the Rossiter case, I fail to see why some of them should be paid this windfall while others are not, and whether or not they are paid will depend purely on whether they get the correct advice from Mr Rossiter or from elsewhere and lodge a claim with great speed.

It seems to me that whether or not individuals are paid something should not depend on such vagaries. The legislation was foreshadowed in November and the vast majority of teachers concerned have accepted that this is a gain to which they are not really entitled and which they did not expect, and it would be grossly unfair to let a few—it may be a large number, but it is a few, compared with the total number of teachers—benefit when others in exactly the same circumstances would not be eligible. I do not think that is the sort of attitude that this Parliament should be encouraging through legislation.

The Committee divided on the amendments:

Ayes (11)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas (teller), Bernice Pfitzner and J.F. Stefani.

Noes (8)—The Hons T. Crothers, M.S. Feleppa, Anne Levy (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill and Barbara Wiese.

Pair—Aye—The Hon. R.J. Ritson. No—The Hon. C.J. Sumner.

Majority of 3 for the Ayes.

Amendments thus carried; clause as amended passed.

Clause 3—'Regulations.'

The Hon. R.I. LUCAS: I ask the Minister and her adviser what is the purpose of the amendments to section 107 of the principal Act. The Institute of Teachers and others who have raised this matter with me have indicated that they do not understand the connection of this amendment to the Education Act with the subject matter of the Rossiter case.

The Hon. ANNE LEVY: It has been suggested to me that clause 3 is not really dealing with the Rossiter case; it is using an opportunity to make a small amendment to the Education Act, given that it has been opened. It means that regulation-making power can extend not only to officers of the teaching service but also to other people who are employed under the Education Act but who are not teachers—teacher aides and school bus drivers would be examples. It was felt that the regulation-making power in the Act should extend to all employees under the Act, not just to the members of the teaching service.

The Hon. R.I. LUCAS: As I said, I have received a submission from the Institute of Teachers on this matter. I remember taking the matter up with Dr Boston and John Wauchope late last year and I received a note from one of the two gentlemen. I have a copy of the first page, but not the second. It comes from the Education Department, anyway, and it is a briefing note for me on the questions I have raised. I asked them this question about section 107 and, for the sake of completeness, I will indicate their response to me, as follows:

> Prospective action hinges on achieving a suitable amendment to the TSB award. There is no guarantee that this can be achieved promptly. Moreover, there is a possibility that support for SAIT may not be forthcoming, and this may influence the board not to make the variation.

As I understand, that is not the case. The institute indicated to me that it is prepared to discuss with the department possible changes to the award. The note from the department continues:

> It was seen to be prudent to have a fall-back provision for effecting the necessary prohibitions against prospective claims via regulation. While this could be achieved in relation to 'officers of the teaching service', because regulation-making powers exist for those employees, no such regulation-making powers are provided in relation to employees appointed under section 9 (4).
>
> These include contract teachers, temporary relieving teachers, hourly-paid instructors, school ancillary staff, school bus drivers and others.
>
> Without the amendment to the regulation-making powers in section 107 of the Act, this inconsistency would be perpetuated.
>
> In drafting the Bill, Parliamentary Counsel advised that in view of the pressing need to prevent further successful claims while awaiting an amendment to the TSB Award, the Government should seek to include the amendment to the Act for both retrospective and prospective action.

I do not understand what is meant by 'it was seen to be prudent to have a fall-back provision for effecting the necessary prohibitions against respective claims via regulation'. As I understand we have before us a Bill to amend the Act retrospectively and prospectively, and it was the Government's intention to amend the Act to guard against these sorts of claims. The department indicates that it needs a fall-back provision. It already has that fall-back provision via regulation for officers of the teaching service. That seems to indicate that the Government could have achieved, by regulation, what it is seeking to achieve by way of amendment to the Education Act.

I do not seek to hold up the passage of this Bill, but I would be interested to receive in due course from the department via the Minister a further explanation of that sentence in this note from the department. Are the department and the Minister indicating that, instead of amending the Act, they could have solved the problem by regulation and that what they are doing by way of this Bill is extending the regulation-making power beyond teachers to other officers of the department under section 9 (4) of the Act, which includes contract teachers, temporary relieving teachers, hourly-paid instructors, school ancillary staff, bus drivers and others?

The note from the department does not clarify the significance of this amendment to the Education Act. I understand what the department is saying, but it does not make complete sense to me. As I have said, I do not seek to delay the passage of the Bill this evening, but I ask the Minister to take my question on notice and to seek from the department and the Minister of Education a more definitive response as to the need for this amendment to the Act.

The Hon. ANNE LEVY: I am happy to seek further information from the Minister for the honourable member. However, I cannot imagine that the Minister would have gone to the extent of bringing in amending legislation if it were not necessary. If it were possible to do something by regulation alone, I am sure that that would have been done as soon as possible. However, as I am not a lawyer I am afraid I cannot indicate the intricacies of the legal argument. I note that the explanation of the clauses states:

Clause 3 amends the regulation-making power that currently allows regulations to be made to prescribed terms and conditions of employment for officers of the teaching service. The provisions are extended to cover staff employed by the Minister under section 9 of the Act.

It extends to those people the regulation-making power which currently exists for the teaching service. I presume that that does not mean that the Bill is unnecessary and that the problem could have been solved by regulation.

Clause passed.

Title passed.

Bill read a third time and passed.

ROADS (OPENING AND CLOSING) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill is the culmination of a complete review of the provisions for the opening and closing of roads contained in the Roads (Opening and Closing) Act 1932. Apart from a few administrative and operational amendments made to overcome procedure problems that have arisen from time to time, and to cater for changes brought about by the introduction of other legislation such as the Planning Act 1982, the Act has remained substantially unchanged since 1946.

Over recent years, local government and other authorities, and members of the public generally, have expressed dissatisfaction and frustration with the cumbersome and time consuming procedures relating to the Act. Various reviews of, and reports on, the legislation have been conducted, and each has identified significant problems in its functions. These reinforced the concerns expressed by users that the current procedures lacked the flexibility to meet the demands of a modern community. It was decided that a further comprehensive review of the Act would be undertaken to develop any legislative and administrative changes considered necessary. It soon became apparent that a completely new Act was appropriate.

Specific problems that needed to be addressed concerned the length of time taken to open or close a road, the relevance of some groups or persons carrying out various activities under the Act, and express problems in the extinguishment of rights over a road when a road is opened or closed. The existing Act gives councils or the Commissioner of Highways the power to commence road alteration proposals and, following a public notification and objection process, power to make any relevant road opening and/or closing order, and places the responsibility for confirmation of that order with the Minister of Lands upon a recommendation from the Surveyor-General. The average time taken to process such applications from the time of lodgment to confirmation has been estimated at 5-6 months. This does not include the lead-time taken by the lodging authority to initiate the proposal, negotiate with landowners involved, and prepare the necessary survey plan and documents. It does however include the time taken to identify and resolve objections, and to examine and approve the survey plan, all of which may, on occasion, take considerable time.

Integral requirements in the Act recognise that the general rights of the public and the specific rights of persons or groups that may be affected by the process should be protected. For example, a number of public submissions have been received from time to time from various groups representing sections of the community, notably bushwalkers, concerning the recreational use of roads and the need for walking tracks to enable persons to gain access to areas of natural beauty. The proponent of a process (a council or the Commissioner of Highways) could be seen as having a vested interest in ensuring that process is carried out, in the face of valid objections. So the final decision on whether or not the process is justified is placed with the Minister of Lands. The review has concluded that the continued protection of the public interest is warranted.

Part of the plan examination process requires determining whether any road to be closed is a public road and involves the location and examination of disparate records in the Department of Lands. If the search reveals that the road is not a public road, or if the status of the road is in doubt, the lodging authority must take action to declare the road public, and ensure that it is properly registered in the public record. This additional process is particularly frustrating to authorities wishing to close such a road, and substantially delays the ultimate closure.

In conjunction with this process of public road verification is the more contentious issue of ascertaining whether extant rights exist over roads to be closed. The existence of such rights is an obstacle (sometimes insurmountable) to subsequent land development. Rights that are recorded over private roads become unrestricted to all persons if the private road is declared to be a public road, even though the private right previously established will continue to be recorded on the relevant title as an appurtenant right. When one of these public roads is subsequently closed, the rights that existed over the road when it was a private road are not extinquished but are revived. Before any road is closed, a thorough search of the records must therefore be made to establish if any prior rights exist. The Highways Act 1926, Local Government Act 1934 and similar legislation in most other States include provisions for the cessation of private rights when a public right exists or is created. It is implicit in these provisions that the private rights of an individual are not prejudicially affected by the creation of an overriding public right, and appropriate provision for compensation is accordingly made. These particular concerns have been addressed in this Bill.

As part of the review process, comment was sought from interested clients. Significant submissions were received, demonstrating that people were taking a keen interest in the development of the Bill. Each of these submissions has been considered as drafting proceeded. Comparison has also been made with similar legislation from the other Australian States and the Northern Territory, and some benefit has been gained from this exercise. Subsequently, draft proposals for a new Roads (Opening and Closing) Act were presented at two seminars, at which members of the surveying profession, local and State government were invited to attend. Resultant discussion and comment was of considerable value in formulating the proposed legislation.

Attention may now be given to specific aspects of the Bill. The object of this Bill is to repeal the Roads (Opening and Closing) Act 1932; to provide new legislation for the opening and closing of roads, the disposal of closed roads, the creation or retention of significant interests and the extinguishment of any other registered interest, compensa-

tion in certain cases, and for other purposes; and to make consequential amendments to the Highways Act 1926.

The purpose of the new Act is to provide a means of rationalising road and traffic needs and disposing of unwanted or disused roads, while preserving the proprietary rights of individuals in particular and the public in general. Many public interest groups regard retention of these old road corridors as of paramount importance, for such diverse reasons as preservation of natural vegetation and for leisure or recreational activities.

The Bill provides that councils will initiate road processes within their areas and prepare relevant documents and plans, and places the responsibility for considering representations and for making a road process order in relation to that process with a prescribed relevant authority. The circumstances in which each relevant authority may act are set out in the Act, and have regard as to whether the road process forms part of a development for which the appropriate planning authority is the South Australian Planning Commission, the City of Adelaide Planning Commission, or the council. The authority to confirm or decline road process orders is entrusted with the Minister of Lands, upon a review of the process and recommendation by the Surveyor-General.

A major departure from former procedures is that councils will perform the public notification function (instead of the Surveyor-General) for all but those proposals to be heard by a planning authority. This will comprise most proposals. Most councils currently seek information, public reaction and feelings in an informal manner prior to formally instigating proceedings with the Department of Lands. Councils will now be able to combine these advertising processes in the one action. The Surveyor-General will still effect notification on behalf of planning authorities.

A separate simplified process and special power is provided for the Minister of Lands to make an order to close roads completely encompassed by Crown land, or any disused roads out of council areas that are not established and maintained as roads by the Commissioner of Highways, and to vest the same in the Crown.

It will be noticed that the Commissioner of Highways no longer takes an active part in the proceedings. This departure from previous procedure is taken because of a pending revision of existing legislation for the establishment and maintenance of principal (main) and outback roads, and because of representations made by the Department of Road Transport. Interim amendments to the Highways Act 1926 are proposed, to allow the Commissioner to close roads and vest the land in the Crown, without recourse to the Roads (Opening and Closing) Act.

One problem that councils always face when initiating any road closing proposal is the possibility that all the preliminary work and expense may come to nothing because of objections made and upheld, either by the council itself, or by the Minister on the recommendation of the Surveyor-General. Therefore a set of criteria, which the relevant authority must have regard to, for determining whether an order should be made or not, has been provided. These same criteria, and substantial compliance with Act requirements, will form the basis for the Surveyor-General's review and recommendation to the Minister.

Another costly exercise for councils, dependent on the process reaching finality, is the current requirement to deposit a detailed and certified survey plan with the Department of Lands at the commencement of proceedings. If the proposal fails, the financial outlay may not be recoverable. A preliminary plan system has therefore been introduced in this Bill, for the purposes of evaluation of road alteration proposals, to be followed by a detailed survey plan, if and when the road process order is made.

A matter of contention for councils and clients (in particular) has been the requirement in the existing provisions for the up-front payment for the land in a road to be closed, often many months before the road is actually closed and the land transferred to the client. The client has no use or benefit of the money during the transaction period. The present Act stipulates that, prior to public notification of a road proceeding, any application for title must be deposited with the Surveyor-General and must contain a statement that purchase-money payable in respect of the sale has been paid. The Bill has removed that statutory obligation to pay at the start. Payment may now be by agreement between the council and client.

Of particular interest to councils and the prescribed planning authorities will be the provisions which allow road process orders for any process where no objection or application for an easement is received, to be made at any time after the expiration of a 28 day objection period, without having to present the matter to a full meeting. A meeting will still have to be held however, if submissions are received. In making its order, the relevant authority must detail the disposal of all land subject to road closure and, where required, include any order for the granting of an easement. Generally, these easements will be statutory easements in favour of a prescribed public utility, but can be private easements annexed to adjacent land. Concise requirements for dealing with the land in a closed road and for determining whether to grant any easement, are set out in the Bill. Any existing easement not provided for in the order is automatically extinguished upon final confirmation of that order. One important aspect of the new legislation is that a relevant authority cannot simply close a road without formally providing for its disposal, as was the case in the existing Act. This will halt the further proliferation of old closed road parcels that now exist throughout the State.

The dissatisfaction of councils (in particular) with the length of time taken to finalise a proposal has been reconciled in several ways. Two measures have been presented already, that is, the revised notification and meeting procedures. Two other improvements have been made. The first is a new approval process, in which confirmation of a road process order by the Minister may be made conditional on approval and deposit of the survey plan by the Registrar-General.

The benefits of this are two-fold. The council and its clients will be made aware of the ratification of the proposal much earlier than under the existing Act (thus allowing any further events to be set in train), and preparation of documents of title may be effected concurrently with the plan examination instead of subsequently as in the present case. Coupled with this is a new vesting power whereby, upon publication of the notice of confirmation in the *Gazette*, land in a closed road vests in the Crown in certain cases and is automatically incorporated with adjoining lands, without a need for further action to be taken. All vestings of land as a closed road are subject to any easement required by the order, but free of any other interest whatsoever.

One issue that arose during the drafting and consultation stages of the Bill concerned the integration of the provisions of the Land Acquisition Act 1969 with the Roads (Opening and Closing) Act, in cases where land is to be opened as new road. It was considered that, since the Land Acquisition Act specifically applies to and in relation to every authorised undertaking involving the acquisition of land in this State, the provisions of this new Act should not derogate from the application of the Land Acquisition Act. Allied with

this was the belief that owners of land affected by a proposed road opening should be restrained from any other dealing with that land without the consent of the council. Logically, these owners should then have recourse to compensation in the event that the road opening is discontinued or lapses. The Bill clearly sets out the obligations and duties of a council and landowners in this process.

A related provision to allow a council to acquire additional land adjoining other land being acquired for road, consistent with the Land Acquisition Act 1969, and subject to approval by the Minister and compliance with the provisions of the Planning Act 1982, has been included, and will be of great benefit to councils in their planning considerations.

The Bill contains several other reforms and revisions. The Government trusts that it will be well received, and looks forward to its passage through Parliament and its successful implementation.

Clause 1 is formal.

Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation.

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

'road process' means a road opening, a road closure, or a combination of the two. Under subclause (2) a road opening includes a road widening and a road closure includes a road narrowing;

'road process order' means an order for a road opening or closure (or both)—as well as any incidental order—made by a relevant authority;

'relevant authority' means either a council or (where the road process is part of or directly associated with a development under the Planning Act 1982, or the City of Adelaide Development Control Act 1976, that requires the approval of the South Australian Planning Commission, the City of Adelaide Planning Commission or the Governor) the South Australian Planning Commission or the City of Adelaide Planning Commission:

'person affected' (in relation to a road opening or closure) means:

(a) a person who has an interest in land that is subject to the opening or closure, or in adjoining land;

(b) a Minister, statutory authority or other person declared by regulation to be a 'prescribed public utility' for the purposes of the Bill;

(c) (in relation to an opening or closure that concerns land of a prescribed class) a public authority (other than a public utility) prescribed in relation to land of that class;

and

(d) any other person who would be substantially affected by the opening or closure:

'agreement for exchange' means an agreement between a council and another person for the exchange of land that is subject to a proposed road opening for land that is subject to a proposed road closure, whether an amount of money is to be paid for equality of exchange or not. It includes an agreement whereby land is taken from a Crown lease (or agreement to purchase) for a road opening in exchange for the addition of land to such a lease (or agreement to purchase) from a road closure, as well as agreements under which it is the fee simple that is exchanged:

'agreement for transfer' means an agreement (other than an agreement for exchange) between a council and another person for the transfer of land in a proposed road closure to that other person (whether for consideration or not). It, too, includes an agreement whereby land is to be added to a Crown lease or an agreement to purchase as well as agreements under which the fee simple is transferred.

Part II (clauses 4 to 8) sets out general provisions dealing with the power to open and close roads and the vesting of newly-opened roads.

Clause 4 provides that a road may be opened or closed by a road process order made by a council (or the South Australian or City of Adelaide Planning Commission) confirmed by the Minister and notified in the *Gazette*.

Clause 5 provides that a road opening or closure (or both) may be commenced by a council in relation to a road or proposed road within the council's area.

Clause 6 gives the Minister, on the recommendation of the Surveyor-General, a special power to close roads. This power applies to two types of road:

(a) roads within or outside a council area, where all of the adjoining land belongs to the Crown or a Crown instrumentality (and is not granted, contracted to be granted or leased (to someone other than an instrumentality) or subject to an agreement to purchase) or is used or occupied by the Crown or a Crown instrumentality;

and

(b) roads outside a council area which the Minister is satisfied are not in public use and will not be required for public use in the forseeable future. The Minister can close these roads in accordance with Part VII of the Bill.

Clause 7 prevents the closure of roads that form part of a stock route.

Clause 8 provides that roads opened under the Bill are (subject to the Highways Act 1926) vested in the council for the area in which they are situated and are under the care, control and management of that council. They are also dedicated as public roads while open.

Part III (clauses 9 to 24) sets out the manner in which a road is to be opened or closed under this Bill.

Division I of Part III (clauses 9 to 13) sets out the proceedings that may be undertaken prior to the making of an order to open or close a road.

Clause 9 provides that where a council proposes to open or close a road, it must prepare—

(a) a preliminary plan of the land that is the subject of the opening or closure;

and

(b) a statement containing the names and addresses of all persons affected by the proposed opening or closure (who can be identified by reasonable inquiry) and such information in relation to the land concerned as the Surveyor-General requires.

A copy of the preliminary plan and statement has to be deposited (with the prescribed fee) at the Surveyor-General's Adelaide office.

Clause 10 provides for the notification of the public and all affected persons where a council commences a road opening or closure. After preparing the preliminary plan and the statement in accordance with clause 9, the council (or, where the council is not the relevant authority in relation to the opening or closure, the Surveyor-General) must give public notice of the proposal in accordance with the regulations and must at the same time serve notice of the proposal on each person affected who can be identified by

reasonable inquiry. A copy of the notice must be deposited at the Adelaide office of the Surveyor-General.

Clause 11 provides for the protection of potential purchasers of any land that has become subject to a proposed road opening. Where a council commences a road opening over Real Property Act land, a note of the proposed road opening is required to be placed on the title to the relevant land. The council may also lodge a caveat to prevent any dealing with the land without its consent. Both note and caveat are required to be removed if the opening is discontinued.

Where a council commences a road opening over land that has not been brought under the Real Property Act 1886, a person with an interest in that land (who has received a notice of the proposed opening under clause 10) is forbidden from entering into any transaction in relation to the land without first disclosing the existence of the proposal to open a road over that land. Failure to disclose the existence of the proposal renders any agreement entered into in respect of the land voidable at the option of the other party to the agreement. In addition, the council may (after lodging a copy of the road opening notice at the General Registry Office) require any person to deliver up to the Registrar-General any document evidencing their interest in the land over which the road is to be opened. Failure to deliver up such a document without reasonable excuse is an offence punishable by a division 7 fine (maximum of $2 000).

Clause 12 empowers councils to enter into preliminary agreements for the disposal of closed roads to adjoining landowners. These agreements may be made at any time prior to the making of the order for closure of the road by the council (or other relevant authority). A council cannot enter into such an agreement unless it first endeavours to secure agreements for exchange with adjoining landowners who are losing land to a proposed road opening. It also cannot make an agreement to sell to an adjoining landowner unless it has first invited offers from all adjoining landowners. An owner for the purposes of this clause means a lessee under a Crown lease and a purchaser under an agreement to purchase, as well as an owner in fee simple. An agreement entered into under this clause is void unless there has been substantial compliance with the procedures set out and becomes void if the road opening or road closure is discontinued in relation to the land that is the subject of the agreement.

Clause 13 makes provision for people to object to proposed road openings or closures and to apply for easements over roads that are to be closed. Any person may object to a proposed road process and any 'person affected' by a proposed road closure may apply for an easement. An objection, or an application for an easement, must be made by lodging a notice of objection or application at the office of the council or other relevant authority (and a copy at the Adelaide office of the Surveyor-General) within 28 days of the date of the public notice under clause 10.

Division II of Part III (clauses 14 to 20) sets out the procedures to be followed by a council or other relevant authority in making an order for a road opening or closure.

Clause 14 requires a council (or other relevant authority) to hold a meeting if there has been any objection to the proposed opening or closure or any application for an easement and to consider those objections or applications at the meeting or at an adjournment of the meeting. The council or other relevant authority must give written notice of the meeting to any person who has lodged an objection or application and such a person (or their representative) may attend the meeting or any adjournment in support of the objection or application.

Clause 15 requires a council (or other relevant authority) to either—

(a) make an order for a road opening or closure in relation to all or part of the land to which the proposal relates; or

(b) determine that no order for an opening or closure is to be made,

as soon as practicable after the expiration of the time allowed for objections and applications (and after considering any such objections and applications). If an order for a road opening is made, that order must specify any land forming part of the proposed new road that is being acquired in exchange for part of a road that is being closed under a preliminary agreement for exchange. If the council or other relevant authority determines that no order is to be made, it must as soon as practicable give notice of that decision to the Surveyor-General, any person who lodged an objection or application and any person with an interest in land that was subject to the proposed road opening.

Clause 16 sets out the criteria that a council or other relevant authority must have regard to in deciding whether to make an order for a road opening or closure and what such an order should contain. The criteria include: the matters to which planning authorities must have regard in determining applications for approval or consent under the Planning Act 1982 or the City of Adelaide Development Control Act 1976 in relation to the relevant area; any objections to the proposal that have been made under the Bill; whether the relevant land is reasonably required as a road for public use in view of present and likely future needs in the area; and alternative uses of the relevant land that would benefit the public or a section of the public. The council or other relevant authority may also consider any other matter that it considers relevant.

Clause 17 requires a council or other relevant authority, when ordering the closure of a road, to make further orders for the disposal of the land contained in that closed road. All of the land must be disposed of, though different parts of the road to be closed may be disposed of in different ways. The following orders for disposal may be made in relation to any land forming part of a proposed road closure:

(a) that the land be transferred or added to other land in accordance with a preliminary agreement for exchange or transfer entered into under clause 12;

(b) that the land be sold by public auction or tender (but only where the council or other relevant authority considers that the land can conveniently be used separately from other land);

(c) that the land be sold or transferred for use for some public, charitable or beneficial community purpose;

(d) that the land be retained by, and registered in the name of the council (but only where that land is required by the council for some purpose);

(e) that the land be added to adjoining dedicated land;

(f) that the land be transferred to the registered proprietor of adjoining land that is held subject to a trust;

(g) that the land be vested in the Crown.

Clause 18 empowers a council or other relevant authority, when ordering the closure of a road, to make an order for the granting of an easement over the proposed closed road. An order may be made in favour of a person who has applied for an easement under clause 13, or may be made in favour of the council itself. The council or other relevant

authority is compelled to make the order where a Minister, statutory authority or other person declared by regulation to be a 'prescribed public utility' has applied for an easement, but has a discretion in the case of other applicants. Where a person has applied for an easement as the owner of adjoining or nearby land, an order granting the easement may only be made if the council or other relevant authority is satisfied that the person's use or enjoyment of the adjoining or nearby land would be substantially affected by the lack of that easement. If an easement is ordered to be granted in favour of such an adjoining or nearby landowner, the easement must be annexed to the adjoining or nearby land so as to run with that land.

Clause 19 sets out the notice that must be given to various parties when an order for a road opening or closure is made by a council or other relevant authority. Written notice of the order must be given to any person who objected or applied for an easement. In the case of a road opening, written notice of the order must also be given to any person who has interest in land over which the road is to be opened, and if the order does not deal with part of the land over which the road was originally proposed to be opened (as set out in the public notice under clause 10) written notice of the discontinuance of the opening with respect to that land must be given to those with an interest in it. A certified copy of the minutes of all meetings held by the council or other relevant authority in relation to the road opening or closure must be delivered to the Adelaide office of the Surveyor-General. Where it is not, a council that makes the order for the road opening or closure (that is, where it is the South Australian, or City of Adelaide, Planning Commission), two copies of the order must be delivered to the council.

Clause 20 sets out the documents that must be deposited by a council at the Adelaide office of the Surveyor-General within three months of making an order for a road opening or closure. They include: two copies of the order; such survey plans as are required by the Registrar-General; a copy of any preliminary agreement for exchange or transfer (on which the appropriate stamp duty has been paid) where land in a road closure has been ordered to be transferred or added to other land in accordance with that agreement; a statement that the order complies with the requirements of clause 38 as to the minimum width of roads (where a road is to be opened or narrowed); and any other document required by the Surveyor-General. Any fees prescribed by regulation must also be deposited within the three months. If these requirements are not complied with, the order cannot be confirmed by the Minister and the road opening or closure lapses. Where an opening or closure lapses through a failure to comply with this clause, the council must as soon as practicable give written notice of that lapse to any person who made an objection or application for an easement and, in the case of a road opening, to any person with an interest in land over which the road was to have been opened.

Division III of Part III (clauses 21 to 24) provides for the review and confirmation of orders for a road opening or closure made by a council or other relevant authority.

Clause 21 requires the Surveyor-General to review an order for a road opening or closure on receipt of the relevant documents pursuant to Division II. In reviewing the order, the Surveyor-General may seek expert advice on any aspect of the order.

Clause 22 empowers the Surveyor-General to correct or supply any error or deficiency in an order for a road opening or closure at any time before confirmation of the order by the Minister. The Surveyor-General must consult the council or other relevant authority before exercising this power unless acting at the request of the council or other relevant authority. Where an order is amended under this section the Surveyor-General must (as soon as practicable) notify the council or other relevant authority of that change. The council or other relevant authority must in turn notify in writing any person required to be given notice of the order itself. If the relevant authority is not the council that commenced the road process, notice of the change must also be given to that council.

Clause 23 requires the Surveyor-General as soon as practicable to report to the Minister on the results of the review of an order and make a recommendation as to whether the order should be confirmed. In determining whether to recommend confirmation of an order, the Surveyor-General may have regard to any matters that the Surveyor-General considers relevant, including whether the procedures and requirements of the Bill have been substantially complied with. The Surveyor-General is empowered to recommend that an order be confirmed conditionally on the approval and deposit of the survey plans by the Registrar-General. Both copies of the order for an opening or closure must accompany the Surveyor-General's recommendation to the Minister.

Clause 24 requires the Minister to confirm or decline to confirm an order for a road opening or closure as soon as practicable after receipt of the Surveyor-General's recommendation on the order. The Minister can confirm the order conditionally on approval and deposit of the survey plans by the Registrar-General. If the Minister declines to confirm an order, written notice of that decision must (as soon as practicable) be given by the Surveyor-General to the council responsible for the road process and the council must (as soon as practicable) give written notice to any person who made an objection or application in relation to the road process or who has an interest in land over which a road was proposed to be opened. If the Minister confirms an order for a road opening or closure, a notice of that order and confirmation (which must provide a general description of the nature and effect of the order) must be published in the *Gazette* by the Surveyor-General as soon as practicable after the confirmation or after the fulfilment of any condition attached to the confirmation. Publication of the notice in the *Gazette* is sufficient evidence of the due making and confirmation of the order.

Part IV (clauses 25 to 30) sets out the legal effect of an order for a road opening or closure that has been confirmed by the Minister and the manner in which that effect comes to be reflected in documents of title.

Clause 25 vests land and extinguishes interests on publication of notice and confirmation of an order for a road opening or closure. In the case of a road opening, on publication of the notice and confirmation of the order the land over which the road is opened vests in the council (unless the council already owns it) and all other interests in that land are extinguished. In the case of a road closure, the effect of publication of the notice and confirmation of the order on the land contained in the closed road depends on the additional orders as to the disposal of the land made (under clauses 17 and 18) as part of that order:

(a) if it was ordered that land be transferred to a given person, the land vests in that person in fee simple;

(b) if it was ordered that land be added to that of a Crown lessee or a person with an agreement to purchase, the land vests in the Crown and is incorporated as part of the land subject to the lease or agreement;

(c) if it was ordered that land be added to dedicated land, the land vests in the Crown and is incorporated as part of the dedicated land;

(d) if it was ordered that land be transferred to the owner of dedicated land that has been granted in fee simple, the land vests in that owner in fee simple subject to the same trust;

(e) if it was ordered that land vest in the Crown, it vests in the Crown;

(f) if it was ordered that land be sold by auction or tender or for public, charitable or beneficial community purposes, the land vests in the purchaser in fee simple, but only on payment of the purchase price and any prescribed fee.

In each case the land vests subject to any easement specified in the confirmed order, but free of any other interest. Easements that were ordered to be granted in favour of adjoining landowners and annexed to the adjoining land so as to run with that land become subject to any mortgage or other encumbrance that the adjoining land is subject to. Where it was ordered that land in a closed road be sold by auction or tender or for some public, charitable or beneficial community purpose, but that is not done within 12 months from publication of the order and its confirmation, the Minister can vest the land in the Crown (subject to any ordered easement but free of any other interest) by notice in the *Gazette*.

Clause 26 empowers and requires the Minister, where an order for a road closure is confirmed and published and where land in the closed road is vested in a person in fee simple (either on publication or confirmation, or on a subsequent sale) or is retained by the council or vested in the Crown as part of land subject to a Crown lease or an agreement to purchase, to issue a closed road title certificate to the Registrar-General.

Clause 27 sets out the information and instructions that a closed road title certificate issued by the Minister under clause 26 must contain. The certificate must describe the land to which it relates, and—

(a) if that land is vested in a person in fee simple, the certificate must state that fact, describe the person and describe any trusts to which the land is subject by virtue of this Bill;

(b) if that land is to be retained by the council, the certificate must state that fact and that a certificate of title is to be issued for the land;

(c) if that land is vested in the Crown and incorporated as part of land subject to a Crown lease or agreement to purchase, the certificate must state that fact and describe the lease or agreement;

(d) describe any easement to which that land is subject; and

(e) set out any other matter required by this Part of the Bill or by the Registrar-General.

The certificate may also specify (where the Surveyor-General has so recommended) that a separate certificate of title be issued for the land that it describes rather than allowing other land to be incorporated with that land in a certificate of title (see clause 28 (3)). Where the land will be incorporated with other land in a single certificate of title as a result of the operation of other provisions of this Bill (see clause 28 (3), (5)) the closed road title certificate must, if the registered proprietor of that other land so requests, include a statement that the land from the closed road is not subject to any specified interest or caveat to which the other land is subject. The same applies where the land to which the closed road title certificate relates is incorporated as part of other land subject to a Crown lease or an agreement to purchase: the certificate must specify, if the registered proprietor of that other land so requests, that the land from the closed road is not subject to a specified registered interest or caveat to which the other land is subject. (Otherwise the closed road land will normally be subject to all registered interests or caveats to which that other land is subject: see clause 29 (3).)

Clause 28 sets out the action to be taken by the Registrar-General on receipt from the Minister of a closed road title certificate relating to land vested in a person in fee simple or land for which a certificate of title is to be issued to a council. The Registrar-General is required to issue a certificate of title for the land on receipt of the closed road title certificate. Where the person entitled to the certificate of title is the registered proprietor of adjoining land, then (unless the closed road title certificate otherwise provides under clause 27) the Registrar-General must combine the adjoining land and the closed road land into one certificate of title and can (with the consent of the registered proprietor) merge other land of that registered proprietor into that certificate as well. The new certificate of title must be expressed to be subject to all easements and trusts set out by the Minister in the closed road title certificate. In addition, unless the closed road title certificate otherwise provides (see clause 27), the land described in the new certificate is subject to all registered interests and caveats that any adjoining or other land merged into that certificate of title was subject to and any easement that ran with any part of the land merged into the new certificate of title runs with the whole of the land in the new title.

Clause 29 sets out the action to be taken by the Registrar-General on receipt of a closed road title certificate relating to land vested in the Crown and incorporated as part of land subject to a Crown lease or an agreement to purchase. The Registrar-General must register the closed road title certificate in the Register of Crown leases. On registration the land described in the certificate is subject to all registered interests and caveats to which the Crown lease or agreement was subject, unless the closed road title certificate otherwise provides (see clause 27).

Clause 30 requires the Registrar-General, following publication of notice and confirmation of an order for a road opening or closure, to make all changes to the Register Book, Register of Crown leases or other records that are necessary as a result of that order or as a result of the operation of the Bill. The Registrar-General can for that purpose require any person to furnish information or produce documents. It is an offence to fail to provide information or documents within two months of being required to do so. The penalty is a division 7 fine (maximum $2 000).

Part V (clauses 31 to 32) deals with the issue of compensation for land made subject to a road opening.

Clause 31 provides that where an order for a road opening is confirmed and notified in the *Gazette*, compensation is payable by the council for the land in the new road. The council must serve written notice of the confirmed order on each person divested of an interest in the land by the opening and must attach a written offer of compensation to the notice. The Land Acquisition Act 1969 is applied to the road opening and (to avoid duplication) the publication of notice and confirmation of the order (which vests the land in the council—see clause 25 (1)) and the notice and offer of compensation are deemed to constitute certain steps that are required under the Land Acquisition Act for the acquisition of land. Compensation is not payable under this clause for a road opening if a power of making roads was reserved in the original grant, Crown lease, agreement to purchase or dedication of the land over which the road is

opened. Nor is it payable if an agreement for exchange of the relevant land has already been entered into (see clause 12).

Clause 32 provides for the payment of compensation where a road opening was commenced in respect of land, but not completed. Where a road opening is discontinued (through no order being made in relation to the land by the council or other relevant authority, or through a failure to comply with time limits or through the Minister declining to confirm the order—(see clause 3 (3)) a person who has an interest in the land may claim compensation from the council by notice in writing not more than three months after receiving notice of the discontinuance. Compensation is required to be recovered and assessed in accordance with the Land Acquisition Act 1969.

Part VI (clause 33) deals with the acquisition of additional land adjoining land subject to a proposed road opening.

Clause 33 empowers a council, where it proposes to open a road over any land, to acquire additional adjoining or nearby land if it considers it appropriate in the circumstances and if the Minister approves. The land need not be required in connection with the proposed road. The Minister's approval for the acquisition of additional land may be given subject to such conditions as to how that land is to be dealt with as the Minister considers necessary to ensure compliance with the development plan under the Planning Act 1982. The acquisition of the additional land must be effected in accordance with the Land Acquisition Act 1969, subject to the following qualifications:

(a) where a notice of intention to acquire the land is served under the Land Acquisition Act before or at the same time as the notice of the proposed road opening is served under this Bill (see clause 10) then objections to the acquisition are to be made in the same way as objections to the road opening under this Bill (rather than in accordance with the Land Acquisition Act objection provisions);

(b) a notice of acquisition in relation to the additional land may not be published under the Land Acquisition Act (thereby acquiring title to the additional land for the council) until the order for the road opening under this Bill has been confirmed (thereby acquiring title to the new road for the council);

(c) the Land Acquisition Act requirement that acquisition take place within 12 months of service of the original notice of intention to acquire does not apply;

(d) any agreement to acquire the additional land under the Land Acquisition Act must be made subject to confirmation of the order for the road opening;

(e) the Land Acquisition Act requirement that any agreement to acquire be entered into within 12 months of service of the notice of intention to acquire does not apply.

The council may dispose of the additional land (once acquired) in any way that it deems appropriate, subject to any conditions that the Minister may have imposed as to the manner in which it was to be dealt with, and any proceeds of sale can be applied to defraying council expenses in relation to the road opening.

Part VII (clause 34) deals with the special power of the Minister to close roads.

Clause 34 sets out the procedures that are to be followed in exercising the special power of the Minister to close roads (see clause 6). Where a road is to be closed under this special power, notice must be given to the Commissioner of Highways, any relevant council and each Minister, statutory authority or other person declared by regulation to be a 'prescribed public utility' for the purposes of the Bill. Representations may be made by those persons or bodies within 28 days of that notice. After 28 days have expired, any representations that have been received must be forwarded to the Minister together with the Surveyor-General's recommendation on the proposal. After considering the representations and recommendation, the Minister may make an order for a road closure and may order the granting of an easement over any land subject to the closure. As soon as practicable after the order is made, the Surveyor-General is required to draw up survey plans (and any other doucments required by the Registrar-General) and then publish the order in the *Gazette*. On publication of the order the land in the closed road vests in the Crown, subject to any easement ordered to be granted but free of any other interest. The Minister is empowered to issue a closed road title certificate (see clauses 26 and 27) requiring the Registrar-General to issue a certificate of title to a Minister or Crown instrumentality for land vested in the Crown under this clause. All of the provisions of the Bill relating to closed road title certificates (see clauses 26 to 30) then apply as if the land had been vested in the Minister or instrumentality in fee simple. The Minister does not have to obtain a certificate of title in this way: all normal powers to deal with Crown land are preserved.

Part VIII (clauses 35 to 50) deals with miscellaneous matters.

Clause 35 forbids the consideration of an order for a road opening or closure under this Act by the Supreme Court after publication in the *Gazette* of notice and confirmation of that order. However, before an order for a road opening or closure is made by a council or other relevant authority, questions of law can be reserved for the consideration of the Supreme Court (and no order may then be made until the decision of the court is known).

Clause 36 sets out the manner in which money paid or received as part of a preliminary agreement or as a result of a sale is to be dealt with. Money paid under an agreement for exchange or transfer or for land sold in accordance with an order after confirmation of that order is to be paid to, and forms part of the revenue of, the council. If an agreement for exchange or transfer becomes void (see clause 12 *(a)*) any amount paid to the council under that agreement must be repaid, as must any stamp duty paid on the agreement.

Clause 37 empowers the Surveyor-General to attempt to confer registered title upon a person in possession of land forming part of a road closed prior to the passing of the Roads (Opening and Closing) Act Amendment Act 1946 for which there is no certificate of title. If the person entitled to the issue of the certificate of title to that land is dead or unknown and the Surveyor-General is satisfied that the person in possession is entitled (by purchase or otherwise) to be in possession and that it is desirable that a certificate of title be issued, the Surveyor-General can publish a notice in the *Gazette* stating that a certificate of title will be issued to that person unless someone claiming an interest in the land objects within 28 days (or such longer period as the notice specifies). Notice of the Surveyor-General's intentions must also be given to each adjoining landowner. If no objection is received within the required time, the Minister may, on the recommendation of the Surveyor-General, issue a closed road title certificate for that land, subject to any interest described in the certificate. The normal provisions

of the Bill relating to closed road title certificates (see clauses 26 to 30) then apply.

Clause 38 requires a road opened pursuant to the Bill to be at least 12 metres wide (unless it is a continuation of a road that is already less than 12 metres wide) and forbids the narrowing of a road pursuant to the Bill to less than that width. The Surveyor-General may exempt a road from this requirement and set a minimum width of less that 12 metres for that road.

Clause 39 requires a council to build fences along the new boundary of a road where existing boundary fences have been removed as a result of an alteration or diversion of the road. The fence must be substantial and of the same nature as the fence previously on the boundary of the road and the abutting land.

Clause 40 relieves the Registrar-General and a council from any duty to take the usual steps to record that a road has been converted into a public road, where that conversion was undertaken by the council in order to close the road. It provides that where a council declares land to be a public street or road (and the land vests in the council under the Local Government Act 1934 on publication of notice of the resolution in the *Gazette*) and, after doing so, commences a road closure under this Bill in respect of that land, the Registrar-General and the council are relieved from any duty to take any action in relation to the vesting of that land in the council (unless the closure is discontinued).

Clause 41 requires that the Registrar-General to remove or vary an easement created under this Bill (or the Act repealed by this Bill) in favour of a Minister, statutory authority or other person declared by regulation to be a prescribed public utility or in favour of a public authority, on application by the public utility or public authority and the proprietor of the land over which the easement extends. The Registrar-General must also make any other necessary changes to the records.

Clause 42 makes it clear that the provisions of this Bill apply notwithstanding the provisions of the Real Property Act 1886, and also prevents the provisions of the Planning Act 1982 and the City of Adelaide Development Control Act 1976 from applying to a road opening or closure or other action taken under this Bill.

Clause 43 preserves any power to open or close a road that exists under any other Act.

Clause 44 requires the Surveyor-General to make any document deposited with the Surveyor-General under this Bill available for inspection on request (during ordinary office hours at the Surveyor-General's Adelaide office).

Clause 45 empowers the Minister to delegate in writing any of the Minister's powers, duties or functions under the Act to a person holding a specified position in the Public Service. Such delegation may be conditional, is revocable at will and does not prevent the Minister from acting personally.

Clause 46 ensures that the powers of delegation that councils, the City of Adelaide Planning Commission and the South Australian Planning Commission have under their respective Acts apply to any powers, duties or functions conferred upon them by this Bill.

Clause 47 sets out the means by which documents are to be served under this Bill. Where the Bill requires a document to be served on or given to a person, that can be done personally or by post. If the person's whereabouts are unknown, the document can be published in an appropriate newspaper or fixed in a prominent place on the relevant land instead.

Clause 48 is a regulation-making power. The Governor may make regulations that are contemplated by, or necessary or expedient for the purposes of the Act. These regulations may require the payment of fees (or the refund of fees), prescribe forms or specify the information to be contained in notices or other documents under the Bill.

Clause 49 repeals the existing Act, the Roads (Opening and Closing) Act 1932.

Clause 50 amends the Highways Act 1926. It makes a consequential amendment to section 27a of that Act, deleting a reference to powers of the Commissioner of Highways under the existing Roads (Opening and Closing) Act 1932 that the Commissioner will no longer have under this Bill. It inserts a new subsection (2) into section 27aa, providing for the same method of service of documents where the Commissioner closes a road under section 27aa of the Highways Act as is provided for in this Bill (see clause 47). It also amends section 27ab of the Highways Act to permit the land comprised in a road closed under section 27aa of the Act to vest on closure in the Crown (where appropriate) rather than having to vest in every case in the Commissioner of Highways, as at present.

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

WRONGS ACT AMENDMENT BILL

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

ADJOURNMENT

At 5.49 p.m. the Council adjourned until Wednesday 6 March at 2.15 p.m.