LEGISLATIVE COUNCIL

Thursday 21 November 1991

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 11 a.m. and read prayers.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 19 November. Page 2027.)

The Hon. K.T. GRIFFIN: My colleague the Hon. Jamie Irwin has outlined the Opposition's attitude to the Bill, but I wanted to make several further observations on specific provisions of the Bill. The first relates to clause 6, and I understand that the Minister has already addressed this in an amendment. Clause 6 deals with the liability for rates, and the point which was made to me as well as to the Hon. Jamie Irwin is that the provision in paragraph *(a)* will make it mandatory that the occupier of land held from a council under a lease or a licence actually pays the rates and is to be regarded as the principal ratepayer, although the Institution of Rate Administrators indicated that there were many occasions where a council had its own agreement with an occupier that the council would bear its own rates on that particular piece of property.

From a legal and practical point of view, it is preferable that the issue of who pays rates on council land, as it is with private land, be a matter for agreement between the landlord and tenant. I note from the amendment which has been placed on file that the Minister is proposing to move that the provision in new subsection (2) *(b)* is to be subject to any agreement to the contrary. That adequately addresses that issue.

Quite obviously the most controversial aspect of the Bill is clause 13, which deals with moveable business signs. The Hon. Jamie Irwin has addressed the issue and has indicated our opposition to this proposal. I want to reinforce that because, although there is power in councils under their own by-laws to deal with moveable signs, nevertheless such a comprehensive provision as is contained in clause 13 of the Bill goes very much further than the law at the present time. The surprising thing about clause 13 is that there was just no consultation with anyone likely to be affected by this provision. There was no consultation with small business or representative groups. There was no consultation with the Real Estate Institute, the Newsagents Association or any of the newspaper proprietors. The first they knew that something was in the wind was when the Bill hit the Parliament, and that is not surprising in the light of other legislation which has been introduced and where there has not been consultation with those likely to be affected by it. I would suggest that much of the pain which has been experienced by the Government over this provision could have been avoided if there had been proper consultation, or at least it would have been alerted at an early stage to many of the problems that small business would experience if this comprehensive licensing provision were to be enacted.

New section 370 deals with freestanding signs which are described as moveable business signs. They are designed to promote a business or any part of a business, or to attract people to business premises. A business does not have to be a profit-making undertaking or venture, but means only an undertaking involving the manufacture, sale or supply of goods or services, regardless of whether or not it is carried on with a view to profit. So, it applies to those which relate to businesses in the normally accepted sense of that word, as well as to charities, private individuals and others. Such a sign under this provision must be the subject of a licence, and subsection (11) provides that a separate licence must be obtained for each moveable business sign to be displayed.

The description of a moveable business sign is that it must be free standing and no more than one metre high and 900mm wide. There is no recognition that some of these signs may be three-sided signs and may therefore have a depth as well as a height and a width. However, those dimensions may be varied by a council. The conditions attaching to the sign are set out in subsection (5). Again, the council may impose other conditions when granting a licence.

I have had numerous concerns expressed to me. I do not intend to deal with them all but, quite obviously, newsagents will be affected. I would suggest that the loose signs which are displayed and which are propped against a telegraph pole with the daily headline would be in the description of a 'freestanding sign'. They are designed to promote a part of a business, in the sense that a newsboy or girl has an undertaking to supply newspapers to traffic as it passes by. The same could be said of the mobile news stands which appear in King William Street, in particular, from which the afternoon newspaper is sold and to which are attached signs advertising the headline and the fact that the news is available for sale.

In relation to a newsagent's business, if these signs are propped against the front wall of the shop premises, then each of them will be required to be licensed under the proposals in this Bill. The interesting question is whether, each time the headline changes and the advertisement in the stands changes, there will have to be a fresh licence. It is certainly arguable that a fresh licence will have to be issued for each variation in the sign. It may be that that was not intended, but I think it is open to that interpretation and, if this provision is to pass (and I do not think it ought to in its present form), then that issue needs to be clarified. Of course, if each time the sign is changed a new licence is required, then the fee fixed by the council is payable in respect of such licence.

I know that some question has been raised as to whether the freestanding signs advertising real estate premises for sale, open inspections, and so on are caught by the legislation and I understand that the Minister was of the view that that was not what was intended, but, again, I think that the proposed section is open to the interpretation that those signs are caught by the legislation.

They are freestanding signs; they promote a business or part of a business; and they promote a real estate agent. They are not business premises, although there is an argument also that, in relation to business premises, meaning premises at which a business is carried on, the land agent is at the premises for an open inspection or auction, so the land agent's own business is being carried on at those premises and that the sign placed on the footpath for a Sunday or Saturday afternoon open inspection, or for a Saturday morning auction, would be caught, because they are advertising or promoting the business of the land agent at premises where the agent's business is carried on for the purpose of the sale of those premises at those premises. The section will also catch the freestanding signs which are written on hard cardboard temporarily to advertise garage sales.

The Hon. Anne Levy: No.

The Hon. K.T. GRIFFIN: It does. It is a freestanding sign. It relates to the promotion of a business and new subsection (1) provides:

'business' means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services.

If the Minister in her interjection says that is not right, then I would argue that response is not correct. However, if there is a difference of opinion, it indicates that there is uncertainty and that uncertainty ought not to remain in the Bill.

The Hon. Anne Levy: My legal advice is that it does not affect garage sales.

The Hon. K.T. GRIFFIN: The Minister says that her legal advice is that it does not affect that. I had independent advice—not just my view—that it could attach and the concern I am expressing is that, if it is open to two different interpretations, it is not then a good law. If the provision is to remain in the Bill, the meaning ought to be put beyond doubt. We can argue about whether or not it does cover this or that sign. If there is at least a reasonable argument that it covers a sign but that is disputed, then it seems to me that it is not a good law and that issue should be addressed. If it can be clarified, it ought to be clarified.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I am not having a heated debate with the Minister about it. I am just saying that, where there is a difference of view—

The Hon. Anne Levy: It is certainly not intended.

The Hon. K.T. GRIFFIN: If it is not intended, I think it should be addressed in order to put the question beyond doubt. I think that many business people also find some difficulty with the concept of these licences having to be issued.

There are two other matters to which I want to draw attention. New subsection (15) provides that, if a sign is seized and sold, then any excess belongs to the council. Perhaps that will not be much, but some justification has to be given for that provision. It may be that that is designed to meet the costs of seizure, but I just have some difficulty without some explanation of that provision. Then, new subsection (17) provides:

No matter or thing done or omitted to be done by a council, an officer or employee of a council, or an authorised person in good faith in relation to the operation of this section subjects the council, officer, employee or authorised person to any action, liability, claim or demand.

That is quite different from the normal provision, because, even if an act is done in good faith, if it is illegal, then ultimately someone carries the liability and that is picked up.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Yes, but this says 'the council'; it is the council that is exempted from any liability. I do not mind if the officer, employee, or authorised person is exempted on the same basis as that is done in relation to controlling authorities under clause 11 but, under that clause, the liability that would, but for that subclause which deals with the liability of members of the controlling authority, lie against a member of the controlling authority, lies against the controlling authority. However, new subsection (17) does not provide for acceptance of any liability at all. The council, its officers, employees and authorised persons are all given immunity from any action, liability, claim or demand.

I draw attention to that because, in my view, that is not appropriate. It gives *carte blanche* to the council and all its officers to do what they like, whether or not it is legal, on the basis that if they act in good faith, even if it is outside the law, no person has a right of action against the council in relation to these moveable signs. That is unreasonable. In fact, I think it is basically wrong in principle. Therefore, I draw attention to it because I think it is an issue that should be addressed.

The Hon. Anne Levy: It does not exempt liability for negligence.

The Hon. K.T. GRIFFIN: Perhaps it is not so much negligence. But, it provides that:

No matter or thing done or omitted to be done by a council, an officer, or employee of a council or an authorised person in good faith in relation to the operation of this section subjects the council, officer, employee or authorised person to any action, liability, claim or demand.

An example might be that an authorised person sees half a dozen signs along the wall of a newsagency and seizes them all. That person does not care whether or not they are licensed but, taking them if they are licensed, it is contrary to the provisions of the Act. The very fact that happens is not in accordance with the provisions of the Act. There may be some liability for which the proprietor of the premises wishes to sue, but he or she is prevented from doing so because no-one is liable. The council, the officer, the employee or the authorised person is not liable under subsection (17).

There may be other variations of that, but it seems to me that that is quite unreasonable. If there is an unauthorised act by a council, officer, employee or authorised person, then someone ultimately has to accept the responsibility for that. In relation to the administration of this section, I think this means that no-one is ultimately accountable. I ask the Minister that this issue be addressed before the matter is resolved. However, hopefully, on the present drafting, the clause will not proceed. They are the matters to which I wish to make some reference in amplification of the position of the Liberal Party as expressed by my colleague the Hon. Jamie Irwin.

The Hon. DIANA LAIDLAW: I support the second reading of this Bill. I will confine my remarks to proposed new section 370, which deals with moveable business signs, because that is the provision about which I have received representations. Those representations have been not only from the Retail Traders Association, which I believe has written to most members of Parliament, but also from the Australian Hotels and Hospitality Industry Association and selected tourism associations in the Adelaide and country areas.

All those representations have expressed opposition to the licensing provisions in this Bill. Those groups object to vesting local councils with the authority to license moveable business signs located in a public place and empowering local councils to charge a fee for the licensing process. Some people to whom I have spoken about the tourism industry have suggested that this matter must be addressed, although not in the manner in which the Government is proposing to do so, because the random display of these moveable signs can appear rather ugly in some areas that are important tourist destinations.

So, notwithstanding that reservation, the general view of people to whom I have spoken in the tourism and hospitality industry is opposition to this measure. It has been argued that councils could well achieve the objective set out in this Bill by using powers already vested with them and implemented through by-laws. I believe that that would be the most appropriate way of addressing this issue. Nevertheless, the councils should be cautious in how they apply those by-laws.

I have long been an advocate of extended shopping hours, as most members in this place would know. It is important that businesses inform consumers about hours of trading, particularly on Saturday afternoons or Sundays. That issue

is even more important at a time when, for commercial reasons, some businesses are opting not to open on Monday and Tuesday but, rather, to stay open on the weekend. They advertise their trading hours by putting a sign out in the street, and I believe that is an important community service. I would encourage that practice to continue, and that is why I caution councils in using the powers they have available to them at the present time through by-laws to respect the consumer need for information about trading hours, particularly at a time when it is so difficult for many restaurants or other businesses to attract—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I understood that that was the case: that they could and that some councils have actually—

The Hon. Anne Levy: Some legal opinion says that they have the power; other legal opinion says they do not. That is why we have the clause.

The Hon. DIANA LAIDLAW: My advice is that councils are acting under—

The Hon. Anne Levy: Some councils.

The Hon. DIANA LAIDLAW: That is right.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: That is correct. As I said, there is a belief on the part of some councils that they do have the power to do this, and they have so acted. I am just urging caution in this area because it is an important community service for businesses to provide advice on opening hours and location of various businesses. It is important for people travelling in country areas to be aware of the facilities that are available.

I know that the use of footpaths for tourism and restaurants, and particularly open air restaurants, has been an issue in terms of public liability. This was raised again in—

The Hon. Anne Levy: It is done by licence.

The Hon. DIANA LAIDLAW: That is right. This was raised in late October in relation to the Grand Prix, when we saw a lot of tables, chairs and umbrellas installed on footpaths at the lower end of Rundle Street and in other city areas. It was a fantastic and popular service. The issue here, according to insurance consultants, is that restaurants, after obtaining a permit, must ensure that they have adequate insurance. I believe that that is the issue that councils and businesses must address. It should be the responsibility of the business installing the moveable signs on public property to be insured adequately in the case of an accident.

I also believe that this issue of permits for or licensing of outdoor tables and the potential for licensing moveable signs is within the Government's responsibility, because the Government has great enthusiasm for using public footpaths for all sorts of facilities, whether it be Australia Post letterboxes, stobie poles or council planter boxes.

The Hon. Anne Levy: That is not private use.

The Hon. DIANA LAIDLAW: No, but I am just indicating that there is a dilemma here. We as a community believe that there is a need for multiple use of these public places in terms of footpaths. I am highlighting a number of difficulties where we distinguish between private and public use and the responsibilities associated with the Government's authority or private business. As I indicated, following the issue of a permit to outdoor restaurants, it is clearly the responsibility of restaurants to obtain public liability insurance. I believe that should be the practice with respect to moveable signs as well, but I suggest that we should be very cautious in how we address this matter. It needs a great deal more consideration than it appears has been given to it to date, notwithstanding the working party's deliberations. So, my comments are on behalf of tourist operators in this State and the Hotel and Hospitality Association, which strongly opposes this measure. The concerns of that association equal those outlined in the letter from the Retail Traders Association.

The Hon. ANNE LEVY (Minister for Local Government Relations): In closing the debate on this Bill, I thank members for their contribution. As has been stated, primarily the Bill makes a number of amendments of a technical nature clarifying the wording to reflect the intention of the Act. The Bill also introduces some provisions that have been developed following consultation over a number of years. These include, in particular, by-law powers relating to the control of cats and the provision that clarifies the fact that councils may permit the placement of moveable business signs on streets and roads. There is also a by-law power providing for control of the occasional slaughter of meat animals, and that incorporates amendments to the Act that were proposed by an honourable member in another place.

The Bill has been developed under the cooperative relationship that is being developed with local government. Under this model, the Local Government Association has agreed to speak on behalf of councils. Legislation reflecting major changes in the relationship between State Government and local government is anticipated for the autumn sitting of Parliament. Accordingly, I approached the association so that matters outside the negotiations under the memorandum of understanding which the LGA wished to be dealt with prior to that time could be put into this sundry amendments Bill. I stress that the provisions in the Bill reflect agreement that has been reached with the LGA on matters that are now being dealt with.

A number of issues have been raised by members during the debate. I will deal, first, with what I think are minor matters. For instance, clause 6 clarifies that, where council land is leased, the lessee is regarded as the principal ratepayer. The amendment certainly does not intend to alter the situation in which a council leases its property to a commercial tenant and negotiates terms of a contract in which a rental sum is paid in lieu of rates. Such a contract is a matter between the council acting on behalf of its community and the tenant.

The Institute of Rate Administrators has raised some concerns that the amendment would prevent such agreement. My legal advice is that this is not the case, but in order to accommodate these concerns I have put on file an amendment to the clause to make it clear that the occupier of council land will be regarded as the principal ratepayer unless there is an agreement to the contrary—in other words, a negotiated agreement between council and tenant.

With regard to clause 4, which concerns the duty to insure against liability, as indicated earlier, this clause arises from a decision taken nationally that councils have a responsibility to have adequate public liability insurance. The LGA has approached me in the past few days requesting that it be made clear that, where a council is a member of the Local Government Mutual Liability Scheme, additional liability cover is not required. Again, my legal advice is that the clause as currently constructed covers councils that are members of the Mutual Liability Scheme, but I am happy to expand on that clause in case any confusion arises, and I have put an amendment on file to make the situation quite clear.

Clause 11 is intended to clarify that a regional controlling authority may carry out a project for the benefit of its constituent councils, whether or not that project is physically located in any of the areas of those constituent coun-

cils. This is consistent with the object of clause 10, which is to clarify that any single council may undertake a project for the benefit of its community, whether or not the project is located within the council area. The controlling authority will comprise two or more councils acting together in the same situation as a single council, so that they may carry out projects for the benefit of their community without specifying the location of those projects.

This amendment arose from constituent councils of regional controlling authorities having received different legal advice on the capacity of the authority to undertake such projects. Again, we had the situation where councils approached different legal advisers and received different legal opinions. It is a pity that lawyers do not have one body to speak for them, but it is certainly the intention of the amendment to clarify the situation to ensure that councils, whether acting individually or as constituents of regional authorities, can undertake projects outside their area, provided that those projects are for the benefit of their own area. They cannot undertake projects which would not be for the benefit of their own ratepayers.

The Hon. Mr Irwin suggested that I should provide examples of such projects. One such could be where a metropolitan regional controlling authority wishes to establish a rubbish dump or a recycling centre in a rural or semi-rural area, the council of that area has no objection to that land use, has no use for such a facility for itself so has no desire to become part of the regional controlling authority, but is happy for another council or regional controlling authority to use the land for that purpose. The Hon. Mr Irwin suggested that in such circumstances the regional controlling authority should be extended to include the council in whose area the project is situated, but for that to be done by compulsion it would be necessary that the project in question was of benefit to that particular council. A rubbish dump in a rural area may be of no benefit to that particular council, so it would not be possible to force it to join the regional controlling authority, but the rural council may have no objection to the other council or regional controlling authority purchasing the land and using it for that purpose.

Another example could be where a regional authority is established to undertake an enterprise outside its council areas which generate revenue and services for its constituent councils. The council in whose area the project is sited may be pleased to receive the benefits of rates paid and business attracted to its area, but may not wish to invest in such an enterprise. Members need to bear in mind that the definition of 'project' is not restricted in a physical sense.

The Hon. Peter Dunn: You have no idea, have you?

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: It can be a project for the provision of facilities or services or any other activity. What is important is not where the work or activity is carried out, but that there be a real relationship between the project and the benefit flowing to the communities of the constituent councils.

The Hon. Mr Gilfillan raised concern about the use of the term 'member' in clause 11. It is intended that the same indemnity exists for people carrying out duties as members of a regional controlling authority as exists for people carrying out duties as members of a council or a council controlling authority. Within section 200 of the principal Act the term 'member' is quite clearly used to refer to people appointed to the controlling authority by the constituent councils. Whenever the section refers to the councils themselves, the term 'constituent council' is used. Within the context of section 200 I am advised that it is not possible to construe the meaning of 'member' to be an elected member of one of the constituent councils. Consequently, the term 'member' does not need further definition in the provisions.

The Hon. Mr Irwin sought clarification of the role of the South Australian Health Commission in relation to clause 15, which deals with septic tank effluent drainage schemes. This provision represents an outcome of the current negotiations between the State Government and local government and demonstrates the capacity of local government to take greater responsibility on behalf of local communities. Administration of the septic tank effluent disposal scheme was consolidated in the Department of Local Government in 1989. It was intended at that time to transfer approvals for such schemes to that department. However, it has been possible to develop a system in which administration is streamlined by replacing approvals with guidelines for the design and operation of such schemes by councils. Councils must comply with standards established by the Health Commission under the Public and Environmental Health Act in the same way as they are currently required to comply with standards under the Water Resources Act. These standards, together with the guidelines for design and operation of the schemes, ensure the quality of the schemes while maximising administrative efficiency.

The Hon. Peter Dunn: It is volunteer labour.

The Hon. ANNE LEVY: It is not volunteer labour in STED schemes. Councils pay large sums to contractors and there are specialists in the area. I do not think that the honourable member knows anything about it.

I turn now to clause 13, which has aroused considerable controversy. It is aimed to clarify the situation that councils may permit the placement of moveable business signs on public streets. There is legal controversy as to whether or not councils have that power now, and it is designed to ensure that councils will have the power to permit the placement of moveable business signs on public streets. We must realise that these signs represent a private use of public land for the benefit of that business. As such, it is not currently clear that they are lawfully placed on our streets. Far from creating an offence, the amendment makes lawful a use which is probably currently not so.

The council has a duty, as the trustee of public streets. The council does not have an unrestricted right to use the street or road in any manner that it pleases or to permit other people to do so. It holds the land subject to the common law rights of the public to pass and repass, except to the extent that these rights have been taken away by statute.

The licensing system proposed in the amendment is consistent with existing provisions about other private uses of public streets and roads in the Local Government Act, including fixed signs. As was noted by the Hon. Mr Irwin in debate, such a system provides for the council to recover the costs of managing the private uses rather than passing on the costs to the community. However, numerous Opposition members object to the use of this system for these particular structures—moveable business signs. I stress that there is no intention for the definition of 'moveable business sign' to refer to signs placed by real estate agents outside residential properties for open inspection or to cover the occasional sign put up for a garage sale.

It is not meant to apply to the newspaper cages which are propped against the wall outside most delicatessens. My legal advice is that the current definition does not include those aspects. However, it may well be, if it is felt there is confusion, that this can be further clarified in the definition of what is a moveable business sign to which the section refers.

Members opposite recognise a need for regulation of such signs for the general amenity and safety of the public street. I have discussed with the Local Government Association the potential for developing a system which would clarify that it is within councils' power to determine the areas where the placement of moveable business signs on streets and roads is appropriate, as I feel that a community through its council should have the right, if it wishes, to prohibit moveable business signs in a particular area if it is felt that that is in keeping with the heritage value or other value of a streetscape. It should be possible for the community, through its council, to prohibit moveable business signs in those circumstances.

We are looking to develop a system which clarifies that it is within the councils' power to determine the areas where the placement of moveable business signs on streets and roads is appropriate, and which will also assist councils in their role as trustees of public streets by allowing them to set conditions or standards for such signs, but which does not provide that a licence fee may be charged to meet councils' costs. The Local Government Association accepts that the amendment currently in the Bill will not pass this Chamber, but certainly wishes that the matter be clarified for councils which have sought resolution of this issue for some years because of the conflicting legal advice they have been receiving. Accordingly, the Local Government Association has informed me that it is prepared to consider a system which enables councils to manage moveable business signs without the use of a licensing system or licence fees.

In any such system, I would wish to deal with the problem of potential liability of councils for damage and injury caused by such signs placed on public land by including an indemnity provision. Similar indemnity provisions occur whenever a council gives permission for, say, a veranda to be built over a public footpath. The giving of such permission is always with the proviso that the council has no public liability as a result of having given permission for the veranda to be constructed.

The possibility of such an amendment, which it is hoped would be acceptable to all members of this Council, is in the process of discussion with the Local Government Association and with Parliamentary Counsel. In order that an amendment can be prepared which, hopefully, will satisfy the needs of councils to be able to control moveable business signs while at the same time not having a licensing system, discussions are currently taking place. I hope those discussions will achieve within a few days a compromise amendment that will satisfy Legislative Councillors. In consequence, I propose to adjourn this Bill so that further consultation with the Local Government Association and Parliamentary Counsel can occur. I hope that a satisfactory amendment can be achieved when this Council meets next week.

Bill read a second time.

MOTOR VEHICLES (HISTORIC VEHICLES AND DISABLED PERSON'S PARKING) AMENDMENT BILL

Second reading.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

This Bill deals with two separate matters. They are—

(i) disabled persons' parking permits; and

(ii) registration of historic vehicles.

Disabled persons' parking permits: The Bill proposes that the term of disabled persons' parking permits be increased from one year to five years. An increase in the term of the permit benefits the holder in only having to seek renewal once in every five years, rather than annually as is presently the case. Although the Bill prescribes a term of five years, it empowers the Registrar of Motor Vehicles to issue a permit for a lesser period. This will allow the Registrar to vary the renewal term of existing permits from between one and five years, so that an even spread of permits falling due over the next five years can be achieved. A fee of $16 for five years is proposed under the regulations. The fee will recover the costs associated with the processing, issuing and recording of the permits.

Registration of historic vehicles: With respect to historic vehicles, the Bill deals with five distinct aspects of the historic vehicles registration scheme—

- registration of the vehicle;
- physical requirements of the vehicle;
- conditions of use of the vehicle;
- ownership requirements; and
- the duties and responsibilities of the vintage car clubs.

Registration of the vehicle: Currently owners of historic vehicles have two options available. They may register the vehicle for periods of six or 12 months at full registration fee and compulsory third party insurance premium rates or acquire a permit to operate an unregistered vehicle.

Registration at full rates may be inequitable if the vehicle is used infrequently. The cost of unregistered vehicle permits limits the cost effectiveness of obtaining individual permits. The Bill provides for registration at a reduced amount prescribed by regulation: a fee of $25 for 12 months is proposed. This fee takes into account the limited road usage of historic vehicles. The alternative to acquire an unregistered vehicle permit will still be available. SGIC has agreed to an annual compulsory third party insurance premium of $40. The total fee for registration and insurance will therefore be $65.

Applications for registration must be supported by a statement by the club secretary of a recognised historic motor vehicle club, or nominated club official, that criteria with respect to the vehicle and the owner have been met. A 'recognised historic motor vehicle club' is one whose club executive has satisfied the Registrar of Motor Vehicles that the members of the club are engaged in genuine activities associated with historic vehicles. Distinctive windscreen labels will be issued for identification and enforcement purposes. The labels will be the existing vehicle labels but will display the designation 'Historic Vehicle'.

Standard 'Festival State' number plates will be issued for historic vehicles. Alternatively, owners of historic vehicles may purchase rights to display any of the categories of special number plates at the current rate applicable. A distinctive 'Historic Vehicle' number plate was considered but rejected on the grounds that a distinctive windscreen label will provide sufficient identification and minimise amendments to current computer systems and procedures. The use of a transferable plate was also considered but rejected on the grounds of insurance and enforcement difficulties and that it is not a practice followed by any other State.

Physical requirements of the vehicle: The vehicle must be a genuine historic vehicle, as certified by the vintage car club. That is to say, roadworthy and suitable for club activities. Modified 'hot rods', for example, will not be accepted for registration as historic vehicles. Vehicles must comply with the requirements of the Road Traffic Act 1961 and other Acts. The vehicle must have been manufactured prior to 1 January 1960. This date of manufacture requirement

will be reviewed from time to time.

Conditions of use of the vehicle: Use of the vehicle will be restricted to—

(i) club events in accordance with the official club yearly calendar; and, in addition,

(ii) up to 20 other separate movements such as vehicle maintenance, road testing, displays, shows and other vehicle club related activities as authorised by a club official. The vehicle may not be used for hire and reward. The separate movement approval must be carried in the vehicle at the time of such movements.

Ownership requirements: The owner of a historic vehicle who seeks to register the vehicle must be a financial member of a historic motor vehicle club recognised by the Registrar.

The duties and responsibilities of the vintage car clubs: A basic principle of the system is that the vintage car clubs will administer the criteria and maintain records which will be available for audit as required. A club must maintain a record of additional use approvals issued, for audit and verification.

A club procedure manual will be issued in consultation with the Federation of Vintage Car Clubs of SA Inc., which will detail the requirements of the historic vehicles registration scheme. The procedure manual will contain detail including the use of permits, roadworthiness and restrictions on using vehicles for hire and reward at weddings and similar functions.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal.

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

Clause 3 inserts new section 39 into the principal Act.

Proposed subsection (1) requires the prescribed registration fee for a motor vehicle to be reduced to the prescribed amount if the Registrar is satisfied (by such evidence as the Registrar requires) of the following matters:

- that the motor vehicle was manufactured before the prescribed date and has not been modified from its original design to any significant extent;
- that the owner of the vehicle is a financial member of a club recognised under the section as a historic motor vehicle club;

and

- that the vehicle will not, during the period for which it is sought to be registered, be driven on the road—

(iii) if the owner has ceased to be a financial member of a club recognised under the section as a historic motor vehicle club;

or

(iv) except—

(A) in events for vehicles of that kind held by that club (whether alone or jointly with another club or person) in accordance with a calendar approved by the Registrar;

or

(B) for other journeys subject to such conditions and limitations as are prescribed.

Proposed subsection (2) empowers the Minister, by notice published in the *Gazette*—

- to recognise a club as a historic motor vehicle club for the purposes of the section;
- if satisfied that there is good cause to do so, to withdraw recognition of such a club with effect from a date specified in the notice (being not less than 28 days from the date of publication of the notice).

Proposed subsection (3) provides that where a motor vehicle is registered for a reduced registration fee under the section—

- the period of registration must be 12 months and not a lesser period;
- no refund is payable by the Registrar on the cancellation of the vehicle's registration;

and

- the registration is not transferable.

Clause 4 repeals section 98s of the principal Act and substitutes a new section. Presently section 98s provides that, subject to the Act, a disabled person's parking permit remains in force for one year and may be renewed annually in a manner and form determined by the Minister and upon payment of the prescribed fee.

The only substantive difference between the present and proposed sections is that the latter provides that a disabled person's parking permit granted or renewed after the commencement of the new section will, subject to Part IIID of the Act, remain in force for a period of five years from the date of its grant or renewal, or for such lesser number of years as the Registrar may, in a particular case, determine.

Clause 5 amends the Stamp Duties Act 1923—

- by exempting from stamp duty an application under the proposed new section 39 of the Motor Vehicles Act to register a historic motor vehicle at a reduced registration fee; and
- by exempting from stamp duty a policy of insurance where the application for registration is made by a person entitled under the proposed new section 39 to have the motor vehicle in respect of which the application is made registered at a reduced registration fee.

The Hon. DIANA LAIDLAW: The Liberal Party supports this legislation. The Minister promised in November of last year that negotiations would take place, and we commend the Government for negotiating over the past year with the Federation of Vintage Car Clubs. That promise was made as a commitment to the clubs after I had moved in this place one set of amendments to the Motor Vehicles Act.

Four or five other sets of amendments had been introduced during the latter part of the session last year. The Liberal Party was very keen to see this issue debated last year. We were conscious of concerns amongst owners of historic cars that they did not enjoy the rights, privileges and opportunities that were available to the owners of similar cars in every other State.

That issue had not been an enormous concern to the owners of these cars until August-September last year when the Government increased the fee for obtaining a permit to drive an unregistered car. That permit fee was increased in two stages from $8 to $19, which made the one-off practice of obtaining a permit for each outing a very expensive exercise. We did not believe that, if the owners of these vehicles chose not to pay the full registration fee and have unrestricted use of that vehicle, that should be their only option.

These vehicles are a sport, a hobby and a recreation for the owners. They are also used infrequently and they are used on many, many occasions for tourism and charitable events. I have had many representations not only from the clubs associated with the Federation of Vintage Car Clubs and the federation itself but also from individual owners

who over the past year declined to accept invitations from organisations to feature their vehicle in a fete, charitable event or tourism promotion.

As a consequence of that, that fete, charitable event or tourism promotion has been the loser, as has the community at large. Therefore, I am very pleased to be an advocate for the owners of these historic vehicles in pushing for this third registration option in South Australia. As I indicated before, all other States have this option of a reduced annual registration fee for restricted use of a vehicle.

After I moved amendments in this place last November—which the Democrats and the Government found they could not accept at that time—the Minister did not make an undertaking that he was prepared to consider any proposal of the Federation of Vintage Car Clubs for an annual plate or permit. I commend the federation for its efforts in this regard. It held a host of meetings, sent out questionnaires to members and prepared a very comprehensive submission following feedback from all other States. Its conclusion was to support the introduction of a historic plate system. The Minister subsequently rejected this option as too cumbersome and costly to administer.

I believe that negotiations since that time have been profitable and that the department, the Minister, the federation and, ultimately, this Parliament will come up with an excellent scheme of benefit to owners of historic vehicles and one that I believe will be an improvement on some of the systems that operate in other States. It is a pity that there are only two members of the Government in this place.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: The Minister is behind a partition. However, at least she is present. It is proposed that the registration be at a reduced rate prescribed by regulation with a fee of $25 for 12 months and a $40 annual CTP insurance premium. That total cost of $65 will compare with the $261 that is currently charged to register and insure a four cylinder vehicle for 12 months. That is a proposed saving of about $200 for the owners of historic vehicles. However, they will have to meet certain conditions and restrictions, as I have noted. The owner will have to be a financial member of a historic car club. The use of the vehicle will be restricted to club events according to the official annual calendar, plus up to 20 other separate movements related to club activities as authorised by club officials, for instance, maintenance, road testing, displays and shows. The vehicle has to have been manufactured before a prescribed date, and the proposal is that that date be 1 January 1960. Of course, that date is subject to review from time to time.

Overall, the vintage car clubs will be responsible for administering the criteria and maintaining the records, which are to be available for audit as required. There are 40 clubs associated with the Federation of Vintage Car Clubs in this State and they have a membership of 3 367 covering some 4 227 vehicles. This Bill will be of great benefit to those 3 000-plus members.

However, I have received representations from owners of other older vehicles—vehicles that were manufactured before what is to be the prescribed date of 1 January 1960—and they have expressed concern that this Bill is far too restrictive in that it requires compulsory membership of a club for the owner to receive the benefits proposed in this Bill. I understand those misgivings, and they have been fully canvassed within the Liberal Party. However, I believe that it would be wrong at this time—and possibly at any time—to suggest that all vehicles manufactured prior to a prescribed date should be able to gain this benefit of a reduced registration fee. First, I have no idea how many vehicles there are on our roads or in garages or on blocks that were manufactured before 1 January 1960. I imagine that, if we allowed every such vehicle to be registered without fee, we would see the emergence of many more vehicles than are now known to us. I would be very interested to know from the Minister whether there is any figure in relation to the number of such vehicles in South Australia and how many owners would possibly apply for this reduced registration fee if there were no restriction in terms of club membership.

I also believe that, as the scheme is structured, the administration of the criteria and maintenance of the records is to be the responsibility of the vintage car clubs. That relieves the Government of a major inspectorial task and it is not a task in which I believe it should be involved. But, it would have to be involved in such an exercise if all vehicles manufactured prior to 1 January 1960 were to be eligible for the reduced registration fee.

Australia already has the oldest vehicle age profile of any OECD country. The RAA recently advised me that the age profile for vehicles in this country shows the average age at 12 years. The condition of many vehicles is quite apparent when one walks the streets; one sees that there is not a great preponderance of vehicles manufactured prior to 1 January 1960, but many of them are approaching that age. I would not like to see the proliferation of older vehicles on our roads. It is quite clear that those vehicles do not have the pollution controls and energy saving features of modern vehicles. This is a concern of those interested in the environment. I know that it is taxing the Federal and State Ministers of Environment and that they are considering a proposal for a tax on old cars and the use of those cars.

The Minister of Transport in this State has indicated that he does not support such a proposal. I do not feel inclined to support it either but, at the same time, I do not think we should be seeking to encourage the use of a wide range of older vehicles by any legislative or administrative means. The opening of a concession fee for registration to all vehicles manufactured before 1 January, as proposed in this Bill, could possibly be interpreted as an exercise that would encourage the wider use of more of these vehicles that do not have the benefit of some of the environmental controls that are a feature of more modern vehicles.

I have also had a number of representations from people who are agitated about the restriction of 20 separate movements that are to be allowed in addition to the official annual calendar. I note that today, in Western Australia, which was one of the first States to move in the direction of a reduced registration fee, there is no requirement to advise the respective club, or to keep a record, of when vehicles are used or road tested. This may be a way to move in the future. I do not believe that it is appropriate at present to introduce such an unrestricted movement initiative when the owners of older vehicles in this State, the administrators of clubs and the issuing authority, the Registrar of Motor Vehicles, will all have to come to terms with this new initiative.

I believe it is important that there be some restrictions at this stage. Let us then see how they work. The success of this measure will be largely dependent on the goodwill of owners and the clubs to which they belong. However, there appears to be some confusion at the moment between what the federation wishes to see defined as a separate movement and what the Government is prepared to accept. I would be interested, even during the course of this debate or at some later stage, to receive advice if the Government is prepared to accept as a separate movement road testing, which is associated with a club event, or whether any form

of road testing would be accepted as a separate movement. That is an important consideration for the federation, and it is nominated in its handbook as acceptable; however, as I have said, the handbook is yet to be accepted by the Registrar of Motor Vehicles or by the department.

I will refer briefly to the other important provision of this Bill, namely, the disabled persons' parking permit. The Bill proposes that the period of such permits be increased from one year to five years, and that a fee of $16 be charged for that five year permit compared with the present charge of $4 for an annual permit. So, considerable savings will accrue to people entitled to disabled persons' parking permits. I have had a number of discussions on this matter with Jeff Heath of Disabled Persons International and Mr Richard Llewellyn of the Paraplegic and Quadriplegic Association. Both those associations support this measure and believe that this upfront fee will not cause great hardship for people with disabilities. They believe that the enforcement provisions of parking spaces at shopping centres and in car park stations—matters that were addressed in this place 12 or 18 months ago—are certainly working in a much better fashion for the benefit of people with disabilities.

However, they are seeking to have discussions with the Government on how to support carers of people with physical disabilities so that, where a disabled person does not have a licence to drive a vehicle or is not issued with a permit, the carer will be, and also with regard to provisions relating to nursing homes and other community associations and organisations that care for people with disabilities. Those discussions are ongoing with the Government, and I will be keen to learn their outcome.

I hope that the outcome of the discussions in relation to wider use and acceptance of disabled persons' parking permits will reach the successful outcome that has been achieved between the Government, the Federation of Vintage Car Clubs and representatives of the Liberal Party, including myself, when we sought to achieve the third option of a reduced registration fee for owners of historic vehicles.

In supporting this measure I thank the many people with whom I have worked, including representatives of the federation and clubs. I commend them for their efforts. I know that this measure will be of benefit not only to owners but also to the community at large because these vehicles give individuals enormous pleasure and assist many community charitable organisations in their fundraising endeavours. We know from the Bay to Birdwood Run of the enormous value of these cars for tourism initiatives in this State. I place on the public record my congratulations to the organisers of the Bay to Birdwood Run who recently won a national award for their contribution to tourism.

The Hon. J.C. BURDETT: I am very pleased to support this Bill in relation to, first, its aspect of making special provision for the registration of historic vehicles. Broadly speaking, this Bill brings South Australia into line with other States. I know that the owners of historic vehicles, the federation and members of clubs have, with justification, been pressing for some time for a Bill such as this because, in the past, the cost of the permit system has been considerable and has inhibited the use of such vehicles. That has been a shame for owners of vehicles and for all people concerned.

The effect of this Bill on concessional registration is entirely positive. It will enable vehicles to be used and taken on the road more often. I am sure that they will not be on the road in such numbers as to create problems to other road users. I am not a historic car buff but I get great pleasure—as I am sure does the community—from seeing these beautiful vehicles on the road. I admire the amount of time and trouble that owners put into keeping their vehicles in the beautiful, gleaming condition in which they are always presented. Of course, they do a lot in raising money for charities.

I have no difficulty with this concession regarding registration fees for historic motor vehicles being confined to the members of clubs. Membership is still purely optional; there is nothing compulsory about it. The present permit system will still exist for owners of historic vehicles who do not want to join clubs. As the Hon. Diana Laidlaw said, the clubs will do a great deal of work in administering these provisions and thereby relieve the Government of that burden and cost. It is appropriate that the Government should seek to relieve itself of this cost and administrative difficulty by using the services of the clubs.

There is nothing new about giving special concessions in recreational areas to clubs and their members, because of the discipline that they exercise and the aid that they give in administration. An obvious example is under the Firearms Act. Pistol clubs and other shooting clubs are given special consideration because of the discipline that they exercise over their members and the administrative work that they do.

I am entirely supportive of this Bill, which has been a long time coming. The federation of the clubs have been pressing for it for some time. The Liberal Party has been supportive of a measure such as this for a considerable time, and I think that has been appreciated. I hope that the Bill will be proclaimed at an early date. Clause 2 provides:

> This Act will come into operation on a day to be fixed by proclamation.

I appreciate that regulations will have to be made. I understand that a working party has been set up in cooperation with the Government, the federation and other interested people. I trust that the Government will use its good offices to ensure that agreement can be reached, the regulations made and the Act proclaimed as soon as possible, because, as I said before, and as the Hon. Diana Laidlaw indicated, the present permit system is inhibiting the use of these vehicles.

I understand that in February next year there will be the annual All British Day. The entries for that closed last Friday. In the past there have been about 400 entries. Last week I heard that there were only about 100 entries. So, it would appear that the permit system is inhibiting people from entering these rallies which, as the Hon. Diana Laidlaw said, are a great tourist attraction, apart from anything else. Later in February I understand that there is the All American Day. I do not yet know what the entries for that are. It would be a shame if the regulations are not in place and the Bill cannot be proclaimed in time to allow such rallies to go forward without people having to get permits on every occasion. I ask the Government to do everything in its power to have the regulations made and the Act proclaimed as soon as possible. After all, we have known for some time that this was going forward. Therefore, it should not be too difficult to devise the regulations.

The second part of the Bill relates to disabled persons' parking. I strongly support that part of the Bill. Over the years I have had many representations by disabled constituents complaining that they have had to pay for their permits every year. It will be of great assistance to them to be able to have a permit every five years. I support the second reading of the Bill.

The Hon. ANNE LEVY (Minister for Local Government Relations): I thank members for their support of this Bill.

I am sure that it will be welcomed by many people. The Hon. Ms Laidlaw and the Hon. Mr Burdett raised a few queries about the number of vehicles in South Australia manufactured prior to January 1960. I do not have that information, but I will ask the Minister to make it available if he has such information or if it can be obtained without too much difficulty.

With regard to the time of proclamation, I do not have information about the stage that the necessary regulations, standards, manual, and so on, have reached. I am sure that the Minister would like this Bill to be proclaimed as soon as possible. I can only hope that it will be achieved by the date that he indicated, but I cannot give such an assurance as I do not know what stage the necessary preparations have reached.

The Hon. Ms Laidlaw asked whether road testing of vehicles with this registration would be one of the 20 additional club activities. I note that new section 39 (1) *(c)* (ii) (B) provides that the vehicle may be used 'for other journeys subject to such conditions and limitations as are prescribed'. The second reading explanation indicates that it is expected that the other separate movements will be up to 20 per year for matters such as vehicle maintenance, road testing, displays, shows and other club-related activities as authorised by a club official. It may be that the use that the Hon. Ms Laidlaw is proposing is already covered or is expected to be covered in the prescribed activities as indicated in the second reading explanation.

Finally, I join the Hon. Ms Laidlaw in congratulating the organisers of the Bay to Birdwood annual event, as well as the History Trust on its involvement with this event through the Birdwood Motor Museum—a constituent museum of the History Trust—which, of course, plays such a crucial role in this most exciting and worthwhile annual event.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. DIANA LAIDLAW: The Liberal Party does not want to be associated with holding up this initiative. Therefore, we are prepared for the Committee stage to be passed at this time, although we do have some questions, and the Minister has indicated that she would be prepared to provide answers to those questions. The reason I labour the point of getting advice with respect to the commencement is that, when the Government Leader in this place indicated yesterday to the Liberal Party which Bills had first and second priority to pass this session, this measure was not on that list, so I was very anxious to make sure that this debate was advanced. We have sought to cooperate fully today so that a Bill that was not seen of priority to the Government is not held up in any way and is passed by this Council. The Government must have envisaged a proclamation date in February or March. Can or will that date be brought forward now that the Legislative Council has cooperated in the passage of this legislation prior to Christmas?

My next question could well be asked of another clause, but the Minister in the other place indicated that he was prepared to look at the role played by agricultural societies with respect to the use, showing and performance of older vehicles. We have not received an answer from him as to whether he is prepared to look at amendments at some later date or whether he is prepared to negotiate with agricultural societies on this matter. At a later date I would like some feedback on this matter.

Finally, with respect to road testing, the Minister noted in her reply that the second reading explanation provided that road testing will be authorised by a club official as one of the 20 separate movements in addition to the club events. The handbook prepared by the Federation of Vintage Car Clubs, which has been forwarded to the Registrar of Motor Vehicles, states that road testing will be one of the club events and therefore separate from the 20 additional events. I am very interested to find out whether that proposal, as outlined in the handbook, has been accepted by the department and the Minister, or whether road testing will continue to be prescribed as one of the 20 movements quite separate from the unrestricted club activities.

The Hon. ANNE LEVY: I regret that I do not have information with me on those three matters, but I will certainly request the Minister in another place to provide answers to the honourable member at the earliest possible opportunity.

Clause passed.

Remaining clauses (3 to 5) and title passed.

Bill read a third time and passed.

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2000.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this measure and is very pleased to see that the Government has followed the initiative of a private member's Bill, which I moved in this place on 9 October, advocating the provision of an exemption for Sikhs on religious grounds. I will not go over those arguments this afternoon because of time constraints, but on 9 October I outlined at great length the reasons why the Liberal Party supported this initiative.

The Government has not suggested such a broad exemption provision as the Liberal Party advocated. The Government has confined the exemption to the wearing of helmets on bicycles (or pedal cycles) but not on motorcycles. I have received representations on that matter but I am prepared to accept the Government's initiative in the sense that there was no exemption earlier for motorcycles. I will not push that because that was not a provision in the safety helmet clause with respect to motorcycles prior to more extensive amendments to this measure in April.

I have an amendment on file in respect of the exemption on medical grounds, which is the same as the amendment that I introduced in my private member's Bill. Because of time constraints, I will not elaborate on that amendment now, but I do support this legislation.

The Hon. I. GILFILLAN: I support the second reading of this Bill which seeks, for religious reasons, to exempt members of the Sikh community from wearing bicycle safety helmets. I am aware of the special reasons that justify the exemption and accept the difficulty of finding a suitable helmet to wear over a turban. Indeed, I am sensitive to the fact that the Sikh religion does not allow for any item to cover a turban, but I will make some comments about Sikh cricket players.

I have some questions about potential problems or difficulties that could arise from this Bill. I mention them so that the Minister may have a chance to respond. Clause 2 specifies the exemption by stating that in section 162c of the principal Act, new subsection (4) provides:

> This section does not apply to or in relation to a person who rides, rides on or is carried on a pedal cycle where that person—
>
> *(a)* is of the Sikh religion;

and

(b) is wearing a turban.

Will the Minister provide the Council with an explanation as to how members of the Police Force will be able identify and know for sure that a person riding a bike without a helmet but wearing some type of turban is in fact a member of the Sikh religion? Does the Minister envisage that officers be trained to recognise a Sikh turban as opposed to other types of turbans that are worn by members of other cultures?

If a bike riding person wearing a turban is stopped by the police, will that person be required to prove his religion and, if so, how? Will the Government consider placing in the Act a definition as to what constitutes a turban? It may be appropriate, given the current cricket tour of Australia by the Indian national team, for members to recognise that in recent years Indian sportsmen who are Sikhs have taken to wearing a modified turban, one that looks very much like a small bun tied to the top of their hair. This is much more practical in sporting and physical activities than the traditional, large turban worn by Sikhs. I wonder whether the Government has given thought to recognising this modified turban as the type of turban considered to fall under the exemption. I would not like to see the religious rights of what in this country constitutes a minority group threatened in any way by potential confrontation as to proof of religion in order to avoid being fined for not wearing a helmet.

In substance, I indicate that I support the Bill, but I think it is reasonable to point out that Sikh Indian test cricketers have worn protective head gear. So, I am not convinced that there could not be developed means whereby the Sikh will not contravene his religious principles—

The Hon. Diana Laidlaw: Or hers.

The Hon. I. GILFILLAN: 'Hers' does not apply. This is one case where, if it is to be accurate—

The Hon. Diana Laidlaw: Don't they wear turbans?

The Hon. I. GILFILLAN: No, the interjection was based on the removal of sexism from the language, but it does not apply in this particular situation, because, in the Sikh religion, it is the men who are obliged to let their hair grow and conform with this custom that we are honouring.

There will be some difficulties in identifying the genuine turban and the genuine Sikh turban wearer from others who may use it as a device to avoid the penalty, and I think that the question of adequate head protection as adapted for test cricket in India could be, and should be, looked at. I respect the religious sensitivities of the Sikhs in this matter, but I am also very concerned that anyone in this country will be riding or will be a passenger on a pedal bike without having adequate head protection. With those remarks I indicate my support for the second reading of this Bill.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): In closing this debate, I welcome the support of members opposite for this Bill. I do not have the information available to me at the moment to respond to the questions posed by the Hon. Mr Gilfillan. I am happy to seek responses from the Minister in another place regarding these matters and would welcome an indication from the honourable member as to whether he is prepared to receive such responses after the Bill has passed this Council, or whether he would prefer the Committee stage to be delayed until such responses can be received.

The Hon. I. Gilfillan: I do not want to institute a delay. I am quite happy.

The Hon. ANNE LEVY: I understand that the honourable member would be happy to receive responses as soon as possible after the Bill has passed this Chamber and, consequently, I indicate that I am happy for the Committee stage of the Bill to proceed forthwith.

In Committee.

Clause 1 passed.

Clause 2—'Safety helmets.'

The Hon. DIANA LAIDLAW: I move:

Page 1, line 18—After 'religion' insert 'and is wearing a turban'.

Lines 19 to 20—Leave out all words in these lines and insert the following:

or

(b) is in possession of a current certificate signed by a medical practitioner and certifying that the person is, for medical reasons, unable to wear a safety helmet or that, because of the person's physical characteristics, it would be unreasonable to require the person to wear a safety helmet.

One of the reasons why I moved a private member's Bill in October to provide exemptions from wearing safety helmets when riding a bicycle was that such exemptions were provided in regulations in both Victoria and New South Wales. I know that exemptions are being considered in Western Australia and Queensland where similar legislation, which is part of the black spot package, is now being considered.

It seemed to me that, if exemption provisions are acceptable for riders of pedal cycles in New South Wales and Victoria on the basis that a person may be a member of a Sikh religion, or on the ground that that person is in possession of a current certificate signed by a medical practitioner which certifies that the person is, for medical reasons, unable to wear a safety helmet or that, because of a person's physical characteristics, it is unreasonable to require the person to wear a safety helmet, South Australians should be entitled to the same exemption provisions, particularly as this whole issue of safety helmets for pedal cyclists was introduced on the basis of a push by the Federal Government for national uniformity in this matter.

So, if national uniformity in terms of the compulsory wearing of bicycle helmets is acceptable, I believe it is also appropriate that South Australians should enjoy the same access to exemptions as applies in the two more populous States of Victoria and New South Wales. They may well be matters for exemption in Western Australia and Queensland when similar Acts are passed there in the near future.

The Hon. ANNE LEVY: The Government does not accept this amendment. This matter was debated at the time that the bicycle helmet legislation was considered and this Parliament decided at that time that it did not approve medical certificates as the basis for exemption from wearing bicycle helmets. I think it was felt at the time that it could be opening the door to abuse, and that, furthermore, the health of people with conditions that may make it a little awkward to wear a bicycle helmet could be more adversely affected by not wearing a helmet and that the risk to their health in not wearing a helmet was far greater than the risk to their health through wearing a helmet. I do not think that the Council should at this late stage reverse the decision it made when debating this matter only a few months ago.

The Hon. I. GILFILLAN: I oppose the amendment. I want to make it plain that I am basically uneasy about the exemption provision in the Bill and, if it is possible to evolve head protection for people without giving religious offence, then that is the way I hope we will go. I do not consider it appropriate to open the door to exemptions at this stage when we are encouraging people to take up the wearing of helmets.

I think that there will be time to review what are appropriate defences when people have actually been charged with not wearing a helmet. That is an issue that we are not addressing in this Bill, and I believe that the amendment

leaves it open for people to claim exemption from wearing helmets on grounds that this Parliament is not in a position to determine. As I said before and in the previous debate, I oppose this amendment.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

[*Sitting suspended from 1.5 to 2.15 p.m.*]

QUESTIONS

DEPARTMENTAL FUNDS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of State Services a question about misappropriation of departmental funds.

Leave granted.

The Hon. R.I. LUCAS: Yesterday in this Chamber I raised the issue of misappropriation of thousands of dollars of departmental funds by a senior staff member within the State records section of the Department of State Services. The Minister confirmed the misappropriation but disputed the level of funding involved. While putting aside that variance in figures, I was interested in the Minister's statement yesterday that:

> As I understand it, the police were to be informed of the case, although they had not been at the time it was brought to my attention. I expect that has occurred by now.

Members would be well aware of the recent court cases which were the outcome of the Operation Hygiene investigations into police corruption. Not surprisingly, there has been some incredulity from some serving police officers that some of their colleagues could have been subjected to such harsh treatment, involving the loss of jobs in some cases, for stealing a few plant seeds maybe 15 years ago, yet another public servant, working in the Department of State Services, can initially retain his or her position after confessing to the misappropriation of thousands of dollars of taxpayers' funds. My questions to the Minister are:

1. When were police first advised about this case and were charges laid? If not, why not?

2. Will the Minister provide details—and I accept that she will not be able to do so now—about the items which were allegedly misappropriated and which reportedly amounted to $6 000?

3. Does the Minister see any inconsistency in the fact that a public servant working within her department can misappropriate thousands of dollars in funds only to suffer a transfer, while public servants employed by the Police Department have to suffer public humiliation and loss of a career because they were, in some cases, involved in petty theft 15 years ago?

The Hon. ANNE LEVY: I do not know the exact date on which police were called in to deal with this matter, but I can ascertain it for the honourable member. Certainly, they were called in very soon after I had been informed of the situation. I can also inform members that the details provided yesterday by the honourable member were inaccurate, not only with respect to the sum concerned. The employee involved was not left to carry out the same duties. There has been no further offence of which anyone is aware. The employee has been moved to other duties within the same division, but will shortly be moved to another division within the department. Police investigations are still continuing and until those investigations have been completed, of course, no charges can be laid. Further resolution must await the completion of the investigation. I do not know the details of the items involved, but I will try to obtain a list and provide it to the honourable member.

CHILDREN'S COURT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the Children's Court.

Leave granted.

The Hon. K.T. GRIFFIN: On 23 October 1991 I asked a question of the Attorney-General about delay in making application for young offenders to be tried in an adult court. Judge Newman has criticised delays in making a decision whether or not to try a young offender as an adult and has said that it took months for the decision to be made, either by the Attorney-General or his department.

Judge Newman is reported to have said that he saw no reason why the question of the venue could not be dealt with quickly, and in the report he indicated that he had raised the issue some five years previously in the report on the Children's Court Advisory Council, which was tabled in Parliament in 1986.

On that occasion in October—a month ago—Judge Newman was dealing with a 16 year old, whom he remanded in custody. On that occasion the police said that they had applied to have the young offender tried as an adult, but were awaiting a response. As I understand it, on Monday of this week the same 16 year old came before the police again, but the police prosecutor said that the application had still not been dealt with. Quite naturally, the youth's lawyer objected to a further remand in custody, but the judge indicated that he had no option and remanded the young offender in custody for another 2½ weeks. However, there was no guarantee that the matter would be dealt with by then.

I am told that police say that the bottleneck is in the offices of the Attorney-General's Department and that this is not the only matter of that nature awaiting attention. In the light of this further delay in this case, will the Attorney-General urgently ascertain where the bottleneck is and clear it so that this matter, and others that may similarly have been delayed, can proceed expeditiously?

The Hon. C.J. SUMNER: I am not sure that there is a bottleneck. There may be a number of reasons why the matter has not been pursued. Nevertheless, I will take it up as a matter of urgency to see whether there is any difficulty with this case.

AUSTRALIA COUNCIL GRANTS

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

Leave granted.

The Hon. DIANA LAIDLAW: The Australia Council distributes Federal Government grants to the arts. I was interested to note that last week the General Manager, Mr Max Bourke, foreshadowed a major shift in policy for the funding of performing arts companies in the country, suggesting that the council may abandon annual general grants in favour of tied grants or contracts for specific projects that adhere to guidelines relating to Australian content, including innovative indigenous productions.

This announcement had wide coverage in the interstate press, but I have not seen any similar articles in the Adelaide media. It is seen as a push by the Australia Council to gain

more control over companies, particularly in the area of artistic and creative policy—an area that has traditionally been held at arm's length from Government influence or interference. In addition, concern has been expressed that any move by the council to fund individual projects will make it more difficult for performing arts companies to plan their seasons in advance, because there would be no guarantee of forward funds.

It is of concern to me that Mr Bourke's announcement appears to be at odds with the trend in State Government funding policy, which seeks to encourage greater financial self-reliance on the part of each of these companies and less dependence on Government grants. I have no objection to that policy, but I think it is most important that, in terms of arts funding, we have at State and Federal levels funding policies that are not a tug of war, with the victims being the companies themselves.

Certainly, the Government's policy of less dependence on Government grants has encouraged or perhaps forced companies in this State to select productions based on commercial considerations and wide audience appeal rather than undertake risks associated with new, challenging works from playwrights in Australia or elsewhere. Perhaps the Australia Council's proposed change of direction would not be so disturbing if it was prepared to guarantee to underwrite the whole risk of any company performing a new Australian work for which the Council was prepared to provide a grant on an individual project basis. My questions to the Minister are:

1. Has she been consulted on the proposed change mooted last week in terms of the Australia Council's funding policy from general purpose grant to individual grants?

2. Would she anticipate being consulted on a change that would have such major ramifications for performing arts policy and performance in this State?

3. As the Director of the Department for the Arts and Cultural Heritage, Ms Dunn, is (on my last advice) Deputy Chair of the Australia Council, does her participation on the Australia Council, and in terms of this policy matter, suggest that there may also be some change in funding policy by the State Government for performing arts in terms of increased Australian content and/or a move from general purpose grants to individual grants?

The Hon. ANNE LEVY: To answer those questions, I can assure the Council that I was not consulted in any way by the Australia Council, nor do I anticipate any consultation. The Australia Council has never consulted with State ministries or departments in setting their policies, practices or procedures. Whether that is desirable is perhaps a matter for debate, but it has never been its policy to do so. I would be surprised if a change were suddenly to occur in that matter. The fact that the Australia Council is proposing to change its policy is quite unconnected to any policy of this Government. I would remind the honourable member that the policy of this Government is not made by public servants: it is made by the Government. The public servants implement Government policy and advise on it, but they do not make policy. There is no suggestion that the South Australian Government intends to change its policy with regard to funding.

In fact, I have just received a response to a question which the honourable member asked some time ago regarding funding for the State Theatre Company, in which she insinuated that it was receiving decreasing funds. In 1992, the State Theatre Company is receiving $1.64 million from the State Government, which is a 6.5 per cent increase on its grant for last year and, in the current economic climate, this is a very significant increase for any performing arts organisation.

The State Theatre Company also received a grant of $390 000 from the Performing Arts Board of the Australia Council for 1991 and will receive about $397 000 for 1992, so the Australia Council has increased its funding for our State Theatre Company by 1.87 per cent. That compares favourably indeed with decreasing grants to certain other State theatre companies, not the least of which is the Sydney State Theatre Company, which has received decreased funding from the Australia Council for 1992. It may be that the Sydney Theatre Company is not fulfilling the aims or objectives which the Australia Council has set for performing arts companies, but there is no doubt that our State Theatre Company has received an increased grant from the Australia Council which, presumably, is therefore happy and satisfied with the performance quality, quantity, standard and choice of our State Theatre Company. This is endorsed by the increased grant which the State Government is providing for our State Theatre Company in 1992.

Indeed, we are very proud of our State Theatre Company and its very laudable achievements, not only this year but also in past years. We support it fully and look forward to its continuing high artistic success in 1992 and in years beyond.

EYRE DISTRICT RESOURCE CENTRE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question in relation to the Eyre district education office resource centre.

Leave granted.

The Hon. M.J. ELLIOTT: I have received correspondence from people on the Eyre Peninsula, particularly from the Port Lincoln area, who are concerned about the impending closure of the Eyre district education office combined schools resource centre. Located in Port Lincoln, it is a very valuable centre, in that it coordinates the receipt and distribution of crucial learning materials to schools in the adjacent region on a cooperative and share basis. The closure of the centre will mean a retrograde step back in time and in the quality of education available to the majority of students in the region.

The local schools value this facility so highly that they are willing to raise funds from their own budgets to maintain the centre, although other people have asked me why they should ever have been expected to do so. However, in its push for cost-cutting, the South Australian Education Department believes the closure is justified. I now understand that the nearest regional centre will be in Whyalla. I ask the Minister the following questions:

1. From where will the schools of Port Lincoln and adjacent regions source materials?

2. What effect will the closure have on the delivery of quality education in regional South Australia?

3. What consultation took place with the local community before Education Department funds were withdrawn?

4. Will the Minister reconsider the decision?

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

PAYROLL TAX

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

Leave granted.

The Hon. L.H. DAVIS: The Minister of Small Business would be aware of the Federal Opposition's taxation package which was released today and that South Australian small businesses with as few as 15 employees will be liable to pay State payroll tax. My questions are:

1. Does the Minister welcome the proposal of the Federal Opposition Leader, Dr Hewson, to abolish payroll tax?

2. Does the Minister support a goods and services tax if it means the abolition of payroll tax—and any down side of a goods and services tax does not cancel out the benefit of such a tax?

The Hon. BARBARA WIESE: On a number of occasions in this place I have indicated—as I believe have the Premier and other Ministers who have responsibility for matters relating to business—that in the best of all worlds we would not have a payroll tax. This Government considers it to be a regressive tax; it is considered to be a tax that is a disincentive to employment. Certainly, if there are ways to compensate for the revenue that State Governments receive from payroll tax, the State Government would be interested in knowing about it.

As to the Federal Opposition's proposals for a general services tax and the other measures that go with it, it is much too soon for members in this place to welcome the proposals or to express accolades about the aspects of it that have been announced in the past 24 hours. It would be a much better idea for members in this place to bide their time and to study exactly what is contained in these proposals with respect to the quid pro quos that come from the bits and pieces of good news that the Hon. Dr Hewson has highlighted in his announcements.

If one is to believe some of the commentators who have had a brief opportunity to study these proposals so far, the disadvantages that will be brought upon various people, individuals and, possibly, businesses from other aspects of the whole package, would not be something I would welcome—and I am sure that members opposite, if they were being fair, would not welcome them, either. I will be interested to see some detailed analyses of the package as a whole before I make any statements about these matters. I will be surprised if the Opposition's package is able to abolish payroll tax without creating disadvantage elsewhere.

The Hon. L.H. DAVIS: As a supplementary question: is the Minister indicating by her answer that she is in disagreement with the Premier, who today has been widely quoted in the media as saying just what I have asked the Minister in my question, namely, that if a goods and services tax was a realistic means of abolishing payroll tax, and the down side did not cancel out the benefit, we must support it?

The Hon. BARBARA WIESE: That is rather similar to the points that I made in my reply. However, if the honourable member reads the article on the front page of the *News*, he will also see that the Premier suggests that the very study which I am recommending of the provisions in this package should be undertaken, because it may very well be that it is not as bright as the Hon. Mr Davis or his Federal counterpart would paint it.

JAMES NELSON SPECIAL SCHOOL

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education questions on the subject of the James Nelson Special School.

Leave granted.

The Hon. BERNICE PFITZNER: Three days ago, an irate and upset parent informed me that the James Nelson Special School at Woodville would be closed. I understand that the children will be relocated in ordinary schools. At that stage, no consultation had taken place with parents. I spoke to a senior school staff member, who did not give a definite confirmation of the matter, but who stated that it could be a possibility. We are aware that a western suburbs school review has been undertaken about which the local community is most unhappy.

This special school, which caters for multiply-handicapped children, that is, children with physical, mental and sensory handicaps, might be closed. I have visited this school as a medical officer, and I have noted that the hall area and the swimming pool are exceptional facilities in which the children can have their physiotherapy exercises. The school is purpose built for these multiply handicapped children from ages five to 19 years. My questions are:

1. Why were the parents not consulted before the proposal was put?

2. Why is such an excellent school, in terms of service and facilities, due to be closed?

3. If the trend is to relocate the children in ordinary schools, what support systems are in place to receive the multiply-handicapped children?

4. What is to be done to the school building?

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

COMPANY MANAGEMENT

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question relating to company management.

Leave granted.

The Hon. I. GILFILLAN: Many of Australia's major corporate groups have experienced and are currently experiencing significant financial difficulty. South Australia is by no means immune. In fact, because of this State's relatively small population and economy, the effects of economic collapse of a major company or group is felt much more here than it would be in New South Wales or Victoria.

The Adelaide Steamship Company (Adsteam), which includes David Jones and Tooths, has approximate 24 000 shareholders, many of them South Australians. Adsteam's precarious financial situation and collapse in share price dealt a savage blow to many shareholders, and there have been allegations that directors misled those shareholders about the financial state of the company in its 1990 report and that the auditors were negligent in not realising the financial problems facing the company at the end of 1989-90. In addition, allegations have been made that company directors have been negligent in refusing the advice of staff, ignoring the warning signs within the industry, and that financial settlements made by the board on termination of employment for some directors were not, to put it kindly, in the best interests of the company.

Lessons have been learnt the hard way from the collapse of Adsteam, and in this respect I refer to the realisation that major companies for too long have not been openly accountable to shareholders. Power has been concentrated in the hands of a select few, who issue directives and mete out to shareholders information and advice, but seem to be able virtually to wash their hands of the matter when things turn sour, leaving shareholders out of pocket and with no recourse to make those directors properly accountable.

Shareholders need greater protection with proper checks and balances on directors rather than directors being allowed to issue misleading information and advice to shareholders, while privately knowing that the company is in dire financial straits. Members may have heard an interesting segment on Keith Conlon's program this morning relating to Bennett and Fisher, about which similar suspicions and allegations of mismanagement have been made. Very dramatic action is currently being taken regarding misrepresentation by Bennett and Fisher with respect to a company that it sold. My questions are:

1. Does the Attorney agree that company law, as it operates in South Australia, needs to be reformed generally, particularly to make directors more accountable to shareholders?

2. Is any current review of corporate law being undertaken and, if so, what?

3. Does the Attorney believe that there is a role for the Australian Securities Commission to review management of Australian companies and, in particular, the recent management of Adsteam to ensure that small shareholders can be fully informed of the real state of their company?

The Hon. C.J. SUMNER: I am also aware of concerns which have been expressed about the collapse of Adsteam and the plight in which small shareholders have found themselves as a result. It has been put to me that losses to South Australians as a result of the collapse of Adsteam are significantly greater than, for instance, those losses resulting from the problems in the State Bank. Yet, where we have a State-owned instrumentality in the State Bank there is a consequential royal commission, whereas nothing seems to happen in relation to Adsteam. At least that is the view that has been put to me and obviously also to the Hon. Mr Gilfillan.

What can be done about this situation, however, depends on what any shareholders who feel that they have been badly done by wish to do. A number of things are open to shareholders. The first is obvious: to use the procedures available within the company's own structure to take up these issues with the directors. Obviously there will be a meeting of shareholders at some point in time for this or any other company at which minority shareholders may wish to complain. The issue can be taken up directly in that forum.

Secondly, if anyone is making allegations of breaches of the companies and securities legislation, complaints can be taken to the Australian Securities Commission (as the honourable member knows, that is now a Federal instrumentality), which is charged with the task of investigating allegations of company malpractice. If shareholders believe that it is justified, the option exists for those complaints to be raised with the ASC, and the ASC will investigate them.

As the honourable member is almost certainly aware, the South Australian Parliament as such does not now have jurisdiction over companies and securities legislation. That is all dealt with nationally, although, as Attorney-General and Minister of Corporate Affairs, I retain some role on the Ministerial Council, which is comprised of relevant Ministers from the States, Territories and the Federal Government, in a consultative role with respect to general issues relating to companies and securities in Australia and a deliberative role in relation to the incorporation of companies and their internal management. That scheme was established as a result of legislation which was passed late last year and which was the culmination of a number of years of inquiry into companies and securities administration in Australia.

Effectively, the law is now determined by the Federal Parliament in most significant areas and is administered by a Federal bureaucracy, the Australian Securities Commission, not by the old system of Corporate Affairs Commissions in each State and the National Companies and Securities Commission. The honourable member should bear in mind that the role of State Parliaments, and indeed of State Ministers, in this area is virtually non-existent once the basic legislation has been passed, and that has occurred, although there is a Bill before us at present to tidy up the legislation that was passed late last year. In the legislative sense, effectively it is a matter for the Federal Parliament, although in some areas State Ministers retain some responsibilities.

I wanted to clarify the issue in response to the honourable member's question. Effectively, the laws that apply in South Australia in this area are now for the most part determined at national level. However, that does not mean that if shareholders, individuals or companies have complaints about issues or want to raise questions of companies law reform with the Federal Government through the Ministerial Council, it cannot be done. It can be done. I am available to receive representations to take up those matters with the Federal Government, or, indeed, if complaints of malpractice and illegality are made, I can refer them to the Australian Securities Commission.

As part of the new companies and securities regime in Australia, a Companies and Securities Advisory Committee has been established, and that has a legal subcommittee. Those committees are responsible for preparing recommendations for change to companies and securities law. Again, if people have issues that they want to raise in relation to amendment of the law, they can be referred to those committees for consideration.

On the general question of directors' duties, the Senate Standing Committee on Legal and Constitutional Affairs some months ago produced a report on directors' duties, commonly known as the Cooney report after the Chair of the committee, Senator Cooney. That report, which is quite lengthy, deals with a number of issues relating to directors' duties. It is fair to say that the recommendations of that committee would provide greater rights to shareholders to take action against directors, and generally they go towards making directors more accountable to shareholders for their actions. That report is currently under consideration by the Federal Government, and no doubt in due course it will be discussed by the Ministerial Council when it comes before it.

I hope that that outlines the various options that are available to individuals as shareholders in particular companies, whether it be Adsteam or not. First, they can use the mechanisms available within the company structure—shareholders' meetings and the like—to take up issues and question directors. Secondly, if they feel so minded, they can report allegations of potential illegality or malpractice to the Australian Securities Commission for investigation. Thirdly, they can take up issues of law reform in this area with me or with the Federal Attorney-General or through the Companies and Securities Advisory Committee.

The Hon. I. GILFILLAN: As a supplementary question, does the Attorney-General see it as possibly his role directly to represent complaints of the nature that I have outlined with regard to Adsteam to the Australian Securities Commission if asked to do so by shareholders?

The Hon. C.J. SUMNER: As Minister responsible in this State on the Ministerial Council, I would not have responsibility for directing the investigation of any such complaints, but I would certainly see it as my role and appropriate

to refer any complaints, if they were made to me, to the Australian Securities Commission.

SPENCER GULF NAVIGATION AIDS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Marine a question concerning navigation aids in Spencer Gulf.

Leave granted.

The Hon. PETER DUNN: There have been reports that the navigation aids in Spencer Gulf—that is, the lighthouses in the northern part of the gulf—will be closed down. They have been there for many years and are badly in need of repair. They are old technology and they are in need of new technology. Those facts are not in question. However, it has been seen by this Government that they should be pulled down and not replaced. Indeed, they are a hazard at the moment, but they are also very useful. They are used by boats that enter and leave Port Pirie, be they grain or bulk carriers, tankers or prawn boats. Also, oil and gas tankers travel to Port Bonython, and coal, iron ore and other bulk carriers enter and leave Whyalla.

I admit that boats today have modern technology in the form of global positioning systems, sat nav, inertia navigation, etc., but the channel they travel in that area, near the Middle Bank Shoal, is very narrow. There is a limestone reef of some significance on the southern end of that shoal. Should technology fail on a dark night (and the Hon. Terry Roberts would know how difficult it is to navigate on a dark night, being an old seafarer), there may be a disastrous result with a tanker going onto the reef and causing an environmental disaster. My questions are:

1. Will the State Government renew the Middle Bank Shoal lighthouse (and that is the lighthouse sought to be renewed) with modern technology to make it a laser or gas lighthouse, whichever is the most suitable?

2. If not, will the Federal Government assist? Has the Minister asked the Federal Government for financial assistance?

I have just received a note from Santos saying that 50 ships per year traverse that area and that only this morning it has put together a position paper for its management regarding the loss of the lights in the area.

The Hon. BARBARA WIESE: On behalf of the Attorney-General, I will ensure that that question is directed to the appropriate Minister and a reply given.

MARINE ACT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Marine, a question on the subject of the Marine Act.

Leave granted.

The Hon. J.C. BURDETT: The Marine Act Amendment Act, No. 34 of 1987 was assented to on 23 April 1987 and was to come into effect on a date to be proclaimed. It has not yet been proclaimed. It related to international conventions, but those conventions had already been passed. It dealt with such important matters as ship construction certificates, alteration of construction of ships and cancellation of certificates, a requirement for ships to be surveyed periodically, the requirement for ship construction certificates, and so on. An amending Bill, introduced in 1989, has been passed.

My complaint is that the Bill was introduced by the Government, was passed by the Parliament, but nothing has been done about it. It has not been proclaimed; it has not be brought into effect. If it was inappropriate, one would have thought that the proper procedure would be for the Government to bring in another Bill and repeal it, but for four years there has been nothing. The Parliament has been set at nought. It is a complete contempt of the procedures of Parliament. The Bill was passed by the Parliament but nothing has been done about it for four years.

Either the Government ought to wait until it is appropriate to introduce Bills or, if it is inappropriate to proceed with them, it should leave the judgment in the hands of Parliament and come back to the Parliament and repeal the Bills. On proper occasions, there would be no objection to that. My questions are: why has the Bill not been proclaimed? When is it intended to proclaim the Bill?

The Hon. C.J. SUMNER: I will seek a report from the responsible Minister and bring back a reply.

METROPOLITAN FIRE SERVICE

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question relating to the Metropolitan Fire Service.

Leave granted.

The Hon. J.C. IRWIN: In 1988 the Government introduced a Bill to amend the South Australian Metropolitan Fire Service Act. The Bill was introduced in part to enable the Metropolitan Fire Service to expand its role in fire equipment servicing activities. In his second reading speech on 2 November 1988 the Minister said:

> It is essential that the division be able to supplement the servicing by the replacement of condemned fire protection equipment in order to provide a total service to its clients. As a consequence it is necessary to amend the Act to provide for these activities described.

That is: Caesar decides and Caesar supplies. Members may recall that this Bill was not passed. In a letter to the Chairman of the Fire Protection Industry Association on 9 July 1991, Mr Klunder wrote:

> In April 1991 the Government approved a program for Fire Equipment Services to sell fire safety equipment, which includes the sale of fire extinguishers. The commercialisation of the division is as a result of demand from clients and is consistent with Government policies.

No doubt that refers to Government department clients. Extracts from the South Australian Metropolitan Fire Service Annual Report of June 1991 state:

- Extensive publicity in the print and electronic media was undertaken exposing the public to the need to provide home fire safety packages. This resulted in an increase in inquiries as to home fire safety needs and increasing sales of smoke detectors and extinguishers.
- Maintain the division (Fire Equipment Services Division) as a commercial entity with operational costs expected to be fully recovered.
- Income exceeded expenditure by $18 000.
- Continue to improve developed marketing strategies and devote expertise to marketing the replacement and sales of quality fire equipment that has Australian Standard endorsement.
- Convert the North Adelaide Station Engine Room into a show room for the sale of fire equipment.
- Stock on hand at 30 June 1991—fire equipment servicing and alarm equipment—$151 000.

My questions are: why did the Minister feel that it was necessary for the Government to introduce legislation in 1988 to allow the Metropolitan Fire Service to sell merchandise and now, without legislation, it is allowing the MFS to sell merchandise with the approval of the Govern-

ment in direct competition with private firms? I am aware of conflicting legal opinions regarding the sale of equipment by the Metropolitan Fire Service. What has changed since 1988 which allows this commercial venture by the Metropolitan Fire Service? Are all cost factors, such as rent, rates, sales tax, etc., on the sale items similar to the private sector cost penalties?

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

SACON TENDERING POLICY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Housing and Construction, a question concerning SACON's tendering policy.

Leave granted.

The Hon. J.F. STEFANI: On 15 November 1991 the Master Builders Association of South Australia wrote to the Minister of Housing and Construction (Mr Mayes), with a copy going to the Premier, strongly protesting about the decision taken by SACON to tender for the construction of one of its own projects, the Salisbury College of TAFE.

In its letter to the Minister, the Master Builders Association expressed the outrage of its members, because it says that SACON could not presume to act as an independent project manager when, at the same time, it makes a bid for its own project.

The Master Builders Association has further expressed serious concerns about unfair advantages, the potential for compensatory bidding and costing, full disclosure of bidding, the adequate return on investment, as well as the full disclosure of profits or losses on each project. I have been informed by the Master Builders Association that, because of its concern, SACON will now have to demonstrate that it does not apply any favouritism to itself when assessing its own bids in competition with other tenderers.

The Master Builders Association further advised me that 17 tenderers bid for this project and that, in view of the crisis within the building and construction industry, the bid from SACON should not have been allowed and should be withdrawn. My questions are:

1. Did the Minister give approval for SACON to tender for its own project?

2. Will the Minister confirm whether SACON will tender on its own projects in the future?

3. Will the Government establish a system of pre-qualification for tenderers in order to avoid the enormous waste of time and money by so many contractors tendering on Government projects?

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

REPLIES TO QUESTIONS

The Hon. BARBARA WIESE: I have replies to two questions that were asked by the Hon. Mr Elliott. I would like to read these replies, because in both questions the Hon. Mr Elliott implied dishonesty on the part of officers of Tourism South Australia, and I think that the replies should have the same prominence as his questions.

TOURISM DEVELOPMENT

In reply to **Hon. M.J. ELLIOTT** (16 October).

The Hon. BARBARA WIESE: The one environmentally sensitive nature retreat on Kangaroo Island was included in the Dudley South zone of the Kangaroo Island Tourism Policy by the working party (consisting of 10 Kangaroo Islanders, five State Government officers and a consultant) supervising the process. It was included, along with several other changes to the draft, at the meeting of the working party held on 7 March 1991 where all the comments on the draft were being considered.

The request for the amendment came from the Dudley District Council, which considered that there are several sites in the Dudley South area suitable for the development of one environmentally sensitive nature retreat. No one specific site in the Dudley South zone—in particular the Black Point area—was considered. The working party accepted the amendment to the draft without dissent and the changes were incorporated in the final policy that was approved by the majority of the members by the working party prior to its publication.

TANDANYA BUSHLAND VILLAGE

In reply to **Hon. M.J. ELLIOTT** (29 October).

The Hon. BARBARA WIESE: I have received a report from my officers on the public information evening held at Kingscote on Thursday 24 October. The official record of attendance indicates that 98 persons were present. This is a relatively small proportion of the total population of Kangaroo Island, currently in the order of 4 300 people.

The meeting was chaired by Mr Bill Spurr, head of Adelaide College of TAFE's School of Tourism, and the format of the evening provided for a presentation of the issues by an officer of TSA, seeking to clarify the difference between the SDP process and any subsequent planning approval process. This officer was followed by a representative of the proponents who gave a detailed presentation of basic project elements, supported by coloured slides and a static display. His explanation was further supplemented by a representative of the firm of consultants carrying out studies on matters such as water supply, electricity supply and waste management.

A formal question and answer session for one hour was followed by a further opportunity for one hour for individuals present to approach any one of the speakers on any items of detail. I am advised that the formal question and answer session was dominated by some eight persons representing either the KI Care Group or the ECO-Action Group who tended to make statements rather than ask questions.

As the meeting was presented as an opportunity to provide information on the proposed project, there was never any intention to call for a show of hands, vote, or any other formal method of gauging the support of the people present. However, comments by the people who directly approached my officers after the meeting, and those who have expressed their opinion since the meeting, indicate that of those who took the opportunity to express an opinion the majority did in fact support the SDP and the proposed Bushland Village concept.

AFTER HOURS CARE

In reply to **Hon. R.I. LUCAS** (30 October).

The Hon. ANNE LEVY: My colleague, the Minister of Children's Services, has advised that the Government is

aware of the proposed changes to Commonwealth fee relief and operational subsidy arrangements for child-care services. These changes are to be implemented in January 1992 with the exception of the changes for Outside School Hours Care which will be implemented in April 1992.

The new arrangements will be represented in changes to the fees that parents will pay for their child-care services. The impact for individual parents will vary dependent on the fee level category that parents will qualify for and the income of the parents.

In the case of centre-based and family day-care, the new fee relief system involves two levels of subsidy for eligible parents. Depending on their income, parents who are working, seeking work, studying, disabled or have children with special needs (including children with a disability or who are at risk) will attract a higher level of subsidy. The greatest benefit will be to low and middle income earners, families with incomes up to $35 000 per annum.

In the case of parents who do not meet these criteria, the level of subsidy will be lower. It is understood that it is this category of users to whom the honourable member is referring when he uses the term 'occasional care'.

The attention of honourable members is drawn to the State-managed Occasional Care Program which will be expanded to 52 locations across the State from June 1992. Currently, 31 of these services are operational. This program specifically targets the needs of parents not in the work force. The program is funded under joint Commonwealth-State arrangements and from the State Social Justice Budget. Funding arrangements for this program have not changed and the cost to parents ranges from $1.50 to $5 for three hours of care.

In the case of Outside School Hours Care, the lower level of Commonwealth fee relief applies to eligible parents. These new funding arrangements will result in the eligibility of a much larger number of parents for fee relief, although the cost of care for those not eligible may increase.

The Minister of Children's Services has raised the honourable member's concerns with the Hon. Peter Staples, the Federal Minister for Health, Housing and Community Services.

SCHOOL SALES TAX EXEMPTION

In reply to **Hon. R.I. LUCAS** (16 October).

The Hon. ANNE LEVY: My colleague, the Minister of Education, has provided the following responses:

1. When the outcome of representations to the Commonwealth Government is known and the actual impact of this decision is ascertained options will be considered if necessary.

2. Refer to Question 1.

3. Consideration of such matters at this stage is premature.

WORKCOVER

In reply to **Hon. I. GILFILLAN** (16 August).

The Hon. C.J. SUMNER: The Minister of Labour has provided the following response:

1. The Minister is not proposing to introduce legislation before it has been to the select committee.

2. No Bill has been approved by Cabinet that could be placed before the select committee.

3. See 2. above.

4. Yes.

DRIVING INSTRUCTION AND TESTING

In reply to **Hon. DIANA LAIDLAW** (10 October).

The Hon. ANNE LEVY: My colleague the Minister of Transport has provided the following responses:

1. Yes. A greater link is being set in place between a training curriculum for novice drivers and the progressive assessment and testing of their acquisition and demonstration of driving competence as measured against defined standards.

The objective of this system is that novice drivers will be better prepared, hence reducing the failure rate and waiting times for tests.

2. A series of meetings has been held over the past 12 months with driver development officers both individually and as a group.

Meetings have also been held with driving instructor groups, including the Institute of Professional Driving Instructors, and representatives of the RAA and its driving school. A continuing process of consultation on the proposed change has also been set in place between Public Service staff and private driving instructors. A program of development of both groups is being implemented between November 1991 and March 1992.

When viewed as a whole over time, the driver training and testing industry can clearly be seen as a mixed industry, involving both public and private sector components. It is intended that this should continue and, although consideration is being given to private industry undertaking certain testing functions, a testing capacity will be retained within the public sector. In addition, the Department of Road Transport will continue to carry responsibility for the regulation of Government standards on driver testing.

3. No cost savings or employee reductions are directly or solely attributable to any redefined role for private driver testing and training in this State. The Department of Road Transport has planned for a net reduction of six full-time equivalent staff in its driver development area during 1991-92. These reductions played a significant part in the productivity increases achieved under structural efficiency initiatives. The salary savings are contributing to the cost of development of new training curriculum and testing standards, as well as the retraining of driver development officers into their redefined broader role.

STATE THEATRE COMPANY

In reply to **Hon. DIANA LAIDLAW** (31 October).

The Hon. ANNE LEVY: I regret that time does not permit me to read the reply in relation to the State Theatre Company as it contains extremely important information and more than adequately responds to many of the unsubstantiated allegations that were made by the honourable member in asking her question. However, I seek leave to have the answer incorporated in *Hansard* without my reading it and trust that members will give it the due attention that I believe it deserves.

Leave granted.

The State Government grant of $1.64 million to the State Theatre Company for 1992 is a 6.5 per cent increase on the $1.54 million grant for 1991. This is a significant increase for any performing arts organisation in the current economic climate.

The company received a grant of $390 000 from the Performing Arts Board of the Australia Council for 1991. It will receive $397 275 for 1992. This constitutes a 1.87 per cent increase. Whilst not being what the company had

hoped for, it is a slight increase and is comparatively better than some of our other State arts organisations. For example, the Australian String Quartet has received a cut in Australia Council funding, from $31 000 in 1991 to $24 000 for 1992, and the Adelaide Chamber Orchestra has also received a significant cut, from $40 000 in 1991 to $30 000 for 1992. The Australian Dance Theatre has done marginally better, with an increase of 2.5 per cent, from $357 000 in 1991 to $366 640 for 1992.

In brief, then, it is clear that neither the State nor Federal funding bodies have cut funds to the State Theatre Company, and in fact in the most recent State budget the company has faired considerably better than other performing arts organisations that generally received a 3 per cent increase.

Most of the State Theatre Company's income comes not from State or Federal grants but from sponsorship and box office. It is these latter factors that play a greater significance on program planning than the current levels of Government support.

The current subscription rate is 4 225 (for 1991). This is a small increase on the 1990 figure of 4 100. The company anticipates that the rate will probably remain static for 1992, given that it is a Festival of Arts year and all organisations with subscribers experience difficulties in increasing numbers in such years. However, with their marketing strategies in place, they are working towards increasing their subscriber base significantly in 1993.

The company has planned a somewhat more careful program for 1992 with buy-ins and one less production than originally planned. This demonstrates responsible management by the State Theatre Company Board.

JUSTICES ROLL

In reply to **Hon. R.I. LUCAS** (23 October).

The Hon. C.J. SUMNER: The replies are as follows:

1. The advice initially provided to Mr Thomas was incorrect but was corrected once additional information was provided to the Department. The correct advice is that Robert Maczkowiack was appointed as a Justice of the Peace in 1976 and was removed from the Roll of Justices in 1983 having, in the meantime, changed his name by deed-poll to Robert Bob-Mack.

The error, although much regretted, does not change the essential fact that Robert Bob-Mack is not currently a Justice of the Peace and it is therefore inappropriate for him to claim to hold that office.

2. This part was answered on 23 October 1991.

3. A number of calls asking whether Robert Maczkowiack (A.K.A. Bob Mack and Robert Bob-Mack) had been made to my office on 14 and 15 October from a variety of persons. All calls and requests for information, including those directed to Mr Duigan, were referred to the officers whose task it is to respond to these inquiries.

4. Generally speaking my office receives 20-30 JP inquiries per day. Most of these inquiries are seeking information about the location and availability of Justices of the Peace and are answered immediately.

Approximately 5 per cent of JP inquiries are seeking information as to whether a particular person is a JP. Similarly, these are answered immediately in the case of telephone inquiries, or as soon as possible in the case of written inquiries. I expect this situation to continue.

ROAD FUNDING

In reply to **Hon. PETER DUNN** (30 October).

The Hon. ANNE LEVY: My colleague the Minister of Transport has advised that the Department of Road Transport has shown a strong commitment to maintaining a high standard road network on the Eyre Peninsula.

Expenditure in excess of $20 million on the recently completed Lincoln Highway improvements and $12 million on the current upgrading works on the Tod Highway has addressed the major deficiencies in what is now a sealed arterial network of equal or higher standard than other areas in the State.

The Peninsula's unsealed arterial roads are continuing to receive funding in line with the Department's overall strategy for improvements to unsealed arterial roads throughout the State. While limited funding for roadworks will prevent any sealing within the foreseeable future, the ongoing resheeting and alignment improvements will continue to increase the safety and level of amenity of these roads.

My colleague, the Minister of Health will shortly reply direct to the honourable member concerning the funding of health services on Eyre Peninsula.

PERSONAL EXPLANATION: STATE THEATRE COMPANY

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

Leave granted.

The Hon. DIANA LAIDLAW: Twice during Question Time in relation to the State Theatre Company the Minister has levelled cheap remarks in respect to a question that I asked on 31 October. Initially she suggested that I had insinuated various things and later she said that I made allegations. I point out that the question I asked on that date was based on quotes from the annual report of the State Theatre Company, citing both the General Manager, Mr Robert Love, and the Artistic Director, Mr Simon Phillips.

CRIMINAL LAW CONSOLIDATION (RAPE) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935. Read a first time.

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

That this Bill be now read a second time.

The purpose of this Bill is to widen the scope of the sexual assault offences contained in the Criminal Law Consolidation Act in two specific ways. First, it is proposed to abolish the presumption that marriage necessarily involves consent to sexual intercourse and thus a man cannot be found guilty of rape (or indecent assault) of his wife. Secondly, it is proposed to reverse, in part, the common law rule that consent procured by fraud to a sexual act is nevertheless still considered to be consent for the purposes of a sexual offence.

Marital Immunity: Until very recently, it was widely held and believed that, at common law, a man could not be convicted of the rape of his wife. It may or may not have been the case that the immunity extended also to other sexual assaults.

In response to a special reference given to it in 1976, the Mitchell committee recommended a partial abolition of the marital rape immunity. The effect of the recommendation was that a husband could be convicted of the rape of his wife if the husband and wife were living apart and not under the same roof. This was the first time that reform of this rule of criminal law was seriously contemplated in Australia. It was very controversial. The committee said:

> . . . it is only in exceptional circumstances that the criminal law should invade the bedroom. To allow a prosecution for rape by a husband upon his wife with whom he is cohabiting might put a dangerous weapon into the hands of the vindictive wife and an additional strain upon the matrimonial relationship. The wife who is subjected to force in the husband's pursuit of sexual intercourse needs, in the first instance, the protection of the family law to enable her to leave her husband and live in peace apart from him, and not the protection of the criminal law.

The Criminal Law Consolidation Act Amendment Act, No 83 of 1976, did not enact that recommendation—but neither did it fully abolish the marital immunity, The legislation was accompanied by passionate debate in both Parliament and the wider community. As this was a reform new to Australian law, much of the opposition to it was based on fears that abolition would lead to a rash of unjustified prosecutions and convictions. The resulting amendment was a compromise. While Parliament enacted, in section 73, a provision abolishing the presumption that a wife consents to sexual intercourse by reason of marriage, the section went on to say that one spouse could only be convicted of the rape of another spouse where the offence was associated with—

(a) assault occasioning actual bodily harm, or threat of such an assault;
(b) an act of gross indecency, or threat of such an act;
(c) an act calculated seriously and substantially to humiliate the spouse or threat of such an act; or
(d) threat of the commission of a criminal act against any person.

If none of these factors of aggravation were present, the marital immunity remained. This remains the position in South Australia.

While South Australia was the first Australian jurisdiction to make inroads on the doctrine of marital immunity, its first efforts have now been overtaken by events. The doctrine has been soundly condemned in almost every common law jurisdiction, if not in every one.

As a result, the marital rape immunity has been abolished by every other jurisdiction in Australia, either expressly or by implication. In England, a Working Paper by the Law Commission has recommended abolition but, unwilling to await events, English and Scottish courts have already taken the position that the common law in each of those jurisdictions no longer contains the immunity in any form. Indeed, it was reported recently that the English House of Lords has so decided. It is therefore ironic that the common law now seems to take a more enlightened view than the South Australian statutory reform.

The South Australian law should now be amended to abolish the doctrine of marital immunity entirely. The arguments for retaining the doctrine in whole or in part are not compelling and have not proven to be true in practice. The immunity doctrine has been widely condemned and now attracts very little, if any, support. There is simply no justification for saying that a person is not protected by the criminal law from forced sexual intercourse (or other sexual assault) merely because he or she is married to the perpetrator. The Bill seeks to achieve that end by simply repealing section 73 (5) of the Criminal Law Consolidation Act, leaving in place section 73 (3) and section 73 (4) which abolish the common law presumption.

I now turn to consent procured by fraud: the common law position as stated by the High Court in 1957 is that fraud will only negative consent to sexual intercourse where the fraud is in respect of:

(a) the identity of the other partner or partners; or
(b) the character of the sexual act.

In *Mobilio*, decided by the Victorian Court of Criminal Appeal in 1990, it was decided that, if a woman was induced to allow the penetration of her sexual organs by the false representation that such a penetration was a necessary medical or health procedure, the consent to the act was effective to negative rape, even where the representation was entirely false and the act was committed solely for the sexual gratification of the perpetrator. It is very likely that this decision also represents the law in South Australia. There are dangers in providing generally that fraud or false representations negative consent for rape. An example of this would be the conversion of a breach of promise to marry into rape where the false promise of marriage is used as an inducement to the woman to engage in sexual intercourse.

Nevertheless, the specific decision in *Mobilio* is arguably wrong on two grounds. The first argument is based on policy. The decision in *Mobilio* fails to recognise that penetration for *bona fide* medical purposes and penetration for the purpose of sexual gratification are quite different things, even if the act involved is the same. The second argument is based on consistency. In 1983, the High Court ruled that, for the purposes of trespass to property and theft, if a person acts beyond the scope of a consent given to enter land or deal with property, that person has no consent to the extent that he or she acts beyond the authority given. Why should the position be different with respect to an agreement to an act which, if committed without legal consent, would constitute a rape or an indecent assault? The argument in favour of the *Mobilio* decision is that the act does not constitute rape because the victim has consented to everything that was actually done even though the victim was not aware of the motives of the accused for doing the act and, in any event, the accused may well be found guilty of an offence against section 64 of the Criminal Law Consolidation Act. This section makes it an offence to procure sexual intercourse by false pretences, false representations or other fraudulent means.

The question really comes down to whether the situation posed in *Mobilio* should be classified as rape or as some other lesser—albeit quite serious—sexual offence. The argument against classing it as rape is that this devalues the concept of forced sexual intercourse as being central to rape. The argument for classing it as rape is as follows: the point of the law of rape is to protect defenceless or helpless people from physical abuse. Women, in particular, are to be classed as 'defenceless' in situations in which they are persuaded by false expert medical or quasi-medical advice to consent to certain procedures. The argument is finely balanced, but Victoria has specifically reversed the decision in *Mobilio* in the Crimes (Sexual Offences) Act 1991 and the Attorney-General of New South Wales has announced his intention to follow suit. The definition of rape should not be inconsistent between the States on such an issue. For that reason, criminal law officers of all jurisdictions have agreed that uniform legislation on this point is desirable.

The Bill, therefore, seeks to reverse the common law in relation to the specific situation in *Mobilio*. The policy behind the Bill is that, in this particular situation, women are placed in a situation of powerlessness or helplessness. They should be protected from those who take advantage of this sort of situation. The Bill provides that a person who agrees to an act on the basis that the act is necessary

for medical or hygienic purposes does not consent to that act for any other purpose. The Bill seeks to distinguish clearly between an agreement to an act for medical or hygienic purposes on the one hand and consent to sexual behaviour on the other. On the amendment becoming law, the accused in *Mobilio* would be found guilty of rape if the jury was satisfied beyond reasonable doubt that he had obtained the agreement of the patient for an ultrasound procedure with the purpose of committing the act for his own sexual gratification and that he did so knowing, or being recklessly indifferent to the fact, that the patient did not consent to the act for the purpose of his sexual gratification. This is submitted to be an appropriate result.

I commend the Bill to the Council, and seek leave to insert the clause notes of the Bill into *Hansard* without reading them.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 amends section 73 of the principal Act by striking out subsection (5) and substituting a new subsection that provides that for the purposes of the provisions of this Act dealing with sexual offences, agreement to an act on the basis that it is necessary for the purpose of medical diagnosis, investigation or treatment, or for the purpose of hygiene, is not consent to that act for another purpose.

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

WRONGS (PARENTS' LIABILITY) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

As this matter has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to implement a recommendation made by the Children's Protection and Young Offenders Act Working Party in its interim report in October 1988. An earlier Bill, the Wrongs Act Amendment Bill (No. 2) 1990 was put to the Parliament in October 1989 when it lapsed because of the prorogation of Parliament and again in February 1990 when it was defeated. The Bill was then referred to a select committee for its consideration. This Bill has been amended in accordance with the recommendations of the committee.

The Working Party on the Children's Protection and Young Offenders Act recommended that consideration should be given to imposing some measure of responsibility on the parents and guardians of young offenders. Parents who can be shown to have taken little or no responsibility for their children should not be able to escape complete responsibility for the actions of their children. It is the Government's perception that this is a matter of community concern which needs to be fully examined by the Parliament. Traditionally, a parent has not been held responsible for the acts of his or her child, although parents may be held personally, rather than vicariously liable for torts committed by their children. Liability may arise because the parents authorised the actions of their child or because they have not reasonably controlled their child. The usual case in which parents are held personally responsible for torts committed by their children is where a child injures somebody while playing with a dangerous article such as a shanghai, gun, dart or such like.

The law in South Australia, and the rest of Australia, is in contrast to that under some civil codes of continental Europe. For example, Article 1384 of the French Code Civil provides:

> The father, and the mother after the father's death, are responsible for the damage caused by their minor children residing with them. The aforesaid responsibility is imposed unless the father and mother can prove that they could not prevent the act which gives rise to that responsibility.

The working party did not recommend the adoption of the continental approach. Rather the committee recommended that where a court is satisfied that the acts or omissions of the parents or guardians of a child under 15 have materially contributed to the criminal conduct of the child, the court should be empowered to order the parents or guardians to pay so much of the damage incurred by the child as is fairly attributable to the acts or omissions. It was recommended that the institution of such an action against the parents or guardians should be in the civil courts. The age of 15 was chosen to coincide with the age at which children are under no compulsion by law to attend school. The earlier Bill was a refinement of that proposed by the working party which, on further examination, proved difficult to implement.

The new section 27d makes a parent joint and severally liable with the child for injury, loss or damage resulting from a tort where the child is also guilty of an offence arising out of the same circumstances, if the parent was not, at the time of the commission of the tort exercising an appropriate level of supervision and control over the child's activities. It is a defence to a claim against a parent to prove that the parent generally exercised an appropriate level of supervision and control over the child's activities. Thus, those parents who are responsible will not be liable for the injury, loss or damage caused by their children. The Bill, as above outlined, was considered by a select committee, established on 11 December 1990. The committee was asked to consider the following matters:

(a) the Wrongs Act Amendment Bill (No.2)

(b) measures whereby parents and guardians can be held responsible for any injury, loss and damage caused by children for whom they are responsible and in particular:

(i) under what conditions parents and guardians should be held responsible; and

(ii) what form such responsibility should take.

The committee concluded that the principle of the Wrongs Act Amendment Bill (No. 2) 1990 was a necessary legislative change to ensure that victims of vandalism and the community generally were adequately compensated for damage suffered. However, the committee recommended that the Wrongs Act Amendment Bill (No. 2) 1990 be modified. The recommendations of the committee are as follows:

1. that parents be made jointly and severally liable with their child for the injury, loss and damage resulting from the criminal acts of their children, aged 10-15 years if, at the time of such acts, the parents were not exercising an appropriate level of supervision and control over the activities of the child;

2. that the Wrongs Act Amendment Bill (No. 2) be modified;

3. that consideration should be given to the institution of a screening process, either before a judge or magistrate, to assess whether leave should be granted to proceed with

a civil action for damages. It is considered that leave should not be granted in certain circumstances, that is, if it can be shown that adequate compensation has been made to the victim or will be made as a consequence of orders against the child;

4. that if leave is granted, and an award of damages is made against parents, consideration be given to increasing the court's powers to fix payment of the award by instalments with further powers to vary the amount of the instalments upon application of the party ordered to pay the instalments;

5. that it be mandatory that parents attend at Children's Aid Panel sittings and at court hearings in which their children are involved. It is recommended that penalties attach to non-attendance without proper cause;

6. that the current powers available to members of Children's Aid Panels be better utilised so that offenders appearing before the panels be dealt with in a manner which is relevant to the seriousness or nature of the offence;

7. that the Family Group Conference, at present operating in New Zealand, be implemented in the South Australian context as an alternative way in which the victim and the offender can resolve the matter of compensation without seeking redress through the legal system. It is considered that this form of victim/offender conference may take more account of cultural differences, for example, the Aboriginal notion of the extended family sits more easily here. This could be incorporated in the process for granting leave referred to in recommendation No. 3 above;

8. that the current sentencing option under section 51 (i) *(ab)* of the Children's Protection and Young Offenders Act, be used by the courts to ensure that perpetrators of 'graffiti art' and vandalism be required to compensate for the damage done. This should lead to offenders being required to assist in the cleaning up of the damage caused to property;

9. that it is inappropriate that the Director-General for Community Welfare or the Minister for Family and Community Services be subject to the provisions of the Bill when a child is placed under their control or guardianship pursuant to the Children's Protection and Young Offender's Act or the Community Welfare Act.

The Bill has been amended in accordance with recommendations 3 and 4 of the committee. The purpose of a screening process, as recommended by the committee, is to assess whether leave should be granted to pursue an action against a parent or parents. Recommendation 4 enables the court to fix payment by instalments which might enable a victim to receive compensation who may not have if the parent or parents could not afford a lump sum figure. Recommendations 5 to 7 will be considered as part of a proposed review of the Children's Court practices and procedures. Recommendations 8 and 9 do not require any amendment to the earlier Bill. This Bill incorporates recommendations 3 and 4 of the select committee.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement of the Act by proclamation.

Clause 3 inserts a new section that makes a parent of a child who, while under 15 years of age, commits a tort, jointly and severally liable with the child for injury, loss or damage resulting from the tort, but only if two factors exist, namely, that the child is also guilty of an offence arising out of the same incident and the parent was not, at the time of the commission of the tort, exercising an appropriate level of supervision and control over the child's activities. Subclause (2) provides that the child must have been convicted or found guilty of the offence, or the court before which proceedings under this section are taken must be satisfied beyond reasonable doubt of the child's guilt. Subclause (3) gives a defence to a parent who can establish that he or she generally did provide, as far as reasonably practicable, an appropriate level of supervision and control over the child's activities. Subclause (4) provides that a parent cannot be sued except with the leave of the court in which the action is to be taken. Subclause (5) provides for payment of an order for damages against a parent by instalments. An order for payment by instalments can be varied on the application of the judgment debtor. If default is made in payment of an instalment, the whole amount outstanding becomes due and payable. Subclause (6) limits the liability to the natural or adoptive parents of the child. Subclause (7) provides that this liability will only arise in relation to torts committed after the commencement of this amending Act.

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

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

STATE EMERGENCY SERVICE (IMMUNITY FOR MEMBERS) AMENDMENT BILL

(Second reading debate adjourned on 14 November. Page 1925.)

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Repeal of s. 18.'

The Hon. J.C. IRWIN: I alluded to some matters contained in clause 7 in my second reading contribution. Many of the questions about this clause have already been answered. The operation of section 18 of the principal Act was suspended when the Act was proclaimed due to the proclamation of the Workers Compensation and Rehabilitation Act. As I understand it, State Emergency Service workers presently receive full WorkCover benefits by arrangement with the Government, and this appears to be working well. I also understand that the Government is considering formalising this arrangement by making a regulation under section 103a of the Workers Compensation and Rehabilitation Act declaring SES volunteers to be a prescribed class of volunteer performing work of a prescribed type. That will be of benefit to the State, and their presumptive employer is the Crown. I understand that this is also the arrangement with the CFS. Given that there is no doubt that SES volunteers and the professionals involved are adequately covered by WorkCover, is it intended eventually to amend the Workers Compensation and Rehabilitation Act, particularly section 103a?

The Hon. C.J. SUMNER: No formal decision has been made by Government on this topic yet, but I understand that it will be placed before Government for decision in the reasonably near future, and no doubt the honourable member can then be advised of that decision. The situation relating to workers compensation at the present time for SES volunteers is as the honourable member has outlined: there is no legal liability, but there is a documented arrangement between the SES and the Government which covers the question of workers compensation. The proposal to formalise that with a section 103a regulation will be considered by Government some time in the future.

Clause passed.

Title passed.
Bill read a third time and passed.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 19 November. Page 2029.)

The Hon. L.H. DAVIS: The Opposition supports this Bill, although I note that since the second reading explanation was given the Attorney-General has placed an amendment on file. In this Bill, the Government seeks to improve on some areas of the existing superannuation legislation for public servants which have either unfair outcomes for beneficiaries or where some technical modifications are necessary. One area that is defective in the existing legislation is that, where a contributor of the Government's superannuation scheme dies with no surviving spouse or children, there is no benefit to the estate of that person. In other words, as it now stands, the Act does not allow the accrued benefits of the deceased person to be directed to the estate of that person. Obviously, that is unfair, and the legislation seeks to remedy that defect.

Again, apparently a contributor could die without a surviving spouse but with surviving children. Amongst surviving children it is possible, under the existing legislation, for there to be a variation in the benefits that can be obtained from superannuation. An instance was given in the second reading explanation of, say, a deceased contributor who has three children two of whom are of the age of 16 years or under, and those children could receive a pension. However, if one of the children was, say, a year older—perhaps 17—they would be denied any benefit from the superannuation. Quite clearly, that is discriminatory, and the legislation seeks to remedy that, and I accept that proposition quite willingly.

Taken together, those modifications account for a cost to the Government of only some $50 000 per annum. The Government may well have some information available to it about the number of cases that exist where those circumstances which I have outlined operate. I am quite happy for the Government to take on notice my query regarding the number of instances which are being picked up by the amendments to the legislation which we are debating.

The Bill also contains some modifications to the Act which clarify a situation where a member who, at the time of his or her death, was not contributing to the scheme. It provides that future entitlements will be based on benefits accruing to the date of the cessation of service. It also clarifies that only members actively contributing to the scheme will have benefits based on the respective service to the age of retirement.

There are also in this legislation provisions to prevent workers from ceasing entitlement to workers compensation by converting their weekly payments to a lump sum and using the superannuation scheme to replace the loss of their income stream.

Superannuation is an increasingly complex area. As honourable members know, the public sector superannuation scheme in South Australia was significantly modified a few years ago as a result of Opposition pressure and mounting public criticism about the spiralling liability of what was described as one of the most generous public sector superannuation schemes in the world. A new scheme has now been set up alongside the old scheme, which has been closed off. This new scheme is much more in line with private sector superannuation funds. It has greater flexibility and a greater attraction for younger members of the Public Service to join. I am pleased to note that the level of membership of the new superannuation scheme has been encouraging, with quite a strong demand for membership. I think that reflects the increased flexibility and benefits flowing from this new superannuation scheme.

It should be noted that the Commonwealth Government has introduced legislation to tax superannuation and that State superannuation schemes may be trapped by this legislation. There has been legal debate about this matter. As an aside, although I understand it is not directly related to the legislation before us, it may be appropriate for the Attorney-General, in Committee perhaps, to respond to the position of the Commonwealth tax on State superannuation.

Finally, I note the amendment which is on file. The amendment to clause 2 will mean that section 15 of the Act will be taken to have come into operation on 1 July 1988. Section 15 relates to an amendment to schedule 1a of the principal Act. I have noted that schedule 1a of the principal Act was brought in only in 1990. I take it that this amendment we have on file relates to that fact. Obviously the Attorney-General will have an opportunity to respond to that point.

The Hon. C.J. SUMNER (Attorney-General): Two questions were asked by the Hon. Mr Davis. My advice is that only one or two cases every five years occur where benefits are payable to a person dying without leaving a spouse and eligible children. Secondly, the matter of State legislation designed to protect the exempt status of the South Australian Superannuation Fund has been heard by the High Court and a decision is awaited.

Bill read a second time.
In Committee.
Clause 1 passed.
Clause 2—'Commencement.'
The Hon. C.J. SUMNER: I move:

Page 1, line 14—Leave out '1 July 1988' and insert '17 January 1991'.

This amendment has been recommended by Parliamentary Counsel because it is acknowledged that there is a legal difficulty in the way that the clause is currently framed. The problem is that the clause cannot deem an amendment that came into operation on 17 January 1991 to have commenced on an earlier date, namely, 1 July 1988. The amendment will settle an issue raised by Mr Stephen Baker in another place.

Amendment carried; clause as amended passed.
Clause 3—'Amendment of s. 28—Resignation and preservation.'

The Hon. M.J. ELLIOTT: I want a chance to ask a question and I suppose this is as good a place as any. People have contacted me who were concerned whether a proper distinction had been drawn between the provisions for contributors who were active and non-active immediately prior to their death. This distinction, at least in these people's minds, was not clarified by definition within the proposed amendments. They expressed concern that the lack of definition could discriminate against people who are temporarily non-contributors because they are temporarily out of the work force but intend to return. For example, they may be on unpaid parenting leave. I am concerned that the families of people in this situation could be disadvantaged under the proposed provisions should something happen to the contributor while he or she is temporarily classed as non-active. Will the Minister clarify how the legislation deals with people who are temporarily non-active contrib-

utors but who clearly intend to be active again?

The Hon. C.J. SUMNER: My advice is that section 23 (6) of the Act already deals with the situation postulated by the honourable member.

The Hon. M.J. ELLIOTT: I should like more detail, because I shall be following that with a further question.

The Hon. C.J. SUMNER: I am advised that, if a person takes leave without pay, he or she can elect to continue to pay superannuation contributions, and as such would continue therefore to be considered an active contributor. Accordingly, that person is covered by insurance.

The Hon. M.J. ELLIOTT: As I understand the option to elect to remain a contributor, it is possible for a person to elect but not actually to contribute. What is the point of the exercise? We may have people who do not elect to contribute and end up returning. There is no essential difference, other than one person signing a form saying they elect to be a contributor, even though they make no further contribution. I am not quite sure of the point of the exercise, and whether it does offer the full protection that we might hope it would.

The Hon. C.J. SUMNER: Electing to contribute enables a person to continue to have the insurance cover for death or disability during that period. If they do not elect to contribute, then they do not have that cover for the period that they are out of the work force. If they return to the work force and restart their contributions, then the cover picks up again.

I think that is clear. I am just advised that it was substantially correct, but I am not sure that I explained it fully, so I will try again. If a person does not elect to continue to contribute when they go off on unpaid parenting leave or for some other reason—leave without pay, for instance—they will only get the insurance cover for death or invalidity based on the service up to that point. If they do elect to continue to contribute, they will get the insurance cover for the death or disability based on the whole of the working life until age 60. If a person takes leave without pay and elects not to contribute, but restarts contributing at some subsequent point when they return to work, the insurance cover will pick up based on the future working life of that person. However, for the period when there was no contribution, there would be a consequent reduction in the amount of the benefit available.

Clause passed.

Remaining clauses (4 to 15) and title passed.

Bill read a third time and passed.

ABORIGINAL LANDS TRUST (PARLIAMENTARY COMMITTEE AND BUSINESS ADVISORY PANEL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2028.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. It was the Tonkin Liberal Government which was the trail-blazer in granting land rights in the Pitjantjatjara Land Rights Act in 1981.

The Hon. C.J. Sumner: And the Dunstan Government having to do it.

The Hon. J.C. BURDETT: It was the Tonkin Liberal Government that introduced it. It was passed, and in 1984 the Bannon Government introduced the Maralinga Tjarutja Land Rights Act, and that was passed by the Parliament also. It was the latter Act which first provided for a parliamentary monitoring committee of the House of Assembly. I mention that it was the House of Assembly, instead of the Parliament as a whole, but that is what was provided then. The Pitjantjatjara people requested that that apply to their Act also, and that was implemented by a Government Bill which was also passed by the Parliament. So, we have in both the Pitjantjatjara Land Rights Act and the Maralinga Tjarutja Act a parliamentary committee to monitor the implementation of the Act, and that appears to have worked very well.

The first thing this Bill does is provide for a similar committee in regard to the Aboriginal Lands Trust. I certainly support that, as it is an entirely sensible proposal. The second thing which this short Bill does is to provide for the establishment of a seven member Business Advisory Panel for the people in the lands administered by the trust. It has been explained that the main intention of this initiative is that, rather than the panel attending many meetings, resource people will be provided to the Aboriginal people in the lands administered by the trust. It has been the case in the past that some projects embarked upon by Aboriginal people have failed because of a lack of proper business, financial and administrative advice.

The suggestion in the Bill to make resource people available to the Aboriginal people in the lands administered by the trust is an eminently sensible one. I take the point raised in the second reading explanation that, rather than attending many meetings, the intention is that these people, who will be voluntary—not paid—could be contacted by telephone or otherwise available to the Aboriginal people for advice.

The Bill was improved in the other place by Opposition amendments, which were accepted by the Government, and which provided for some parliamentary as well as ministerial input in the appointment of the personnel of the Aboriginal Lands Business Advisory Panel. As I say, this was accepted by the Government, no doubt in a spirit of cooperation, and I think it has strengthened the Bill.

It seems to me that the Bill is entirely positive. It carries forward what has already worked in regard to the other two Acts and the provision of the Business Advisory Panel is eminently sensible.

The Hon. PETER DUNN: I support the Bill. I think that this sort of legislation has been necessary for a long time. I have travelled into those lands on quite a number of occasions. One of the things I have always been critical of is the administration and the lack of anything productive coming from the area. In the past, it was proven that the area was successful in the production of beef cattle. This Bill quite rightly sets up a Business Advisory Panel which, I believe, will comprise some good businessmen. Like the Hon. Mr Burdett, I believe that, if the panel meets infrequently, qualified people will be attracted to it, because today people do not have time to meet on a fortnightly basis in order to assist others.

If it meets infrequently and good decisions are made, there is no reason why there cannot be excellent operations in the Pitjantjatjara lands and the Maralinga lands in which the Aborigines can become more involved, and that is what we are on about. I believe that this Bill will set up small business developments for those people so that, with the assistance of people outside, they can have an operation which will be economically productive. It will also provide a form of occupational therapy for many of those people. I have said in this Council on a number of occasions that there seems very little for them to do on the lands.

I recall distinctly on my very first trip landing at Pipalyatjara—Mount Davies—in the corner of the State, and

being greeted by Phillip Toyne, who had problems with his aeroplane. I was sitting on the top of his plane, assisting him to fix the fuel leak, when I said, 'This is marvellous country. I would have thought there would be some beef cattle here.' In his wisdom, he said, 'No, this is far too fragile; you could not run beef cattle in this country.' That defies history, because history shows that there were beef cattle in the area. Aboriginal people are very skilled in managing cattle and I think that, if they are given the right advice and assistance through this Business Advisory Panel, that will be a big help and a step in the right direction.

The Pitjantjatjara and the Maralinga Tjarutja lands, have been plagued with non-activity since the day both those areas were proclaimed. There has been little production in those lands and I think this is a step in the right direction.

The second part of the Bill sets up a Parliamentary Lands Trust Committee to oversee the Pitjantjatjara and the Maralinga Tjarutja Land Rights Acts and to report back to the Parliament. I think that, because the lands are remote from this Parliament, that is right and proper. If I had one criticism to make, it would be that I believe that that committee should include one or two members of this Council, because all those Bills ultimately come back to this place and, in many cases, they are refined and amended for the better, or for the worse. However, they come to this Council and we should not be excluded from having some hands-on experience in those areas. They are difficult areas to understand and I certainly do not understand them fully even though I go there perhaps twice a year. I believe that there ought to be some representation from this Chamber. I am not particularly fussed whether that honourable member is from the Government or the Opposition, but there ought to be some representation on that committee to go into the area and get that first-hand information.

Bearing that in mind, the Minister may decide to look at that suggestion. It is too late now to amend the Bill, but the Minister may see fit to take a representative from this place and let him or her look at how the lands are being administered so that, when the Council debates any legislation that is required to assist those people, there is first-hand information. I support the Bill, because I think it is a good step in the right direction and it should have been passed seven or eight years ago.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank members for their support and trust that this Bill will achieve the high aims hoped for by everyone. I point out to the Hon. Mr Dunn that the parliamentary committee to be set up under this legislation does not replace the existing parliamentary Maralinga and Pitjantjatjara committees. It will be a third parliamentary committee on Aboriginal lands. It will have the roles that the others have with respect to the Maralinga and Pitjantjatjara lands, but in this case it will oversee the lands which are under the control of the Aboriginal Lands Trust. It is certainly expected that the membership of this committee will be identical to the membership of the other two committees which, although statutorily different, nevertheless have the same membership.

Bill read a second time and taken through its remaining stages.

THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA (JOINT AWARDS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2028.)

The Hon. J.F. STEFANI: The Opposition supports this Bill, which seeks, among other things, to make a number of minor amendments to the Flinders University of South Australia Act 1966 in order to recognise the offering of awards other than degrees by the university. The measure also provides for the mechanism to offer joint awards through a joint faculty system whereby students who enrol in engineering courses at Flinders University are able to complete their studies at The Levels Campus of the new University of South Australia. The proposal will allow for the development of full cooperation between these two institutions, providing greater educational opportunities at tertiary level for people residing in the southern suburbs. The current Act does not permit conferral of awards jointly with other institutions. This Bill facilitates that process. The Liberal Party supports the Bill.

The Hon. J.C. BURDETT: I, too, support the Bill. I will speak to it very briefly because I am a member of the Flinders University Council representing the Legislative Council, as is the Hon. Carolyn Pickles. This Bill was introduced by the Government at the request of the Flinders University Council. The council received legal advice that it did not currently have the power to make joint awards under the Act and the Bill seeks to rectify that. It is obviously sensible, particularly now that we have three universities in South Australia, and it appears to me that the Bill is not confined to South Australian universities, anyway, but applies to universities in other places as well. The Bill in no way restricts the Flinders University because it does not have to join in making joint awards, degrees or diplomas if it does not wish to. This is simply enabling legislation as far as the university is concerned; it gives it a power that it did not have before to be a party with another university or other universities in making joint awards. It can do nothing but good and I support the Bill.

Bill read a second time and taken through its remaining stages.

PRIVACY BILL

Adjourned debate on second reading.

(Continued from 19 November. Page 2016.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak relatively briefly to this Bill. I do so because my colleagues, and particularly the Hon. Trevor Griffin, have already provided excellent contributions, including analyses of the potential ramifications of this legislation if it were to pass in the form in which it has been introduced in the Council. I wish to place on public record my congratulations, in particular, to the Hon. Trevor Griffin, for the superb effort that he has demonstrated, not only in this Chamber by way of analysis of the Bill, but also in his effective public advocacy of the problems with the legislation if it is passed in its original form, or even with the suggested amendments of the Government.

I believe that without the efforts of the Hon. Trevor Griffin and his detailed analysis we probably would not have seen the mobilisation or the groundswell of opinion from not only the media but also the community and interest groups that have expressed concern about the ramifications of the legislation. I know that the Hon. Trevor Griffin and his staff—the one member of staff he has—have spent many hours circulating copies of the Bill, press releases, analysis and comment to many dozens and, perhaps, hundreds, of individuals and interest groups, indicat-

ing that they ought to be taking serious notice of and be giving serious attention to the detail of this legislation. As I have said, as a result of that effort, various groups have considered the legislation and have publicly voiced their concerns as to what might occur if this Bill were to pass.

I think it is fair to say that the media, generally, and individual members of it were a little lax (if I might use that term) when this Bill was first introduced and the select committee was established in another place to consider the ramifications of the legislation. In fact, some of the spokespersons for media interests or interested journalists have been frank enough to admit that they did not give sufficient attention to the legislation or the proceedings of the select committee to highlight to that committee and its members their concerns, as a profession, about the ramifications of the legislation. That is a good lesson for members in this Chamber and, more particularly, for members of the media to be ever vigilant, not only in relation to legislation that affects their interests, at least in part, but also the interests of the community.

I think many pieces of legislation that go through this Parliament are not provided with sufficient attention by sections of the media. We see Bills go through the Parliament without sufficient public debate and discussion and that, in the end, is to the cost and detriment of various sections of the community, even perhaps to the community generally. Of course, in this case the journalists and the media saw their own particular interests, as well as those of the community, being affected and, when my colleague the Hon. Mr Griffin and others started to highlight the problems in the legislation, they demonstrated interest and became outspoken critics of it and the problems they foresaw should it ever be passed into law.

Again, I would like to put on the public record something that I have said to a number of people in the debate and discussion we have had in relation to this Bill. In my view, it highlights the importance of the Legislative Council and of the work of its individual members. There are some—not many—in the community and even in sections of the media who, on occasions, sling off at the Legislative Council, who cast aspersions on the work, operation and effectiveness of the Legislative Council. I think it is only when we see the public debate and discussion that has ensued as a result of the debate on the Privacy Bill that these people realise—or should realise—the absolute importance of a second Chamber, the Legislative Council, in the efficient operation of the Parliament, and the absolute and essential importance of the Legislative Council as an element of a strong democracy in South Australia. The bottom line is that, without the Legislative Council and the work of colleagues such as the Hon. Mr Griffin, this Bill would have been rammed through the House of Assembly with the support of Mr Evans. It would have passed into law, with all its defects and problems which, even now, a range of interest groups continue to highlight and which members of all persuasions in this Chamber have also highlighted.

Nevertheless, this defective legislation would have passed into law were it not for the operations and existence of the Legislative Council, and I think that is an important message of which editors, managers, senior sections of the media and working journalists ought to take strong notice: were it not for the Legislative Council they would have had inflicted upon them the operations of the Groom/Evans Privacy Bill, and they would have suffered the consequences of it for ever and a day, or at least until the Government potentially changed.

The Hon. T.G. Roberts: You were right the first time.

The Hon. R.I. LUCAS: Not after today. As I indicated, I believe the Hon. Mr Griffin has given a very thorough analysis of the Bill. As he did, I received dozens of submissions in relation to it. In my contribution this afternoon I really want only to refer briefly to two sections of two submissions in relation to restrictions on the media. The first submission is from the Australian Journalists Association and, in effect, from the Anti-Secrecy Committee of the South Australian Branch of the AJA. The submission states:

> After careful examination, the Anti-Secrecy Committee of the South Australian Branch of the AJA rejects the Government's amendments to the Privacy Bill. They do nothing to address the committee's fundamental opposition to the creation of a tort of privacy which impacts on the free press. The media will still find itself in court fighting unnecessary litigation. Putting the onus on the plaintiff . . . that is, to prove a report is not in the public interest . . . still requires the media's legal counsel to put up a counter argument that it is.

The Hon. C.J. Sumner: Why shouldn't it?

The Hon. R.I. LUCAS: Well, the Attorney interjects, 'Why shouldn't it?' I am sure that, in his second reading reply, he can elaborate on his continuing views.

The second submission to which I want to refer is from a letter published in the *Advertiser*, which states:

> The Bill will still encourage media bodies to avoid potential litigation over and above existing defamation and common law provisions by withholding stories. Uncertainty as to how a court might react and even the cost of successfully defending a claim which could not currently be instituted would lead to stories being suppressed. There is a major concern that these suppressions will be demanded by the people who have the resources to take legal action, even though they may be the people who deserve investigation by the media. Although the amendments place the onus on the plaintiff to show an activity is not justified in the public interest, the practical operation may be little different from the previous draft's likely result, which the Government has seen fit to withdraw.

In effect, both those submissions highlight the same problem that working journalists and editors see in the Government Bill and the amendments. They are concerned, as are we that, if the Bill were to pass into law, many important issues that perhaps highlight problems with key, vested interests or monopolies in South Australia, might not be able to be raised because of the problems that the *Advertiser* and the Anti-Secrecy Committee of the AJA have so adequately described in their submissions.

It is also important to note that some sections of the media might not be in the strong financial position in which, I suppose, we have tended to understand the media to be in in the past. We have always looked upon the media as being rich and powerful, run by rich and powerful people, and certainly that is true in some sections. People such as Mr Packer and Mr Murdoch would certainly fit that description but I think the late 1980s and the early 1990s, whether you talk about television, radio or newspapers, brought on a whole new group of media proprietors: people who are not necessarily as individually wealthy as people such as Mr Packer and Mr Murdoch. People in that situation, some of them in receivership and some perhaps not too far away from financial difficulty, are not necessarily in a position to fight expensive legal battles to try to get up a story that may highlight, in the public interest, a problem in relation to a very wealthy individual or very wealthy vested interest or monopoly. In those situations, some sections of the media and proprietors may well choose to back off, to not take on the wealthy vested interest, and run that particular story.

When one hears stories that some sections of the media are so desperate for advertising revenue at the moment that advertisers have increasing power over what is or is not included in media broadcasts or published in newspapers,

one wonders whether such a problem is not as fanciful as perhaps it might have been 10 or 15 years ago when the caricature of all media proprietors as being wealthy individuals might have been a little closer to being accurate. So, there are major problems, and from the viewpoint of the media, the community and members of Parliament, many important and difficult stories might not be run by the media.

Many members of all persuasions in this Council and in another place have expressed concerns about some of the operations of sections of the media in South Australia and in Australia. Whilst that is true, as some of my colleagues have said we need to take that in its proper context; of the many thousands of stories that are printed or published, only a small proportion might be arguable in relation to a problem with respect to privacy or significant inaccurate elements in the story. I am sure we all have examples in which the media have been less than kind to each of us. I am sure that even Mr McKee recently might have been a little unhappy about his treatment. In my time in this Parliament, I have been unhappy about treatment that various sections of the media have meted out to me.

As a public figure I have certainly accepted that in essence we are there to be got at—if I can use a colloquial expression—one would hope accurately, but sometimes it happens inaccurately. However, because we are public figures, in the end there is not much we can do about it. We can grizzle and groan about it, but in the end the media have power and they can make their judgments. Whilst we might disagree—and we may say so publicly—we generally find that even if we are right and the media are wrong any retraction is buried at the bottom of page 14 on the left hand side when perhaps the original story was on page one or page three with a photograph.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Yes. In the end, within reason, most members of Parliament accept that that is the way of political life. We may not like that aspect of it, but in the end we grin and bear it or we groan and accept it. As some other members may have indicated in their contribution, we are less likely to accept such publicity when it affects our individual families and when families are drawn unfairly into debate in relation to an issue that the media might want to pursue. Again, whilst a member of Parliament might complain, not much could be done to prevent these occurrences—even given the many issues that have been raised by my colleagues in relation to this Bill.

It is fair to say that we have concerns, although there is some evidence—as my colleague the Hon. Diana Laidlaw said—that this debate has one good side effect. For the first time in a little while some sections of the media are seeing that members of all persuasions have genuine concerns about some aspects of their operation. I know that, because there is the threat of the Bill perhaps being passed hanging over their head, that has prompted some of the response. However, that is one by-product that might, even if this Bill were to fail, have some long-term benefit. I—as one of my colleagues did early this week—congratulate the *News*, its editor, Mr Baker (with whom I have had differences of opinion on occasions in the past) and his staff on their public commitment to follow standards of codes and ethics. The *News* is to be congratulated on its persistent publication of those codes of practice. I know, from reading the newspaper, that this week or last week it appointed a 10 person advisory council—and I am not sure of the terminology—to which members of the community can complain if they have a problem with the operation of the *News*. I congratulate the *News* on those initiatives.

Looking at the names of the people involved in that council or committee, I do not think anyone could say that it was stacked with people who were designed to ensure that proper consideration did not occur of any genuine complaint which was made to that group. Time will tell. It is a very noble gesture. It has also been announced that the decisions of that council or committee will be given appropriate publicity in the *News*. The test will be to see, when the first very unfavourable comment or decision is taken by such a body, how the editor and proprietors treat that unfavourable publicity.

Certainly, many newspapers in the United States of America at the moment are appointing their own conscience—I am not sure what they have called them. In effect, they have appointed a person like an Ombudsman to whom members of the community can complain. Those appointees have prominent positions within the newspaper, and they are able to be outspokenly critical of the actions of the proprietors, the editors and the journalists of that newspaper; that is the task for which they are paid.

The Hon. T.G. Roberts: Can they get it printed, though?

The Hon. R.I. LUCAS: Yes, they can. I suppose it is easy when one is in a big market, as are some of the cities in the United States, and one can afford to pay a respected senior journalist or columnist good money to make those sorts of impartial criticisms of the operation. I think the *Washington Post* is one, and another of the leading newspapers in New York has adopted a similar practice. Perhaps further down the track we might see that adopted in Australia, if not here in South Australia. Certainly, the response from some journalists within the AJA has been encouraging, and I can only hope that they will continue with the work they say they are doing whether or not the legislation passes.

The media need to understand that many members have concerns about some aspects of their operations. These sorts of initiatives by the *News* and the AJA need to continue: they cannot just stop should this Bill not pass the Legislative Council. Otherwise, I am sure that members in this place or in another place will seek to regulate or restrict, if not in this fashion in this Bill then in some other way, the operations of the media by way of further legislation at some time in the future.

My position, just as the Hon. Mr Griffin has outlined, is that this Bill is not the answer. There are a number of options that perhaps in the future we should consider. The AJA raised the question about finding against a particular journalist on the basis of its code of ethics. It had legal advice and was concerned that it could not publish any unfavourable results against one of its members in a newspaper for fear of defamation proceedings being taken against it. It wanted Parliament to consider that problem, because it said that it is more than prepared to publish any unfavourable finding against any of its colleagues who might breach the code of ethics, as long as it could be assured that it would not be liable for the significant problems with defamation.

If that is a problem—that is a matter that the Attorney-General, the shadow Attorney-General and others could address in the future—perhaps we need to consider allowing the AJA to police effectively its code of ethics. No journalist wants his or her peers to find against them in relation to their breaching, perhaps seriously, their code of ethics and, secondly, to have that published widely, whether through that journalist's newspaper or in the *Advertiser* or the *News*. If this is not a problem from the legal viewpoint, perhaps the *News* or the *Advertiser* might be prepared to take up the option. If the AJA finds against a journalist for serious breach of its code of ethics, the *News* or the *Advertiser* could

be prepared to give some prominence to such a finding against that particular journalist.

That matter ought to be taken up with the *Advertiser* and the *News*. If given the opportunity, I should certainly like to raise it with people from those newspapers because nothing is more important to a journalist than his or her reputation. If journalists knew that by seriously breaching their code of ethics their name was potentially going to be plastered not only across their newspaper, but also prominently in the *Advertiser* or the *News* or, even worse perhaps, on television, it would be a powerful incentive to journalists not to breach the code of ethics.

To that end, another option that Parliaments might perhaps consider in future is the forced publication of apologies and retractions. There are arguments for and against but, on the surface, I think that Parliaments—whether State or Federal—should consider forcing sections of the media to apologise or to publish retractions prominently. We do see retractions in newspapers. For example, the *Age* has a retraction policy. We often see retractions or apologies in the Melbourne *Age*.

An honourable member: Every day.

The Hon. R.I. LUCAS: I do not know about every day, but it happens very often. I do not think I have ever seen one on a television station. I do not think that is because television journalists never make mistakes; it is probably because television proprietors have not gone down the path which proprietors of the Melbourne *Age* have gone. I think that the Parliament should consider whether that is a workable option. I suppose it is a question of where we go from here in relation to this legislation. The Liberal Party's position is quite clear. We are opposed to the Bill, even with its amendments.

The Australian Democrats' position is probably more interesting. They started off being strongly opposed; they wobbled a bit; and now they are strongly opposed to the Bill unless certain definite things happen. If they do not happen, the Bill will not get through. A number of Labor members in another place are very confident that the Democrats are already wobbling from that second position. They certainly loudly proclaim to anyone who is prepared to listen that the Democrats have already wobbled from their original position of outright opposition to a position of opposing: unless we definitely get one, two, three, it will not happen.

Members of the Government are now loudly proclaiming that the Democrats are on the second stage wobble and are about to move from the second wobble position to the next wobble position. The view of those members of the Government is that, the longer they can wait, the greater the opportunity there will be for the Hon. Mr Elliott and the Democrats to wobble further and move away from the most recent position that has been outlined in relation to the Bill. I hope that is not the case. I hope that the Hon. Mr Elliott does not wobble further in relation to this legislation, because, as the Hon. Mr Griffin indicated, it would be a tragedy if the legislation, even with the Government's amendments and the amendments that the Hon. Mr Elliott is looking for, were to pass this Chamber. I oppose the Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions, even though many of them did not support the Bill. It is probably fair to say that none of them supported the Bill in its present form. However, a number of issues have been raised which require a response from the Government. To enable that to take place, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STAMP DUTIES (ASSESSMENTS AND FORMS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

As it has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill contains a number of amendments to the Stamp Duties Act 1923 which counter tax avoidance and evasion, improve the collection and recovery powers and exempt certain instruments.

The Stamp Duties Act imposes duty on a range of instruments including applications to register and applications to transfer the registration of a motor vehicle, however, there are currently no penalty provisions under the motor vehicle head of duty to ensure compliance. Under the other tax heads penalties are payable if duty is not paid on time or instruments are not lodged for assessment.

The lack of penalty provisions relating to motor vehicles has contributed to a reluctance by some taxpayers to comply with the Act which in turn has led to an erosion of the tax base. It is proposed to include appropriate penalty provisions to apply to those persons who avoid or evade duty on applications to register or transfer registration of a motor vehicle.

The opportunity has also been taken to provide a default assessment provision in relation to the motor vehicle head of duty.

The Stamp Duties Act imposes duty on the rental receipts of businesses engaged in the hiring out of goods. Servicing cost deductions are provided and an exemption (currently $24 000 per annum) is given below which no duty is payable. Duty is collected through a scheme of self-assessment with a registered person required to lodge monthly returns.

The Commissioner of Stamps through ongoing compliance programs has identified a recent practice of netting down rental charges. Business operators artificially assign disproportionate amounts to ancillary or exempt charges and only declare a nominal and incorrect amount on their returns to the State Taxation Office.

It is proposed to amend the definitional clause of the Act to make it completely clear that the total amount charged in relation to the hire of goods is dutiable.

Additionally, the default assessment provision for rental duty has been redrawn in a manner more consistent with recent State taxation provisions.

The Government had proposed to include reassessment provisions for all instrument based duties in this Bill, however, discussions are still being held with relevant industry bodies and these reassessment provisions will be included at a later time.

In 1988 the Act was amended to close a blatant tax avoidance device whereby written offers were accepted by performance rather than in writing. At that time the amendment required a dutiable statement to be lodged whenever there were changes in legal or beneficial ownership of property not effected or evidenced by an otherwise dutiable instrument.

A further amendment is now proposed which will ensure that if the dutiable statement is not lodged at the time the change in legal or beneficial ownership took place, then penalties will be imposed on the statement in accordance

with the existing penalty provisions applicable to instruments.

A company which carries on general insurance business in South Australia is required to register and lodge returns of insurance premiums received relating to such policies and pay stamp duty. Duty is calculated on the premium received less certain specifically listed exclusions.

Compliance programs conducted throughout the insurance industry while generally showing a high level of compliance, have identified an isolated incident in which not all premium received was included in the return.

It is proposed that the definitional clause of premium be amended to put it beyond doubt that all amounts paid to the insurer with the exception of the specifically listed exclusions are liable.

The above proposals are further steps designed to minimise avoidance and evasion practices and to enhance fairness, equity and a level playing field to the Stamp Duties Act. Consultation has occurred as appropriate with industry bodies and submissions have been received. The Government is very appreciative of the contribution of these bodies.

The final matter dealt with in this Bill is to provide an exemption from duty for declarations of trust by the Public Trustee (as trustee) as a result of compensation payments made to infants under the provisions of the Criminal Injuries Compensation Act 1978.

The Government considers it inappropriate for stamp duty costs to be met from the Criminal Injuries Compensation Fund in these circumstances and therefore proposes to exempt from duty the relevant declarations of trust.

Clause 1 is formal.

Clause 2 provides for commencement of the measure.

Clause 3 amends section 31e of the Act so as to provide that forms used for the purposes of the provision must be furnished in a manner and form approved by the Commissioner.

Clause 4 amends section 31f to also provide for the use of forms that are approved by the Commissioner. Furthermore, a statement lodged with the Commissioner will be required to set out the total amount received by a registered person in respect of his or her rental business during the relevant month (and not just any amount received as rent).

Clause 5 amends section 31g of the Act in a manner consistent with the amendment to section 31f to ensure that a statement lodged with the Commissioner includes all amounts that are received by a registered person in respect of his or her rental business.

Clause 6 substitutes section 31m of the Act with a new section relating to default assessments. The provision will entitle the Commissioner to make an assessment of duty on the basis of estimates if the Commissioner has reason to believe or suspect that a person has failed to lodge a statement as required by the Act, or is in default in the payment of duty. It will be an offence to fail to pay the assessed duty within a period determined by the Commissioner in a notice sent to the taxpayer. Furthermore, the Commissioner will be able to impose penalty duty of an amount equal to twice the amount of the duty assessed under the provision.

Clause 7 amends section 31n of the Act to delete reference to 'rent' and to include any amount received by a person under an agreement that relates to the use of goods.

Clause 8 amends section 32 of the Act to insert a definition of 'premium' into the annual licence provisions to ensure that the term 'premium' encompasses all payments made in respect of a policy of assurance or insurance (including any levy charged to a policy holder and any instalment of premium).

Clause 9 amends section 41 of the Act so that penalty duty imposed under that section is an amount equal to twice the amount of duty assessed in a case of default. The amendment is consistent with the amendment effected by clause 6.

Clause 10 relates to the use of forms approved by the Commissioner, rather than prescribed forms, under section 42aa of the Act.

Clause 11 relates to section 42b of the Act. This provision allows the Commissioner to make a special assessment as to the value of a motor vehicle if he or she is not satisfied that the amount stated in the relevant application is the true value. The amendment will allow for the imposition of penalty duty if the Commissioner determines that additional duty should be paid.

Clause 12 is another default provision, inserted in that Part of the Act that relates to the imposition of stamp duty on the registration, or transfer of registration, of a motor vehicle. The amendment is consistent with the amendment effected by clause 6.

Clause 13 relates to section 71e of the Act. A new subsection will ensure that the Commissioner can impose a penalty if a statement required under section 71e is not lodged within the time required under the Act.

Clauses 14 and 15 replace references to prescribed forms with references to forms approved by the Commissioner.

Clause 16 relates to the regulations that can be made under the Act. In particular, the penalty that can be imposed for a breach of the regulations is to be increased to $2 000. Another amendment will ensure that the regulations can be of general or limited application, allow the use of forms approved by the Commissioner, confer other forms of discretionary power, and make different presumptions according to prescribed circumstances.

Clause 17 amends the second schedule of the Act to exempt from stamp duty any declaration of trust by the Public Trustee that is made for the benefit of a child under the age of 18 years who has received a payment under the Criminal Injuries Compensation Act 1978.

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

ADJOURNMENT

At 4.49 p.m. the Council adjourned until Tuesday 26 November at 2.15 p.m.