LEGISLATIVE COUNCIL

Thursday 6 March 1997

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

LEGAL AID

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of legal aid funding arrangements.

Leave granted.

The Hon. K.T. GRIFFIN: Today I am pleased to announce that the Government has reached in-principle agreement with the Commonwealth Attorney-General on the legal aid funding arrangements to operate from 1 July 1997. Members will be aware that, by letter dated 26 June 1996, the Commonwealth Attorney-General (Hon. Daryl Williams) advised of the Commonwealth's intention to terminate the Commonwealth-State legal aid agreement, with a view to negotiating a new agreement to take effect from 1 July 1997.

The present cooperative agreement between the State of South Australia and the Commonwealth of Australia for legal aid funding has been in place since 1 July 1988. A cooperative arrangement has been in place since the Legal Services Commission was established in 1978. The agreement requires either party to give notice in writing of not less than 12 months from the date on which the notice is given if they wish to terminate the agreement.

At the time I received the letter from the Commonwealth Attorney-General, I expressed my surprise and concern at the Commonwealth Government's sudden decision to terminate and to seek to renegotiate the agreement without any prior consultation. In giving notice of termination, the Commonwealth Attorney-General advised that his main concern was to address what he claimed were shortcomings in the current agreement. In particular he wished to ensure that, in future, funds provided by the Commonwealth for Legal Aid Commissions would be used for matters that arise under Commonwealth law rather than relate to those for which the Commonwealth has a special responsibility (the unemployed, recipients of pensions, migrants, and so on), as was the case previously.

The Commonwealth budget, which was brought down on 20 August 1996, announced the extent of the reduction in Commonwealth outlays for Legal Aid Commission funding. The budget indicated that it was the Commonwealth's assessment that an apportionment of responsibility between the Commonwealth, States and Territories for legal aid would lead to a reduced requirement for Commonwealth funding of $33.158 million. If the cut had been applied on a pro rata basis the resultant cut to the funding for the South Australian Legal Services Commission would have been an indicative cut of $2.7 million.

The decision by the Commonwealth Government to reduce the funding for legal aid has attracted widespread criticism from all sectors of the community, including the judiciary, legal profession and welfare organisations.

The Commonwealth Attorney-General has repeatedly made statements about the need to reform the provision of legal aid and claimed that the States were 'rorting' the system. I have maintained the view that the South Australian Legal Services Commission is the most efficient commission in Australia and is the least funded by the Commonwealth. My view has been substantiated by the recent report of the Statutory Authorities Review Committee into the operation of the Legal Services Commission in this State. In addition, I have refuted any claim that South Australia has rorted the system. All the information available clearly indicates that that is not so.

The annual report for the Legal Services Commission for 1995-96 provides the following details on the Commonwealth Government's funding: core funding, $9.511 million; child support, $515 000; veterans' support, $102 000; Justice Statement funding, $.242 000; making a total of $10.37 million. The Justice Statement funding will not be continuing, and this therefore reduces the figure to $10.128 million.

The Commonwealth has recognised the rapidly growing commitments being faced by the Legal Services Commission in relation to the funding of Aboriginal cases. This huge growth in demand has to date not been met by any commensurate Commonwealth funding commitment. Therefore, as part of the in-principle agreement the Commonwealth has given an undertaking to address this issue with the State entirely separate from the renegotiated agreement.

The Legal Services Commission has identified its funding for Aboriginal cases in 1995-96 as $400 000. Since the receipt of the letter from the Commonwealth Attorney-General in June 1996, this State has cooperated with the Commonwealth (and with the other States and Territories) in endeavouring to resolve the issue. South Australia has been able to demonstrate that its performance in applying Commonwealth funds to Commonwealth matters has been proportionately far higher than in some other jurisdictions. This has been reflected in the in-principle agreement which has been reached between the two Governments.

My officers, acting on my instructions, have been diligent in providing information and meeting with the Commonwealth and, ultimately, in negotiating an agreement which is acceptable to this State. I particularly appreciate the assistance provided by the Legal Services Commission and my own Chief Executive Officer, Kym Kelly, and Deputy Chief Executive Officer, Kate Lennon, in spending many hours providing to the Commonwealth detailed information which clearly demonstrated our case—in fact, it is more like a matter of weeks rather than hours.

The in-principle agreement reached with the Commonwealth will ensure the provision of legal aid in South Australia beyond 1 July 1997 jointly by the State and the Commonwealth. Pursuant to the in-principle agreement, the Commonwealth has agreed to continue funding at a level equal to the mutually assessed expenditure by the Legal Services Commission on Commonwealth matters in 1995-96. This means the Commonwealth will pay to South Australia $9 million for the 1997-98 year, and maintain that level of funding over the life of a three year agreement.

In comparing this figure with the current level of funding, it should be noted that the Legal Services Commission uses accrual accounting whereas the Commonwealth funding is on a cash flow basis so it is difficult to compare.

In contrasting the Commonwealth's funding for 1995-96 with the $9 million being now offered by the Commonwealth, it should be recognised that the in-principle agreement reached with the Commonwealth provides for more flexibility to the State. It also provides for the Legal Services Commission to, in effect, draw a 'line in the sand'—that is, when Commonwealth funding in any year has been expended, the

State will not pick up any shortfall and further legal aid for those seeking assistance in Commonwealth cases will not be funded until the commencement of the next financial year, when Commonwealth funds again become available. This is also consistent with the view that the South Australian Legal Services Commission has performed better than other jurisdictions in its application of Commonwealth funds for Commonwealth matters.

The State has agreed to work with the Commonwealth to examine whether there are any changes to practices and procedures which might provide legal aid more efficiently and effectively. I am quietly confident that the in-principle agreement reached with the Commonwealth will provide a sound basis for the provision of legal aid in this State by the State of South Australia and the Commonwealth cooperatively.

RETAIL SHOP LEASES LEGISLATION

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.T. GRIFFIN: On 14 November 1996, I introduced the Retail Shop Leases Amendment Bill 1996 into the Parliament. The Bill responds to a number of concerns identified by the select committee on retail leases and reflects the unanimous agreed recommendations. The Bill also provides for a statutory right of first refusal for an existing tenant who has no right or option to extend the lease. On 3 December 1996, I made a ministerial statement in which I outlined the progress on the Bill and reported on the discussions of the Retail Shop Leases Advisory Committee, which I will describe hereafter as 'the committee'.

The committee is established pursuant to the provisions of the Retail Shop Leases Act 1995 and brings together representatives of lessees' and lessors' organisations. In my ministerial statement I advised that at the meeting of the committee held on 22 November 1996 the committee expressed a desire to achieve a workable outcome on the issue of what should happen at the end of a lease, and an outcome that would minimise litigation and antagonism. In recognition of this desire, I put to the committee a proposal that involved the development of a mandatory code of practice to be enshrined in regulations pursuant to the Retail Shop Leases Act 1995. I outlined the details of that proposal in my ministerial statement on 3 December 1996, and advised of my intention to convene an urgent meeting of the Retail Shop Leases Advisory Committee with a view to undertaking further consultation during the Christmas-New Year period.

The committee met on 11 December 1996. At that meeting, which I chaired, the committee unanimously maintained its commitment to working through the issues with a view to trying to achieve a code of practice that would address the issues of what should happen at the end of the lease. The committee agreed that a group the size of the Retail Shop Leases Advisory Committee was too large for the purpose of producing a code of practice and that a smaller group should meet, with a view to preparing a discussion paper identifying common ground. It was further agreed that the industry representatives themselves would resolve the membership of the group and that the group would not involve a representative from the Government; however, if the negotiations broke down the group would approach me as soon as possible to endeavour to resolve any difficulties.

I gave an undertaking to the committee that if a code of practice was formulated by early this session I would hold off dealing with the Government's Bill, but if nothing was achieved the Bill would be dealt with toward the latter part of the session so as to allow the members of the committee time to lobby other parliamentarians if they wished to do so. Subsequently, a small working group consisting of Mr David Shetliffe (Executive Director, Retail Traders Association of SA Inc.), Mr Max Baldock (President, Small Retailers Association of SA Inc.), Mr Steve McCarthy (State Manager, Westfield Shopping Centre Management SA Pty Limited) and Mr Stephen Lendrum (representative of the Property Council of Australia) was formed. I convened a meeting of the committee on 19 February 1997 for the purposes of the group reporting back on their progress.

At that time the working group advised that they had met on four occasions and were making some progress but required further time to continue their discussions. In view of the complex and sensitive issues, both legal and philosophical, which are being discussed by the group, I was sympathetic to this request and organised a further meeting for the working group to report back on 3 March 1997. At our meeting on 3 March 1997 there was unanimous agreement by the working group that, because each party was demonstrating a genuine desire to reach an agreement, they should continue their deliberations with a view to developing a code of practice to deal with the issue of what happens at the end of a lease. The working group was of the view that a further three month time frame would be needed to achieve this.

I have informed the working group that I am anxious to resolve this issue and that I will be actively involved in future meetings in order to ensure, so far as possible, that the three month time frame is met. This time frame will coincide with the budget session of Parliament.

The Hon. M.J. Elliott: What if they don't agree?

The Hon. K.T. GRIFFIN: We will deal with it then.

Members interjecting:

The Hon. K.T. GRIFFIN: Well, I will interrupt my ministerial statement because the question is, 'What happens then?' The Parliament deals with it—simple. The Bill is on the Notice Paper and it will remain there.

I have agreed to provide the group with some legal research capacity and also to arrange for Parliamentary Counsel to be available to assist with drafting. I recognise there are some who may criticise the delay in proceeding with this Bill. However, it should be recognised that a code of practice, which is developed by the industry representatives, must be the preferable option rather than Parliament's imposing a legislative regime without the support of the industry.

Further, we all must recognise the complex and difficult issue that the working group is addressing. For Australia it is groundbreaking work and, if an outcome can be achieved, it will be a model for the rest of Australia and, for the first time, have what are seen as the competing interests of lessors and retail tenants more easily addressed. In the end, one cannot survive without the other. There are no easy answers. However, in the long term it will be of much greater benefit if the solution can be reached by consultation rather than confrontation. I seek leave to table copies of a letter signed by each of the four members of the working group indicating their support for this course of action.

Leave granted.

EARTHQUAKE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement from the Minister for Energy in the other place on the earthquake.

Leave granted.

ADELAIDE CITY COUNCIL

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement from the Premier in the other place on the Adelaide City Council.

Leave granted.

QUESTION TIME

VICTIMS OF CRIME

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about victims of crime compensation.

Leave granted.

The Hon. CAROLYN PICKLES: Several constituents have complained recently of the treatment they have been receiving from the section of the Crown Solicitor's Office that deals with compensation for victims of crime. In one case the mother of a murdered man sought $3 000 for funeral expenses, as permitted by the victims of crime legislation. The view taken by Mr Korolis of the Crown Solicitor's Office was that such expenses should have been covered under the WorkCover legislation because the man was murdered at his work place. It became evident that there were grave doubts as to whether the deceased was a worker as defined in the Workers Rehabilitation and Compensation Act.

The workers' compensation insurer therefore formally determined that no workers' compensation was payable. When presented with this fact, the Crown Solicitor's Office simply advised that the mother of the deceased could challenge the workers' compensation determination at her own expense. One might well wonder whether the Crown Solicitor would force her to go to the workers' compensation tribunal, the Supreme Court, or even the High Court before deciding that the woman in fact had no alternative means of being compensated for her son's wrongful death.

Another related problem is the deduction of huge amounts from compensation *prima facie* payable under the Criminal Injuries Compensation Act in the exercise of the Attorney-General's discretion where the applicant is deemed to have received compensation from other sources, particularly WorkCover benefits. For example, one applicant was offered the maximum amount of criminal injuries compensation. The offer was accepted and the Attorney's discretion was then exercised to reduce the amount to $2 500. While I appreciate that there should not be double dipping, the problem seems to be the crushed expectations of the applicants when they cannot necessarily guess how much the Attorney will take off them after agreeing to an amount of compensation *prima facie* payable. My questions to the Attorney are:

1. How common is it for the Crown Solicitor's Office to refuse criminal injuries compensation on the basis that alternative compensation is payable, particularly when the potential source of alternative compensation has refused to pay up on what are *prima facie* reasonable and lawful grounds for refusal? Will the Attorney look into this funeral expenses matter if I provide him privately with the name of the applicant?

2. Is the Attorney taking a direct role in exercising the statutory discretion to reduce criminal injuries compensation on the basis that alternative compensation has been paid either by policy directors or by the examination of individual cases, or is the discretion being exercised solely at an administrative level? Why can applicants for criminal compensation not be provided with an intimation of the amount by which the Attorney will reduce compensation in the exercise of his discretion whenever a settlement offer is made or otherwise prior to trial so that applicants can know how much they will receive in the hand when they actually receive their criminal injuries compensation?

The Hon. K.T. GRIFFIN: If the honourable member wishes to let me have the details of the particular case to which she refers I shall have that matter examined with a view to bringing back a response without identifying in the Council the name of that person. The issue of criminal injuries compensation is a difficult one where there is other compensation available. The Act specifically identifies that the Attorney-General has certain discretions in respect of an award under the Criminal Injuries Compensation Act where there may also have been an award under, say, the workers' compensation legislation. That was raised again last year or the year before with respect to a matter where a person had been injured at work as a result of a robbery attempt and I had exercised my discretion to reduce the compensation to $10 000.

I drew attention to the fact that that was exactly the same practice as had been followed by my predecessor, the Hon. Chris Sumner, for the whole of the time he was Attorney-General in accordance with the Act. I do not know what his practice was in relation to exercising discretions. I suspect that he did look at every docket where the exercise of a discretion had to be made: certainly, I look at every docket. I have one of my own legal officers examine the docket. I look at the docket when the matter comes to me. I read the docket, including sometimes the psychiatric reports and the medical reports if they are relevant, and exercise the discretion. I do not seek to resile from the responsibility which the law places upon me.

Certainly, officers of the Attorney-General's Department give advice. They handle these cases on a day-by-day basis. Many of them do not come to me because they are not matters in respect of which I have to exercise a discretion. But where it is a matter where I have to exercise my discretion as Attorney-General I do that personally. I accept responsibility for the reductions which are made where there has been other compensation paid. I do it in accordance with the law which has been the subject recently of a review by the courts. In fact, the practice and the law has been upheld by the court.

In terms of the funeral expenses issue, where other compensation is available the law requires that other compensation be accessed. As I recollect, that is not one matter where I have a discretion. We must remember that the Criminal Injuries Compensation Act is a fund of last resort and not one of first resort. It provides some funds to a person who may be injured as a result of a criminal act where that person would not otherwise be entitled to compensation or who would otherwise have to sue the offender and take the offender through the courts on a civil basis. Of course, that option still remains, but mostly in the circumstances where criminal injuries compensation pays out money to a victim

it is the Crown which pursues the offender and seeks to recover. The amount in total that is recovered each year is reported in the Auditor-General's Report, as well as the department's report, in so far as it relates to the Criminal Injuries Compensation Fund and the administration of the Act. That is the framework in which these matters are dealt with.

In terms of whether or not applicants can be provided with some identification of the amount they may get if the Attorney-General were to exercise a discretion, I do not know that under the scheme of the Act that is a practicable or possible way to proceed. I will have that matter examined and I will bring back a reply. I just do not have sufficient information at my fingertips to be able to respond immediately. I will bring back a reply in due course.

MOTOR VEHICLE NUMBERPLATES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions concerning motor vehicle licence plates.

Leave granted.

The Hon. T.G. CAMERON: A recent newspaper report stated that the Minister for Transport is about to formally announce a crackdown on drivers using illegal numberplates later this month. The story, which appeared in the *Advertiser* dated 14 February 1997, stated:

> By law, all plates must be embossed and carry a piping shrike emblem.

Following the *Advertiser* story, my office has been inundated with telephone calls from people worried that their numberplates might be illegal. They are concerned that they might be fined or forced to buy a new numberplate. People who have vehicles built before 1981 are worried that their numberplates might be illegal because they do not have the piping shrike emblem, which was introduced in June 1981.

I understand that the police currently discard about 20 per cent of all their speed camera photographs because the numberplates are unclear. Nearly 105 000 people were caught by speed cameras in 1995-96, bringing in a total of $17.1 million to the Government in revenue. If figures supplied by the police to my office are correct, over 20 000 offenders escape the net each year at a cost of some $4 million in lost revenue annually. As speed cameras were introduced in 1990, that adds up to more than $25 million. I acknowledge that recent changes to regulations under the Motor Vehicles Act have plugged loopholes with regard to bike racks attached to motor vehicles. My questions are:

1. As nearly 20 per cent of motorists caught for speeding by speed cameras are not prosecuted or issued expiation notices each year due to illegal or obscured numberplates, does this mean that up to one-fifth of numberplates on South Australian motor vehicles might be illegal?

2. Considering that thousands of people might be unsure whether or not their current numberplates are legal, will the Minister hold off on the planned crackdown on numberplates until it is made clear to the public which plates are legal and which are not?

The Hon. DIANA LAIDLAW: I will make further inquiries with the Police Department about the crackdown on these plates as described by the honourable member. That is not my immediate area of responsibility. In terms of the number of people who escape being caught because they have deliberately or inadvertently obscured their numberplate, again, I will make such inquiries with the police. I do not have immediate advice at hand on that matter. As the honourable member mentioned, it has been thought that, in terms of bicycle racks, a number of people do not remove them deliberately in order to obscure the numberplate. By regulation, a new, much smaller plate that can be attached to the bike rack will be introduced soon, and that will be required. Certainly, some letters appear to be painted out on some numberplates. We are anxious to make sure that those more obvious examples are the focus of our attention and that those plates are upgraded.

NUCLEAR WASTE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about transport of nuclear waste.

Leave granted.

The Hon. T.G. ROBERTS: Yesterday, I was supplied with an answer to a question I asked on 12 February regarding the transport of nuclear waste off the coast of southern Australia. I asked what contingency plans the Government had if there was to be a nuclear accident with the ship; for example, it could hit an iceberg, be in heavy seas, or have mechanical trouble, a fire, and so on. The answers I received yesterday do not allay my fears at all regarding the lack of a contingency plan or any plan at all for South Australia or off the southern coast.

The Western Australians are very concerned about the matter. In fact, sections of the Western Australian media are contacting environmentalists and people who they think could comment. It is part of broad discussions there but in South Australia there is no discussion at all. The answers that I will read to members show that there does not appear to be any fear shown or any responsibility taken on this matter.

The first question I asked was whether there were any responsibilities for any contingency plan for the State in relation to the courses that have been struck by these international ships off our southern coast. The answer to that was 'No,' because, as they were travelling in international waters, the State does not have any responsibility. I accept that; that is the legal responsibility. However, I would contend that there is a moral responsibility.

My second question related to whether ships travelling in international waters were obliged to supply timetables so that contingency plans can be looked at—or at least local shipping can be made aware that these ships are off the coast. One of the big fears held by international environmentalists is that, with the heavy loss of containers off decks which float just below the surface of the water, a lot of ships are now finding that they are having trouble avoiding these 'growlers' because they cannot be seen until they are struck. Apparently, there is a view that a lot of these containers are finding their way into the Southern Ocean, and that is part of the course these ships take when they move between France and Japan. The answers to my questions generally indicated that the State was not interested in putting together a contingency plan, nor cooperating with the Commonwealth in raising the issue.

Will the State Government be liaising or talking with the Commonwealth Government at least to draw up a worse case scenario plan for a mishap at sea on the Australia's southern coast? This could be done in conjunction with Western Australia and other States, and it seems to me that it would not hurt to raise the matter at the next Commonwealth-State meeting.

The Hon. DIANA LAIDLAW: I will just highlight that the example the honourable member gave was France to Japan. In that instance, they are not coming via South Australian waters. In international waters, which are waters 200 nautical miles from the coastline, there is unrestricted free access for such shipping movements. I am not sure whether the honourable member is suggesting that there should be restricted access for ships carrying nuclear waste.

Because it is unrestricted access and because these are international waters, we would see that it is a Commonwealth responsibility to draw up such plans, just as we have national plans for oil pollution at sea. I am happy to raise the matters with my Commonwealth colleagues. Whether it is 200 kilometres out and whether there is unrestricted access, there should be some understanding of what resources would be required in any such instance of trouble at sea with such vessels. I will make such inquiries.

AGRICULTURAL CROPS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about alternative crops.

Leave granted.

The Hon. M.J. ELLIOTT: I was reading an article in the *Bulletin* of 25 February in relation to the growing of wheat in the wetter, colder climates in Australia. I will quote part of the article, as follows:

> For the first time, farmers in Australia's high-rainfall zones—those areas most environmentally suitable for intensive, high-yield agriculture—have a potentially high-value crop to grow in cooler, wetter areas.

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. I notice that the honourable member's Press Secretary has been in the *Advertiser* box for a good 10 minutes. I would hate the *Advertiser* to miss this question. I understand there is a ruling in the other place about media sitting in that position, and I wondered whether you, Sir, could make that ruling.

The PRESIDENT: Order! There is no ruling on that. We have do not have that ruling here. If the *Advertiser* allows this to occur, then so be it.

The Hon. M.J. ELLIOTT: The article continues:

> Only a year ago, farmers like Wilson relied entirely on grazing and its unpredictable wool, beef and fat lamb markets. These limited options made their holdings typically small and financially marginal, and pitted the New South Wales tablelands, southern Victoria, Tasmania and the deep south-west of Western Australia with pockets of rural poverty.

I might add that the South-East of South Australia would fit into that category, too. Further, the article states:

> The development of a high rainfall wheat by CSIRO scientist Jim Davidson now changes the profile of southern agriculture. It offers a new economic and agronomic framework that will, for the first time, allow diverse intensive European-style farming.

It is worth noting that, a little later, this article refers to 'stonewalling' from the Australian Wheat Board and the Grains Research Development Corporation. The article also notes that Davidson had been working for some 20 years on developing these wet area wheats but had received virtually no assistance from Government bodies at all. The CSIRO had allowed and tolerated it, but certainly not encouraged it; in fact, there was active resistance in quite a few quarters.

Clearly, the South-East stands to benefit from the development of these wheats. One is also reminded of the difficulties that were experienced on Eyre Peninsula not that long ago when grain and wool prices were down, and there really were no other alternatives to turn to. My question is: what is the Government's policy in terms of research on alternative crops? Clearly, if alternatives other than wheat and wool are available on Eyre Peninsula, it might have offered some hope to people during those years of depressed prices. Also, what percentage of the total crop research funding in South Australia is allocated to research on alternative crops to those grown in the traditional areas?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague in the other place and bring back a reply.

SCHOOL SPEED SIGNS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Transport a question about school speed signs.

Leave granted.

The Hon. J.C. IRWIN: I believe that a fiasco has arisen in relation to the much publicised installation of school emu pedestrian crossings. They certainly were not installed nor operated in accordance with regulation 2.05 of the Road Traffic Act up to 1 September 1996. The old regulation 2.05 required that any pedestrian crossing could operate only when the lights were flashing and that the part-time pedestrian crossing had to be denoted with signs 'school crossing ahead'. In many instances there were no flashing lights.

The new regulation 2.05 promulgated on 1 September last year sets out how a pedestrian crossing should operate, but certainly does not specify what a crossing is. My advice is that there is no regulation specifying what a pedestrian crossing is.

The need to consider legislative changes before making changes is illustrated by a notice headed 'Important notice for all road users' published in the *Advertiser* of Saturday 25 January (page 10), the *Sunday Mail* and indeed all South Australian papers. As the required changes to the Road Traffic Act had not been made, there would be no speed limit at most schools on Tuesday 28 January, as the signs mentioned in the notice had no meaning under the Road Traffic Act. Drivers in this State do not have to observe speed signs, let alone specified times. Some old school sign crossings have not been removed, adding to the confusion.

As there is not a provision to define a pedestrian crossing in the road traffic regulations 1996, the provision of a relevant speed limit at a school crossing no longer applies, particularly as the 'school crossing ahead' signs have mostly been removed with the installation of the signs illustrated in the advertisements. Section 49(c) and (d) of the Road Traffic Act provide:

> (c) 25 km/h on a portion of a road that is between a sign bearing the word 'school' and a further sign bearing the words 'end school limit' at a time when children proceeding to or from a school are on that portion of the road; or
>
> (d) 25 km/h when approaching and within 30 metres of a pedestrian crossing at which flashing lights are for the time being in operation and at the approach to which there is erected a sign bearing the words 'school crossing ahead' or words to that effect.

I understand that there is no provision in the Road Traffic Act for the 25 km/h signs to be observed by drivers, there being no provision under the Act for any signs to operate as to the days, periods of the day, or circumstances.

At the conclusion of a hearing of a complaint for exceeding a speed limit, a magistrate about 12 months ago made the following comments in relation to the first provision of

section 49 of the Road Traffic Act relating to 60 km/h speed signs. The magistrate said:

> I find there is no requirement that the boundaries of any municipality, town or township be denoted and that the speed limit in same be denoted.
>
> I find that there is no requirement that a speed limit sign be observed and there is no provision to authorise the erection of speed limit signs.
>
> Parliament requires that every driver in South Australia should know where the boundaries of every municipality, town or township are.

An article which appeared in the *Advertiser* last Friday 28 February regarding new signs being installed at schools stated:

> 'It's an absolute fiasco,' Mr Thomson said, adding that the RAA had been inundated with complaints from members fined after failing to see the new signs.
>
> Police armed with laser guns in the 25 km/h zones were slugging motorists travelling at 60 km/h with $282 fines and six demerit points for being 45 km/h over the limit. Drivers' licences can be suspended for three months after the accumulation of 12 demerits.
>
> Calling on police to educate and caution motorists until the issue had been resolved, Mr Thomson said most of the visibility problems were confined to arterial and main roads. The new signs—installed at a cost of $800 000—replaced the yellow flashing lights which a Department of Transport committee deemed inadequate. However, many parents prefer the lights because they are easier to see from a distance.
>
> The new signs indicate a 25 km/h speed limit and the times during which the limit is in operation but at 45 cm wide and 120 cm high are too small for a motorist travelling at 60 km/h to read.
>
> The RAA also has pointed to a lack of uniformity between operation times on each sign. Some speed limits run throughout the school day, some set at 8 am to 9 am and 3 pm to 4 pm, and others are different again. Transport Department spokesman, Mr Arndrae Luks, said workers were already replacing some of the new signs on the main roads 'in the interests of the safety of schoolchildren'.

I have in front of me two silly—and I will use that word although I have written 'idiotic'—examples of signage about which I will inform the Minister. They are at Edwardstown and St Leonards Primary Schools. Within the one school zone different operating hours are denoted: one sign says '4 pm' and the other one says '4.30'. People can enter the school zone by using a number of roads, landing them right in the middle of a school zone without their going past one sign. My questions are:

1. Why were most of the 'school' and 'school crossing ahead' signs removed and replaced (some having been overlooked) with what can be described as a confusion of speed limit signs in the vicinity of a number of schools?

2. Is it correct, as outlined by a magistrate, that there is no provision in the Road Traffic Act for the 25 km/h signs or any other speed signs to be observed by drivers, there being no provisions under the Act for any signs to operate as to days, periods of the day, and so on?

3. Why has not the Road Traffic Act, particularly section 49, been suitably amended prior to the changes being made to the signs at schools?

4. How many speeding fines have been imposed in relation to, first, the new school crossings since the start of the school year, and, secondly, the so-called emu crossings used prior to the new school year?

5. Does the Minister acknowledge that the original 'Emu' school crossings were instigated and installed incorrectly?

The Hon. DIANA LAIDLAW: I certainly do not acknowledge the latter, and I have written to Mr Gordon Howie who, I suspect, without acknowledgment the honourable member has quoted extensively in his explanation. Mr Howie is aware that through the gazettal of these provisions, according to all our legal advice, these signs and crossings have been correctly installed.

It is important to understand that, while Mr Thomson from the RAA calls the issue a fiasco, the RAA was represented by Mr Paul Simons on the Pedestrian Facilities Review Group, which recommended that we provide signs at school crossings to explain to motorists what provisions applied at what hours. So, there is no change to the law in any of those instances.

We have always assumed that because of the 25 km/h speed limit being known in the Act and because they operate between school operating hours, we have, on the recommendation of the RAA, the South Australian Association of State Schools Organisations, the Aged and Invalid Pensioners Association, the Australian Institute of Traffic Planning and Management, the Institute of Municipal Engineering Association (that is all the local government engineering people), the Local Government Association and the Department of Transport, enforced what has been recommended. What has been installed accords with the Australian design standards. So, the department has acted on the recommendation of all those groups and it has acted within the Australian design standard. It is also important to note that, because of this recommendation that motorists should be entitled to know what speed limit applies at school zones and when it applies, we have provided that advice.

The law has not changed in that sense. Whether what is on the sign is big enough is another issue, but it is within Australian standards. But it is no different from what has always applied: we are simply making it clearer for motorists. We place some considerable priority on the safety of kids and others in the school zone. What we have in place with those signs is the Australian standard. Two days before it made the public statement referred to by the honourable member, the RAA had a meeting with the Department of Transport and was made aware that the Department of Transport would be writing to all councils formally requesting them to review their school zones to ensure that vegetation or other signs are not obscuring the school zone signs, and that the signs are properly located and installed at the recommended height.

The department also indicated that it was reviewing its school zones and installing larger signs as appropriate, as well as duplicating the signs on divided roads. The RAA was aware of all that, yet it came out with a statement two days later suggesting that it did not have any of that information—simply to get a cheap headline. The RAA was initially consulted as a member of the group that recommended this initiative. It had a meeting with the department indicating that it had some concerns. The department indicated that it too had some concerns, and the RAA came out with an inflated statement to get a cheap headline. I think it is a pretty shoddy way of operating. It is important to recognise—

Members interjecting:

The Hon. DIANA LAIDLAW: No, we have responded to criticism, and that is what I have said. We have responded to the community, which wanted information at the schools, and I would have thought that would be applauded by every member of this place; that motorists today, in the interests of the safety of kids, now have information about what applies. The police, of their own volition, have decided to enforce that; that is not my province or responsibility. It is important to recognise that the department has invested $800 000 in providing this information. It also supplied to all councils the signs that the councils indicated they required for installation in these school zones. It is also important to recognise that,

in the majority of cases, the times which were set and which apply on the panel are those set by the schools themselves with the schools' association, school council and principal.

The department has simply facilitated what the schools have sought in terms of the times, and has simply facilitated the number of signs the councils have sought. Notwithstanding that, the department recognises, as do I, that the Australian standard may not be adequate and in some instances the signs should be increased in size, and on divided roads there should be a duplication of signs. It is agreed by local councils that, in some instances, vegetation should be trimmed so that the sign is easier to see. In terms of the St Leonards example cited by the honourable member, I will ask the department to work with the local council—

The Hon. L.H. Davis: And the Edwardstown one.

The Hon. DIANA LAIDLAW: And with the Edwardstown one.

Members interjecting:

The Hon. DIANA LAIDLAW: If you have examples, go to the local council, because the local council has indicated where it wants the signs. The department has provided the signs and the councils have installed them and sent the bill for that work to the department. The department itself has not nominated where the signs should be installed and has not done the work. The schools nominated the hours placed on the signs. I applaud the initiative, which has come, as I indicated, from the South Australian Association of State Schools, the RAA, the Aged and Invalid Pensioners Association, town planning, municipal engineers and the Local Government Association itself. It is an excellent initiative so that members of the public generally know what rules are to apply. There may be some corrections to be made and they will be made, but the initiative overall is one that we strongly support.

The Hon. G. WEATHERILL: As a supplementary question, in reference to these signs the Minister said that the law had not changed. If the sign says that if you are driving past that school between 8 o'clock and 4 o'clock you have to drive at 25 kilometres per hour, then if it is 2 o'clock in the morning and there are children on the footpath can I still be fined?

The Hon. DIANA LAIDLAW: No, because the speed limit applies to the hours advised. This is exactly the point that the signs are addressing, because the old procedure was that there was a sign for a school zone and nobody new when that school zone applied. Now the sign is up and indicates the school zone in terms of those emu crossings. As I said, community discussion indicated that we had to provide more information so that people were better informed about what was to apply. So, it is at the hours nominated on that panel; outside those hours it is a general speed limit, because the school zone is not operating.

The Hon. T.G. CAMERON: As a supplementary question, when will the faulty signs be replaced and, instead of hitting motorists who may be confused or unaware of the faulty signs with fines and demerit points, will the Government undertake to educate the public on the new signs as well as to direct the police to caution motorists until the replacement process has been completed?

The Hon. DIANA LAIDLAW: I do not know about the honourable member, but I recall that former Premier Dunstan got into some trouble when he told the Police Commissioner how to operate. I will not be telling the Police Commissioner that the police are to caution. The police make their own decisions on how they operate, and I would leave it to the police to work out how they wish to operate in these areas. In terms of the shadow Minister's statement, there is no faulty sign. As usual, he does not care to listen, because he is so busy talking and interjecting—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order, the Hon. Terry Cameron!

The Hon. DIANA LAIDLAW: There are no faulty signs: they come within the Australian standard. The department has acted appropriately. We have indicated, however, that we will be looking at the signs because, notwithstanding the national standard, it is clear that South Australians, in some instances—and clearly the honourable member; perhaps he should not be driving—cannot see the nominated hours.

Members interjecting:

The Hon. DIANA LAIDLAW: Well, they are short-sighted. The point is that members should be setting an example and be aware that in a school zone anyway there is a lower speed: it has always been 25. We are simply advising people when that school zone is there so that they are better informed. If South Australians require a bigger print than the national standard requires, then we will look at that.

The Hon. SANDRA KANCK: As a supplementary question, if members of the public—

Members interjecting:

The PRESIDENT: Order, the Hon. Terry Cameron!

The Hon. SANDRA KANCK: If members of the public are concerned that some schools or kindergartens have times up that are not appropriate, with whom should they lodge their complaint?

The Hon. DIANA LAIDLAW: With the particular school or kindergarten, because they have nominated through the local council to the department the hours when they wish that speed zone to operate. It is the school or kindergarten that has nominated these hours.

AUSTRALIAN NATIONAL

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Transport a question about Australian National.

Leave granted.

The Hon. P. HOLLOWAY: On 3 December I asked a question of the Minister for Transport concerning the scoping study being undertaken by the Federal Government to determine whether Australian National would be broken up or sold as a whole. The Minister replied that State Government officers would be working very closely with those undertaking the scoping study. The Minister also stated:

> They [the consultants] will have until the end of January to report and [the State Government] will be consulted and involved in that process.

My questions to the Minister are:

1. As the deadline passed some five or six weeks ago, is she aware of the outcome of the scoping study and, if so, what was that outcome?

2. If the Minister is not aware of the outcome, is she satisfied that the scoping study has adequately taken into account South Australia's interests?

3. Will the Minister also say what input the State Government has made to that study, and when does she expect to be informed of the results?

The Hon. DIANA LAIDLAW: I thank the honourable member for his question, and I suspect that I may be accused of being given a dorothy dixer, but the Hon. Mr Holloway and I are not working quite that closely at the moment. The

telephone call I just received while the honourable member was asking his questions was to advise that Mr Fahey's office had telephoned further to a telephone call I received earlier this morning. I am advised that Mr Fahey would be announcing today the Commonwealth Government's consideration of the scoping study.

I am able to advise this place that the Federal Government has decided to proceed with the sale of AN by competitive tender as a total package or for component parts with the objective of completing the sale by the end of this financial year, if possible; and that it will be offering TasRail and AN's South Australian-based businesses to the market as fully integrated rail businesses, that is, AN's interstate operations will be offered with track and rolling stock. In this way the Federal Government believes that it will be able to assure the availability of viable and efficient rail services to South Australian customers.

My response on behalf of the South Australian Government will be that this outcome, in terms of the agreement to sell, is certainly the best outcome for the future of South Australian rail and jobs in this State. We argued very strongly for any sale to proceed by competitive tender. We argued very strongly that it be offered by total package or for component parts. All those conditions have been agreed to by the Federal Government and announced today by the Minister for Finance. This State Government will now proceed expeditiously with the Office of Asset Sales to settle the terms of the sales issues, and will also work with the office in terms of the reform of the Rail Transfer Agreement.

The Federal Government acknowledges that any new legislative reform with respect to the Rail Transfer Agreement must embrace the protections that are in the current agreement in terms of the vesting of land, line closures and cessation of services. We have been seeking to clarify issues as quickly as possible, particularly to ensure that companies have reason to do business with rail; that they know what the future of rail is; and that we do not lose more business from rail to road. It is important that these decisions were made with some speed and were not stalled further. It is also important in terms of jobs and that people know what their future involves.

I should also point out that AN is presently losing $10 million (and possibly a bit more) a month, and that haemorrhage should not be tolerated for much longer. This option of sale will ensure that we get new vitality into the operation of rail. That is certainly what the rail future needs in this State to win back business from road and to secure jobs.

The Hon. P. HOLLOWAY: As a supplementary question: in view of the Minister's statement, what guarantee has she received from the Commonwealth that jobs at the Port Augusta and Islington workshops will be maintained?

The Hon. DIANA LAIDLAW: The honourable member would know, if he had actually studied the Rail Transfer Agreement and taken an interest in this matter over the past year, that the jobs at Port Augusta, unless they were jobs held earlier with the South Australian Railways, were not jobs over which the State Government has any power in terms of redundancies, because they were Commonwealth jobs. The Port Augusta workshops were Commonwealth workshops. With respect to the Islington workshops, the Act provides that if AN wishes to make any redundancies it must alert the Commonwealth Minister and, in turn, seek the agreement of the State Minister. I have not had any such request at this stage.

I know that AN, with the agreement of the union, wrote to its work force generally last December alerting it of redundancies so that people could start thinking through possibilities for their future; that if other jobs became available they should be encouraged to take them, and this has been happening for some time. The letter from AN to its work force generally in December was that redundancies may start from June of this year, but again, as I say, there has been no correspondence from the Federal Minister to me on this matter. The Act requires that I agree to any such redundancies before such redundancies can be made.

The Hon. A.J. REDFORD: As a supplementary question: has the rail panel been given any role to play in this issue and, if not, what role will it play?

The Hon. DIANA LAIDLAW: I trust the honourable member is talking about TransAdelaide's new initiative in terms of establishing a rail panel. That new initiative relates to passenger rail in the metropolitan area: it does not directly relate to AN's operations and the sale process announced today by the Minister of Finance, the Hon. Mr Fahey.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: To help in every way.

HOSPITALS, REGIONAL

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Information and Contract Services, a question about food supply contracts

Leave granted.

The Hon. CAROLINE SCHAEFER: Yesterday, the Hon. Sandra Kanck by way of a question and the Hon. Ron Roberts in a speech, each raised the matter of food supply contracts. They particularly dwelt on the perishable food supply contracts for country hospitals and implied that some new system was being used, and that the new contracts would be necessarily let Statewide and to the lowest tender with no exemptions. In doing so, they created considerable anxiety in country towns and amongst the proprietors of food shops who have traditionally supplied perishable foods to their local hospital. The Hon. Sandra Kanck and the Hon. Ron Roberts did not do their homework. In order to allay the unnecessary fears of those shop proprietors and country communities generally, will the Attorney supply the Council with the facts on this matter?

The Hon. K.T. GRIFFIN: It is not uncommon for the Opposition and the Democrats to try to create unnecessary concern, particularly in the rural areas of the State. On this occasion they may have sought to do it but did it on a false premise. My information is that what is happening in relation to call for tenders is that it is not a new initiative but that it is a routine matter of calling for tenders. The contract has been in existence for a considerable number of years, and this is just part of a periodic process. It is open for any company anywhere in the State to submit a tender. I am told that ServicesSA, which manages the process, is prepared to consider submissions from local health authorities seeking exemption from the need to purchase goods from whichever contractor is successful in gaining the new contract. That is also something that has been in existence for many years. I am told that some country health units do make use of the contract system whereas others choose for various reasons to use a source of local supply.

As I say, some regional hospitals do obtain exemptions from whole of Government contracts in order to source

regional suppliers. That does not relate only to foodstuffs; it relates to other products which might generally be the subject of a State-wide tender call. I am told that the evaluation of the current tender call to renew the existing contract for the supply of fresh fruit and vegetables will incorporate, as part of the evaluation, criteria relating to the economic impact on regional small business. In addition, ServicesSA is working with the Economic Development Authority to develop a policy and set of principles to be applied to tendering and contracting in regional areas. It will take into account the impact on small businesses and the regional economy and will be available in a draft form within the next couple of weeks.

WATER, HILLS

In reply to **Hon. R.D. LAWSON** (11 February).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

1. Mines and Energy SA monitors groundwater levels in the Mount Lofty Ranges. This monitoring data indicates that there are no significant regional water level declines associated with spring water production.

2. The new Water Resources Bill currently before Parliament will provide the appropriate mechanism for these water resource allocation issues to be addressed.

3. Two initiatives are underway in the Mount Lofty Ranges concerning groundwater resources and spring water use.

Firstly, an investigation program has commenced to assess the groundwater resources of the region under the auspices of the South Central Regional Development Organisation. Mines and Energy SA is conducting this investigation program which will focus on priority areas based on the level of use of the groundwater resource.

Secondly, a Plan Amendment Report is being prepared for the spring water industry which will require monitoring of local groundwater levels as part of the development approval for the establishment of spring water operations.

COONGIE LAKES

In reply to **Hon. T. CROTHERS** (4 February).

The Hon. DIANA LAIDLAW:

1. The proposal referred to by the honourable member is for a seismic survey program only—there is no extraction involved at this stage. Under the Petroleum Act the proponent is required to produce a Declaration of Environmental Factors (DEF) and the specially constituted Coongie Lakes Control Zone Management Group is overseeing this. The seismic survey proposed will employ best practice codes and technology and is expected to have minimal environmental impact.

2. The Minister for Mines considered a Declaration of Environmental Factors (DEF) to be the appropriate level of assessment for the seismic survey phase and in recognition of the environmental significance of the area, Santos voluntarily initiated a targeted consultation process. Over 60 key individuals and organisations have been invited to contribute ideas and expertise and some valuable input has been received. There will be some positive amendments to the approach as a result of this process, but I repeat that the survey work proposed is of a low impact nature and the natural values of this highly important area will not be compromised.

TRAFFIC RESTRICTIONS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport a question about traffic restrictions.

Leave granted.

The Hon. G. WEATHERILL: In the last 12 months the section of Henley Beach Road between South Road and the railway crossing has been widened to three lanes on either side. In addition, the intersection of Henley Beach and South Roads has been widened, which makes the road much clearer with fewer visual restrictions. This is very good for traffic, but when one travels along Henley Beach Road between Kooyonga Golf Course and South Road the amount of traffic parked on the side of the road restricts traffic to one lane. I have spoken to representatives of the ambulance service who tell me that there are many accidents along there because people are totally frustrated at being held up. There were suggestions that cut-ins would be provided along the road. This would widen the road and provide for two lanes, which is needed. The same thing occurred on Burbridge Road. I have received complaints that, because of the amount of traffic parked on the road, there is only one lane of traffic up and down during the day. I point out that there is enough space for cut-ins to be constructed. Will the Minister look into this and determine whether it is feasible to undertake this type of work?

The Hon. DIANA LAIDLAW: I certainly will undertake to address this question expeditiously and bring back a reply to the honourable member. I suppose that clearways is another option, although perhaps many of the small business people along these main roads would not wish to see that facility. We will look at the engineering issues that the honourable member has raised.

TRANSPORT, STUDENT CONCESSIONS

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a brief ministerial statement on the subject of the Paul Simon trial result.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday the Hon. Terry Cameron asked a question about Mr Paul Simon and a transit infringement notice that he had been issued and he indicated that the case had been pursued by transit police and that the court had thrown it out in terms of not requiring the student on a student concession ticket to have a student concession identification. I advise the Council that, contrary to the statement and impressions given by the honourable member in his explanation to his question, Mr Simon was found guilty but the charge was dismissed by Justice McLean on 27 February 1997 under section (15)(1)(a) of the Criminal Law (Sentencing) Act as trifling. A guilty charge means that the PTB does not pay the court costs. The PTB will not be appealing against this decision because Mr Simon was found guilty.

WATER RESOURCES BILL

In Committee.

(Continued from 5 March. Page 1120.)

Clause 45—'Functions of the Minister.'

The Hon. M.J. ELLIOTT: Mr Chairman, before the debate was adjourned last evening a question had been asked by the Hon. Angus Redford in relation to clause 45 and at that stage I did not have a ready answer for him other than acknowledging that there was a problem that he had raised that I shared concern about. After a discussion with Parliamentary Counsel I realised that in fact we had already addressed the issue and that the previous amendment to include paragraph (c) had the effect of giving the Minister sufficient discretion in relation to how the regulations apply in subclause (4). As such, the necessity for consent would not

necessarily apply to all information supplied by people. The Minister could by regulation make plain that it relates only to information that is personally identifiable. The difficulty raised by the honourable member was a legitimate one but it had been addressed by the previous amendments in tandem with this clause.

The Hon. A.J. REDFORD: I accept that explanation and thank the honourable member.

The Hon. DIANA LAIDLAW: The Government is not opposed to this amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 36, after line 28—Insert subclause as follows:

(5) Without limiting the directions that the Minister may give to a catchment water management board or a water resources planning committee, the Minister may direct a board or committee to observe practices and comply with standards specified by the Minister in relation to the gathering, recording and keeping of information.

It is important that the Minister be in a position to direct boards or committees to comply with standards in relation to the gathering, recording and keeping of information. In other places, I have pursued the question of openness and availability of information. That works only if there has been appropriate gathering, recording and keeping of information in the first instance.

The Hon. DIANA LAIDLAW: The Government is not opposed to the amendment.

Amendment carried; clause as amended passed.

Clauses 46 and 47 passed.

Clause 48—'Minister may delegate.'

The Hon. M.J. ELLIOTT: I move:

Page 38, line 5—After 'Part 8' insert ', Division 1'.

This recognises other amendments that I will move elsewhere in relation to the relative powers and responsibilities of the Minister *vis-a-vis* the council. It is my intention that by inserting the expression 'Division 1', it is plain that the power to delegate functions or powers relates to that division.

The Hon. DIANA LAIDLAW: The Government opposes this amendment. We see it as consequential upon other amendments to be moved in relation to Part 8, Division 2, which deals with the collection of the levy. The Government supports a system of collection through councils, which is not what is being proposed in the Hon. Mike Elliott's amendment.

The Hon. T.G. ROBERTS: My understanding of the amendment is that it allows for a mixed role, a two-tiered system or a separate system from councils being obligated to collect the levy, with an option as to whether or not they want to collect it.

The Hon. M.J. ELLIOTT: This is one of those cases where you give instructions to Parliamentary Counsel and, when all the amendments are drafted, there is often a small amendment to a subclause, and you do not pick up where it links into the major amendments. I assumed that this was linked to some other amendments that I will move concerning the relative powers of Ministers and the Water Resources Council, but in fact it links to the levy. In the circumstances, it might be sensible to discuss the issue of the levy more generally now because the vote on this amendment will be a vote on the question of the levy and its collection.

Whilst I will persist with moving the amendment, I am aware that there have been discussions outside this place between the Local Government Association and the Government in particular, but there may well have been other players. As I understand it, the Government will move a number of amendments which will address the concerns of local government. As such, local government will note that those amendments will ameliorate some of those concerns about levy collection. Will the Minister indicate whether that is the case and will she provide a further explanation as to what is proposed at this point?

The Hon. DIANA LAIDLAW: The honourable member indicated that there have been further discussions between the Government and the Local Government Association on the collection of the levy issue. Many of the concerns of local government have been thoroughly discussed and overcome in amendments that will be moved by the Hon. Terry Roberts. The Government will support those amendments. The Hon. Mr Elliott has raised this matter with the Government and through amendments, and so has the Hon. Terry Roberts, and the Government will support the Hon. Terry Roberts's amendments in this regard. I understand that they are now on file to clauses 59 and 68.

The Hon. M.J. ELLIOTT: Will the Minister explain the effect of those amendments?

The Hon. DIANA LAIDLAW: For the record, I will indicate why I strongly oppose what the Hon. Mr Elliott proposes. The proposed amendment would remove the obligation of councils to collect and pay to the boards the land based catchment environment levy. It seems that the honourable member would prefer to see the community bear the burden of establishing a completely new bureaucracy to collect this money, diverting funds away from on-ground works.

I know that there was an interjection at some stage—and I cannot remember by whom—in relation to the collection of the levy, and it was proposed that SA Water (the old EWS) would have the mechanism for the collection. I indicate that we could not use that facility, because not all rateable properties are serviced by SA Water. Therefore, we would need to establish a new bureaucracy for this purpose, whereas local government already have such a network and facility in place.

The fact is that local government is the only institution which has an effective tool for collecting money from all rateable properties. Although the State Government collects and keeps data on who owns which parcel of land and how much it is worth, it does not have the rating system in place for these people. To establish another rate collection body to collect the land based levy would impose further unnecessary costs on the community.

The catchment environment levy, based on land ownership, will be paid not by local governments but by landowners within the catchment area included in a council's region. This recognises both the contribution of landowners to the problems of a catchment and the benefit reaped by those same landowners from the solutions to the problems. The Government has no wish to increase unnecessarily the costs of administering this important legislation by establishing a duplicate collection method.

The Bill provides for local councils to be reimbursed their actual costs of collecting the land based levy. Quite apart from that, the history of the two existing catchment boards established by this Government under the Catchment Water Management Act to clean up the Torrens and the Patawalonga catchment areas is that significant funds are provided by the two boards to projects such as the new wetlands at Urrbrae which directly benefit local councils and assist them to implement works for dealing with stormwater.

The Hon. T.G. ROBERTS: The Opposition was supportive of the Government's position (which is inclusive of the amendment I have on file) for all the reasons the Government has outlined. Also, in the first draft of the Bill and in the first round of negotiations local government was never quite sure of its role or what sort of partnership it was to play in the whole process. The longer the negotiations went, the clearer it became that the Government would have to take some responsibility for providing supportive infrastructure to allow for the administrative mechanics to be provided.

The difficulty a lot of councils would have, given that rate capping and many other exercises restrict their ability to raise revenue, is that extra revenue would have to be supplied. I referred last evening to the partnership between the Commonwealth, States and local government in assisting not only to rehabilitate and clean up the environment but also to provide for prevention programs through soil boards and water management programs. There needs to be an integrated approach to that.

We are attracted to the Government's new negotiated position, as well as the compromises that were drawn and the resource allocation that the Government has promised to local government for the levy to be collected to assist it in minimising any potential for conflict or argument at a local level, be it in the metropolitan area or regional areas. We are attracted to a one layer approach, that is, a single collection method.

If there is provision for another administration for the collection of a levy, SA Water could lend itself to becoming overly bureaucratic. It could also lend itself to no commitment from some councils that might prevail upon SA Water to become their agent for collection. With the imposition of the levy and the associated administration, with the participation that local government will now have on the boards, a responsibility will be built in for their role and participation.

Local government has met with the Minister. It has negotiated a sensible solution to the problem and, if any adjustments need to be made later, I am sure that the State Government and local government can work that out as they go. We support the Government's position.

The Hon. A.J. REDFORD: Is it envisaged in this legislation that the only way a levy is set or struck is based upon land, or is the amount of water used another option in terms of determining a levy? What are the options in terms of how a levy is struck?

The Hon. DIANA LAIDLAW: It is correct that it is not defined in the Bill. There are options, one of which is water licences, which are based on the allocation of water and how much is used. The other basis could be on land and the rateable value of that land. In each instance, it would be up to the board to recommend to the Minister which of those two options would be used in the particular circumstances.

The Hon. A.J. REDFORD: It would appear that the Hon. Mike Elliott's amendment is seeking to confine those options, and I will not get into a debate as to whether that is appropriate. It would also appear that, from the Government's amendment, there is a provision for the councils to collect it, because they have the infrastructure, experience and ability to collect rates, taxes, levies, and so on, based on landholdings, land values and the like. In other words, the Government is suggesting this course of action because the councils have this infrastructure in place, and this is the most administratively efficient way of doing it.

However, the Hon. Michael Elliott is saying, 'Well, let's confine the nature of the rates and how they are struck to land values, based on capital value of rateable land.' I am sure the Hon. Michael Elliott will correct me if I misunderstand his intent. It seems to me that, whatever we accept, the temptation of water boards will be to strike these rates based on capital values of land. If I am correct in that assumption, it is somewhat misguided in any environmental sense in that I would have thought that the most appropriate way to charge for water would be on the basis of water used, especially if we are going to encourage an environmentally sustainable and economic use of the water, particularly having regard to the justification for the changing way in which we charge for water rates, instituted first by the then Minister Susan Lenehan and then promulgated and continued to be adopted by the present Premier, the Hon. John Olsen. Both positions seem rather odd, but perhaps I am misunderstanding something.

The Hon. M.J. ELLIOTT: I do not want to take up too much time on this issue at this stage because the numbers are already there. A couple of debates may have been possible, but the fact is that the Opposition has already indicated that it is moving amendments which the Government has indicated it will support. Who should collect the rates is the question on which I am concentrating now. Both the Government and the Opposition are on record in relation to this matter of who should collect the levy. I note also that, whilst the LGA would prefer local government not to collect it, they feel that with some of the other proposed modifications they can at least live with it.

We could debate for another hour the philosophy about the way in which one levies rates against water, but I inform the honourable member that the stepped rating system that we now have in relation to the use of domestic water is something that I inserted into legislation on a previous occasion. So, I certainly appreciate the necessity for having levies against water use, but I do not think we need to prolong it at this stage.

The Hon. T.G. ROBERTS: I do not want to prolong it, but I want to place on record some of the administrative commitments that the Government made during negotiations yesterday, and this might be a good time to do that. I understand that the LGA was looking for written agreement. Will the Minister say what the Government's intentions are in regard to the administrative agreement being sought by the LGA and the types of issues that this agreement would cover? How would it be negotiated and how would it work in practice?

The Hon. DIANA LAIDLAW: I understand that the administrative agreement relates to the department's providing some electronic data to councils to help them in their assessments and also some training. Those terms will be outlined in correspondence from the Director of the Department of Water Resources, if not today or tomorrow, within the next week. Is that sufficient? That is what I understand will be provided for in this letter of agreement.

The Hon. T.G. ROBERTS: Are there any other commitments to infrastructure costs?

The Hon. DIANA LAIDLAW: Yes, the Bill provides for the reimbursement of the actual costs involved in collecting the land based levy.

The Hon. A.J. REDFORD: I support the Government's position, which is preferable to that of the Australian Democrats, although I must say that the Democrats' position is probably more intellectually honest. I say that because this provides the encouragement to bring in rates based on land and capital values and not on the use of the water. I cannot

see how that fits in any way with the objects of the Bill or with the stated objects of the Minister in introducing this legislation and, in particular the COAG principles, where we ought to be encouraging an economic and environmental best use of the water. I say that because, if a person owns a lot of valuable land and they are given an allocation of water because they are paying high rates, they will use that water whether or not it is economic. It is exactly the same position in which the EWS found itself when people who had high values placed on their land were given water allowances based on their capital value, not on their need. Consequently, some people were paying for water they were not using and other people were using more water than they were paying for. That is a major departure, and it is unfortunate. I must say that I cannot suggest a better way of doing it, but it is unfortunate.

The Hon. M.J. ELLIOTT: While this issue of land values is being discussed, I have little doubt that there will be problems in, say, the Murray River area, where dry land farmers might find themselves paying a levy against land value when it is likely that they are making no contribution to the river at all. In some catchments one could argue quite strongly that it is not such a problem. For instance, in the Mount Lofty Ranges no property would not be producing a run-off, and no property would not, in some way, be contributing to what is happening in the stream.

That would probably be true in the South-East, too. There is surface water but there are some areas where it does not move over great distances: it tends to sit in one place and perhaps soak down. The issue is complex. It would not have been such a problem if we had integrated landcare legislation—an issue on which I touched when we first started the debate yesterday.

If someone was talking not just about water but about soil care, and so on, it would not be as unjust. Certainly, while we are focusing on water resources alone, they will have to be very careful how they draw the boundaries regarding whom they will impose levies on in relation to the Murray River, because anyone outside an irrigation district is probably having a negligible, if any, impact on the system. I could understand why they would be pretty upset if they got hit with a levy.

The Hon. T.G. ROBERTS: Perhaps this is a good time for the Opposition to ask some specific questions. The Minister may prefer to supply the answers now or later.

The Hon. DIANA LAIDLAW: I am happy to answer them now.

The Hon. T.G. ROBERTS: Will the Minister outline the relationship between clauses 135, 136 and 138 and specifically how these clauses shall be applied?

The Hon. DIANA LAIDLAW: Clause 135 provides that the Minister will set the levy at the amount needed by the board, plus an amount that the Minister estimates will be lost through the deduction of rebates, remissions, valuation appeals or exemptions. Clause 138 provides that the council should impose a levy that will be struck at the level required to meet the amount of the council's bill without taking into account the fact that a council may be entitled to reduce the amount paid to the board by any rebates, remissions, and so on. Data received from various councils within the Torrens and Patawalonga catchment areas show this to average only about 2 per cent in total across the whole catchment area.

Clause 136 talks about the amount that a council must pay to the board and states that this may be different from the amount actually gazetted. Clause 136 provides that the amount a council must pay is that calculated by the Minister under clause 135, less any rebates or remissions granted by the council and less adjustments due to successful land valuation appeals by the ratepayer and less the exemption in clause 138. (The clause 138 exemption provides that, if a person is paying a water licence levy, they will not also pay a land based levy in respect of their irrigated property.)

The department will provide this data to councils in electronic form. It is important to remind the Chamber that this very same system has been administered by 24 metropolitan-rural councils since May 1995, apparently without mishap or misunderstanding. Councils deduct their various rebates and remissions. The boards get by on the levy that is received. The honourable member should note that the Minister has not increased the amount required by the boards in this financial year, or the previous one, as the average expected rebates would have amounted to about 2 per cent. Given the inherent flexibility of the budget of any wide ranging set of programs, this was considered too insignificant an amount to warrant adjustments.

The Hon. T.G. ROBERTS: This will enable the people involved in the debate when they read *Hansard* to obtain answers to these questions, because they were the most often asked and negotiated questions when discussions were taking place. As I understand it, if the councils are to calculate a levy in their areas and to collect the amount determined by the Minister, this amount is an estimation that is based on requirements of the Catchment Management Board's plan. What will occur if the levy collected falls short of the requirement of the board's plan or if the levy is more than the requirement of the board's plan, and are rebates and remissions factored into the collection of the levy?

The Hon. DIANA LAIDLAW: If the levy actually collected falls short, the board would need to cut its coat according to its cloth. This may mean delaying certain programs until the following year. If the amount received is more than that required by the board, the amount will be carried over until the next year. As I will detail in a moment, there is no possibility for any funds to be funnelled away to other causes. The levy may be spent by the board only on the matters detailed in its plan. However, I note again estimates that average losses will be to about only 2 per cent which, given the inherent flexibility of the budget of any wide ranging set of programs, is insignificant.

In terms of the rebates and remissions being factored into the collection of the levy, the answer is 'Yes'. Each council is entitled to deduct from the amount actually paid to the board an amount that the council has granted to ratepayers as rebates or remissions. The same rebates or remissions are available as can be granted by a council in respect of its general rates under the Local Government Act. This is provided for in clause 136.

The Hon. T.G. ROBERTS: The basis of the levy is outlined in clause 138 of the Bill. Will the Minister provide examples of key issues that will be taken into account in the selection of the basis for the levy, against clause 138(3)(a) to 138(3)(e)? In addition, will she outline the type of consultation likely to take place with councils?

The Hon. DIANA LAIDLAW: The type of levy to be chosen from the 'menu' set out in clause 138 will be the subject of community and council consultation by the board during preparation of a catchment water management plan. Issues that may be relevant to these community discussions will include things such as: the preference of the constituent councils; equity between users of water resources in the

catchment; the users of the catchment in a more general sense; and the ability to pay. For example, in rural areas properties frequently have very high capital value—a matter raised earlier by the Hon. Angus Redford—although the farmers on those properties may have limited income.

The Hon. T.G. ROBERTS: What recourse do councils have when members of the community do not pay the levy?

The Hon. DIANA LAIDLAW: As the levy is to be collected as if it were a rate for the purposes of part 10 of the Local Government Act, the council has the same debt collection opportunities open to it as it does for its rates generally. However, on this point I think it important to note that the levy has been collected under almost identical provisions under the Catchment Water Management Act for nearly two years now. I am not aware of any representations from councils complaining of such an issue. Clearly, this is because all the evidence points to the willingness of the community to support catchment management through paying this levy for the clean-up of its waterways.

The Hon. T.G. ROBERTS: I suspect that the amounts might be slightly different. Will the Minister outline the interrelationship between clause 138 of this Bill with section 175 of the Local Government Act?

The Hon. DIANA LAIDLAW: Clause 138 quite clearly provides that the levy will be collected as though it were a separate rate under part 10 of the Local Government Act, and that part 10 will apply except where the contrary intention appears. Section 175 of the Local Government Act provides that a separate rate can be set only in respect of land within a part of a council's area. For the purposes of clause 138 of the Bill, clearly, where the whole of a council area is within a catchment board's area, this will be a contrary intention and that limitation will not apply. The levy provisions of this division, specifically clause 138, clearly state that a council should reimburse itself for the collection by collecting it from rateable property in its area.

The Hon. T.G. ROBERTS: Given that a benefit test is included in section 175 of the Local Government Act, will this test apply in the application of clause 138 of this Bill?

The Hon. DIANA LAIDLAW: As I mentioned in the answer to the previous question, the issue of whether land will be particularly 'benefited' by the raising of the levy is not applicable to the raising of the catchment environment levy, due to the provisions of division 2. The honourable member has given me notice of two other questions: perhaps I could also refer to those. They relate to provisions in the Bill to allow for the levy to be collected by councils to be capped, and how the Minister will monitor the ability of local ratepayers to pay the levy. I am advised that the Bill does not contain formal provisions for capping the levy. However, the levy provisions are part of the rigorous consultation process over the content of the board's plan and in that way are open to public comment about proposed levels of expenditure.

Another important item in the board's plan, which was remarked upon by the Hon. Jamie Irwin in his speech in support of this Bill, is a social impact statement, an assessment of the expected social impact of the imposition of any proposed levy under part A. This is contained in clause 92(3)(p) of the Bill. Over and above all these safeguards, the Hon. Angus Redford proposes to move amendments, which are supported by the Government, which would require the proposed levy to be submitted to the Economic and Finance Committee of the Parliament. I will let my colleague speak further on that matter for himself.

The last question asked by the Hon. Terry Roberts is: how will the Minister ensure that the public knows that councils are collecting the levy on behalf of the Government and the boards? I am advised that levy is not being collected on behalf of the Government. The levy moneys are quite clearly not part of the Consolidated Account and cannot be spent by the Government. This was made clear in clause 63(4) of the Bill. The funds are collected by and for the boards. Specifically, they may be spent only on implementation of a board's catchment water management plan. This is clear under clause 65 of the Bill, which provides that a board may undertake only those activities that are specified in its plans or are incidental or ancillary to matters specified in the plan, or that are otherwise required by the Act; for example, public education is specified in the Bill as a separate and specific function of the boards.

The catchment environment levy must appear as a separate line on the council rate notices, so that it is clear that it is not a council rate. This is provided in the Bill at clause 138(9). To ensure accountability on this matter, a board's plan and other relevant documents must be kept available for public inspection, as must its annual reports, which include its audited financial statements and other financial details. Boards' accounts are audited annually by the Auditor-General, and boards generally are subject to the provisions of the Public Finance and Audit Act, which set stringent standards for the management of funds and auditing requirements. Board meetings must be properly advertised and open to the public, except in very limited circumstances. I suggest that these are ample safeguards for the community to ensure that its funds are spent by the boards only for purposes set by the boards, and that they are spent wisely.

Amendment negatived; clause passed.

Clause 49 passed.

Clause 50—'Membership of the council.'

The Hon. M.J. ELLIOTT: I move:

Page 38, line 25—Leave out ', in the opinion of the Minister,'.

I note that both the LGA and the South Australian Farmers Federation found the words, 'in the opinion of the Minister' unnecessary. In each case we have a panel of nominees that have been put forward by a range of bodies—and I have several amendments along similar lines—representing local government, the Conservation Council and the Farmers Federation. The Minister has the option of choosing one of those three people. The words 'in the opinion of the Minister' are not necessary. In fact, those people have been nominated because of their experience by the relevant organisations.

The Hon. DIANA LAIDLAW: The Government does not support the amendment. The Government has an amendment to the same clause—

The Hon. A.J. Redford: It is a much better amendment.

The Hon. DIANA LAIDLAW: That is right, but then, as I said last night, we have had another week to work on it after—

The ACTING CHAIRMAN: Will the Minister move her amendment?

The Hon. DIANA LAIDLAW: I move:

Page 38, line 25—Leave out 'in the opinion of the Minister' and insert 'in the opinion of the Association'.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: Our amendment is better than the Hon. Mike Elliott's, but we did have a week further to think about it after he raised the issue, so—

The Hon. M.J. Elliott: Very magnanimous.

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: I will tell the honourable member why—

The Hon. M.J. Elliott: I'll show you mine if you'll show me yours.

The Hon. DIANA LAIDLAW: In fact, the honourable member did not show me anything. I came into this very late in the exercise. Our amendment proposes that the assessment of the expertise of the panel members put forward to the Minister is made by the Local Government Association itself, and that is not provided for in the honourable member's amendment. We are asking the Local Government Association, SAFF, or the relevant body to nominate the expertise, and that is why mine is better than yours.

The Hon. T.G. ROBERTS: The Opposition supports the Government's amendment.

The Hon. M.J. ELLIOTT: My amendment does exactly that, and I do not understand why the Labor Party is bending over backwards to accommodate the Government all the time.

The Hon M.J. Elliott's amendment negatived; the Hon. Diana Laidlaw's amendment carried.

The ACTING CHAIRMAN: Does the Hon. Mr Elliott wish to persist with his two following amendments? They are consequential amendments.

The Hon. M.J. ELLIOTT: That is what we are doing anyway; we are striking out those words.

The Hon. DIANA LAIDLAW: I move:

Page 38—

Line 28—Leave out 'in the opinion of the Minister' and insert 'in the opinion of the Council'.

Line 32—Leave out 'in the opinion of the Minister' and insert 'in the opinion of the Federation'.

Amendments carried.

The Hon. M.J. ELLIOTT: I move:

Page 38, line 36—After 'board' insert 'who has been nominated from a panel of three persons submitted by a majority of the catchment water management boards'.

I note that the Government has an identical amendment. It is so identical it could be only marginally better, so I will not lengthen the debate. The Bill, as it currently stands, has a person who is appointed by the Minister who must be a member of a catchment water management board, but the boards themselves have no say. The effect of my amendment and the Government's amendment will be that the catchment water management boards themselves will submit three persons from whom a person will be chosen to be a member of the Water Resources Council.

The ACTING CHAIRMAN: The amendment standing in the name of the Minister is identical.

The Hon. DIANA LAIDLAW: I will not move my amendment; the Government supports the Democrats' amendment.

The Hon. T.G. ROBERTS: I was hoping the Minister would move her amendment so that I could support the Democrats' position to show the honourable member that we are even-handed and that we support some of the Democrats' amendments.

Amendment carried; clause as amended passed.

Clause 51—'Functions of the council.'

The Hon. M.J. ELLIOTT: Before I move my amendment, I want to put something on the record that I did not pick up during yesterday's debate, and this is as good a place as any to raise it. Yesterday we had a discussion in relation to the object of the Act and the Government created a terrible fuss about the insertion of the word 'fair' into the object of the Act. The Government seemed to suggest it would be the end of western civilisation, among other things. On my re-reading of the Act, which this Bill is about to supersede, the objects of the current Act are as follows:

(b) to establish a system ensuring the sharing of available water on a fair basis.

In fact, the Current Water Resources Act has exactly that—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: Are you saying that the courts can do that? On this occasion the Act has left out the concept of fairness—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: I did want to put that on the record for all those people who suggested that it would cause things to tumble down, that there would be huge numbers of court cases, that it worked against the current clause and so on. I felt that that was a load of nonsense. I wanted to point out that the current Act has had it for six years and that it does not appear to have caused the sorts of problems that people predicted would occur if such words—

The Hon. Diana Laidlaw: You have embraced ESD, which has the notion of fairness, anyway.

The Hon. M.J. ELLIOTT: I would argue that the old objects of the Act probably looked after ESD better than these, but I will not enter into that debate as well. I move:

Page 39, after line 7—Insert paragraphs as follows:

(a1) to examine and assess the state and condition of the State's water resources; and

(a2) on its own initiative or at the direction of the Minister to advise the Minister on any matter relating to the state and condition of the State's water resources or the management of those resources; and.

The intention of these paragraphs is to expand on the functions of the council. It is appropriate that the peak body in relation to water resources should have those functions.

The Hon. DIANA LAIDLAW: The Government opposes the amendment. We have our own amendment on file to address this matter. The Government intends to have the roles and responsibilities of each of the bodies under this Act clearly defined. We intend that the Water Resources Council will remain focussed on a strategic level, not on the day-to-day or regional matters which are properly for the boards to focus on. The honourable member's amendment suggests in (a1) that the role of the board is to examine and assess the state and condition of the State's water resources. We see that as a power of the board and not of the council.

The Hon. T.G. ROBERTS: The Opposition's position is that, even though overlap is not intended, there probably will be overlapping responsibilities. We will support the Government's amendment when it is moved. We will be opposing the Democrats' position. It is a lesson in that they have put their amendments to the Government too early and probably got too good a result from the Government's position.

The Hon. M.J. ELLIOTT: I would ask the Hon. Terry Roberts why he might have problems with part of this which it seems to me the Government has not picked up. The first part of my amendment talks about examining and assessing the state and condition of the State's water resources. I wonder why the Labor Party would not want the Water Resources Council to have that responsibility, because that does not appear to have been picked up by the Government's amendments. In other places the Government appears to have duplicated it, but it is not quite the same. Certainly, that is one thing which appears to be missing. To have a peak body

which can of its own volition carry out such an examination and assessment is a useful thing.

The Hon. T.G. ROBERTS: I agree that it would be a useful thing, but it is horses for courses in relation to roles and responsibilities for various sections between the state water plan, the council, the boards and the Minister. It appears to me that the council would be duplicating a role that perhaps the board would be playing. I did indicate that, even though the legislation might spell out ways of separating roles and responsibilities, I suspect there will be overlap. We would not want to encourage duplication of planning each function. Each role for each separate structure needs to be identified, otherwise there will be confusion.

The Hon. A.J. Redford: Which board will do the whole State?

The Hon. T.G. ROBERTS: The Minister's plan would be the one that I would think, and it would be done I would say from input from the boards and probably there would be informal input from councils, anyway. All those people talk to each other. They go to similar meetings and functions.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: They are the Minister's words, not mine. It is for those reasons that we support the Government's amendment.

The Hon. M.J. ELLIOTT: If there is to be a State water plan, I would have thought that the Water Resources Council would at least have some input. Here you have a peak body which brings a person from the Water Board and other people with key knowledge who all come together around a table. It would seem to me that the Minister should be asking them for some advice in relation to a State water plan, and I cannot see how they would be capable of giving advice if they did not have some idea of the condition of the State's water resources overall. It seems to me to be self-evident that that should be occurring.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 39, lines 11 and 12—Leave out subparagraph (ii) and insert—

(ii) the extent to which implementation of the Plan has achieved the object of this Act,

and, where the council thinks fit, make recommendations in writing to the Minister as to changes that should be made to the Plan; and.

The effect of this is not only to look at the extent to which the plan achieves the objects of the Act but also for the council, where it thinks fit, to make recommendations in writing to the Minister in relation to changes that should be made to the plan. We are talking about the State water plan in this case. I note that the Minister has an identical amendment on file. I reiterate the comments I made on the previous clause that we have just lost. The Minister has the same amendment on file which enables the council, where it thinks fit, to make recommendations to the Minister about changes that should be made to the State plan. I do not know how it will do that without carrying out the role that I suggested in the previous amendment, which we lost. I note that the Minister has an almost identical amendment on file, so I guess that will get up.

The Hon. DIANA LAIDLAW: My proposal contains a small variation, but I am prepared not to move it and to support the Hon. Mr Elliott's amendment.

The Hon. T.G. ROBERTS: We will support the Democrats' amendment because the Government has indicated that it will not proceed with its amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 39, lines 18 to 20—Leave out paragraph (c) and insert paragraph as follows:

(c) at the direction of the Minister—

(i) to examine and assess the extent to which a particular water allocation plan has been implemented; and

(ii) to examine and assess the extent to which implementation of the plan has achieved the object of this Act,

and, where the council thinks fit, to make recommendations to the Minister as to the directions that the Minister should give to the appropriate catchment water management board or water resources planning committee in relation to implementation of the plan; and

The effective difference between my amendment and the measure in the Bill that it seeks to replace can be found in the last four lines, where the council thinks fit to make recommendations to the Minister as to the directions the Minister should give to the appropriate water resources planning committee in relation to the implementation of the plan. It is not enough to examine and assess the plans but, if they are to be examined and assessed, they should make some recommendations in some cases.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

The Hon. T.G. ROBERTS: We support the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 39, after line 22—Insert paragraph as follows:

(da) to promote public awareness of the importance of the State's water resources and the proper management of those resources; and.

I believe that the Water Resources Council can play a role in promoting public awareness of the importance of the State's water resources and the proper management of those resources.

The Hon. T.G. ROBERTS: The Opposition opposes this amendment, using the same argument that we used before about the duplication of roles. It will probably happen informally, but I do not see that it should have a budget line. Budget lines should go into other areas. The board, DENR and the Government should be in a position to perform that educative, promotional role, so that is why the Opposition opposes this amendment.

The Hon. DIANA LAIDLAW: The Government opposes this measure, and the reason for our opposition was clearly outlined by the Hon. Terry Roberts.

Amendment negatived.

The Hon. DIANA LAIDLAW: I move:

Page 39, after line 22—Insert paragraph as follows:

(da) on its own initiative to advise the Minister on any matter relating to the state and condition of the State's water resources or the management of those resources if it is necessary to do so in order to achieve the object of this Act; and.

To assist clarity in legislating for the role of the council, this amendment will specify that the council may advise the Minister on matters relating to the object of the Act if necessary to do so in order to achieve that object. The council's role as defined in the legislation has been kept deliberately at a highly focused strategic level. Naturally, the council may approach the Minister if it is of the view that a particular issue requires looking into and it would be surprising if it did not. This would also be a major part of the council's role in reporting to the Minister on the effectiveness of the State water plan in achieving the object of the Bill.

The Hon. M.J. ELLIOTT: I support the amendment and note that it is substantially the same as part of an amendment which I moved earlier and which was defeated, except that on its own initiative the council will give advice on matters, and I presume that it will not do so unless it has first examined and assessed the condition of the State's water.

The Hon. T.G. ROBERTS: We support the Government's amendment.

Amendment carried; clause as amended passed.

Suggested new clause 51A—'Funding of council.'

The Hon. M.J. ELLIOTT: I move:

Page 39, after line 31—Insert new clause as follows:

The funds required by the council to carry out its functions and to perform its duties under this Act must be paid to the council by the Treasurer out of the Consolidated Account which is appropriated to the necessary extent.

As I recall, this recommendation was made by both the Farmers Federation and the LGA. They both argued strongly that, if we are to have a council which is to provide independent advice, it must have sufficient funds to carry out the functions that are described in this Bill. The need for such a clause is self-evident.

The Hon. DIANA LAIDLAW: The Government opposes this amendment. The council will be resourced in line with Government priorities and the allocation of funds through the Department for Environment and Natural Resources. We would not make such an open-ended commitment as the honourable member would like through moving this amendment. I do not recall that there is any precedent in any other piece of legislation, be that environmental or of any nature, in terms of making such an open-ended call on the Treasurer and the Government as a whole through Consolidated Account. The Water Resources Council currently costs about $60 000, and I will get that figure checked. That money is already provided for that purpose. It may cost a bit more if they find a bit more.

The Hon. T.G. ROBERTS: We support the Government's position. If the council were given a funding line, its function and role may change. We see that the Government's position is a reasonable one.

Suggested new clause negatived.

Clauses 52 to 56 passed.

Clause 57—'Membership of boards.'

The Hon. M.J. ELLIOTT: I move:

Page 41, line 33—Leave out 'five members but not more than nine members' and insert 'six members but not more than eight members'.

The amendment changes the size of the boards from a minimum of five and no more than nine to a minimum of six but no more than eight. Of course, this relates to later amendments, particularly to clause 59, where I will be seeking to amend the way in which people are elected to various boards. I am trying to ensure that we end up with people who have got there very much on the basis of their knowledge and experience in specific areas. At the same time, I have sought to ensure that not too many people get there for what I would see as overtly political reasons. For instance, the Patawalonga Management Board has as members a couple of people who really should not be on it. They are there for all the wrong reasons, not because of any expertise that is particularly useful for the board.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Other people can work that out. You don't have to be Einstein to work that out. You just have to look at their memberships, know their background and you will know. While there are some extremely good people on that board—and I do not want to reflect on all of them by any stretch—some simply should not be there. If we want to set up boards that will work, people to have to be there for a good reason. Within may later amendments, to clause 59, I have sought to define the sort of composition that gives us a board composed of people with the relevant and necessary expertise so that we will not have too many people who have been put on the board for more vague reasons. I draw members' attention to clause 59(c), which provides:

The other members of the board (if any) must have, in the opinion of the Minister—

(i) knowledge of or experience in public or business administration; or

(ii) knowledge of or experience in regional economic development; or

(iii) knowledge of or experience in any other area that is relevant in the opinion of the minister.

That is all unnecessarily vague. We must decide whether we need people on boards for certain reasons and the sorts of expertise that we need on them. Members need to look at my amendments to clause 59 in totality before making a decision on this amendment to clause 57.

The Hon. DIANA LAIDLAW: The Government opposes the amendment, and we will probably oppose the next amendment to lines 27 to 31. The honourable member also refers to clause 59 regarding the category of person to be appointed and the method of appointment. Overall, we are opposed to those propositions. In terms of the amendment before us, the Government believes very strongly that the boards will frequently have to cover large and disparate catchment areas.

Flexibility for a maximum of mine members may well be necessary in such circumstances. It does not say that the Minister must appoint nine members in each instance. I know that there are Acts under the arts portfolio which just give a defined number. This gives the flexibility to have up to nine members if required. As a general principle, we believe that it is far better to have an uneven number of members on boards, given that deadlock decisions might arise from time to time. I will speak just to that part of the whole proposition—to leave it as five members but not more than nine members, rather than six members but not more than eight members.

The Hon. T.G. ROBERTS: I rise to indicate that we support the Government's position in relation to the five members. Regarding gender balance, if the membership is five, I understand that one member needs to be a man and one needs to be a woman. Does the same gender flexibility apply if there are nine members?

The Hon. M.J. ELLIOTT: I did not go sufficiently into clause 59.

The ACTING CHAIRMAN (The Hon. T. Crothers): Order! We are on clause 57.

The Hon. M.J. ELLIOTT: Whatever decision is made regarding clause 59 affects clause 57. It is of great concern that clause 59(b) provides that one person or perhaps two people must have knowledge in particular areas. I cannot understand why you would have a Catchment Management Board that would not have a person with knowledge and experience in the management or development of water resources. We should always have at least one person with that knowledge. There should be a person with knowledge and experience in the use of water resources, one with knowledge and experience in the conservation of ecosystems and

another with knowledge and experience in local government. I do not think they are ifs or maybes; we should have a person with a knowledge in each of those categories.

As I see the composition of the board, as a result of clause 59(1)(a), we will have a person who represents the community in a pretty broad sense. We will then have four people who are experts in categories all of which we would want to have covered and not try to get one or two people to try to cover all those areas. The fact is that we will get somebody who has expertise in one and passing knowledge in another. There is a failure in our current boards in Adelaide in terms of the expertise involved. That is one of my criticisms. This is a criticism that I made before—some people have been put there for the wrong reasons. That takes us to a board of five to start off with.

The Minister still must nominate a Chair, which takes us to six members. I am saying that I have no problems if the Minister wants to put two other people on the board, because they will add some balance and put on the board experience relevant to that catchment. However, as I see it, we will need a minimum of six members to ensure that we have all the relevant expertise on the board. It is not unreasonable to have an extra two people. If the Government feels so inclined, it can have an extra three to take it to nine members so that it can have an odd number; that is fine, too.

However, I am deeply concerned that we are expecting one or two people to cover the four areas that are defined in clause 59(1)(b). Frankly, it would be irresponsible to construct boards that do not have each of those areas separately covered, rather than expecting someone to be a part expert in several of them.

The Hon. A.J. REDFORD: To whom are these boards accountable? What powers does the Minister have in relation to these boards? Ultimately, who is responsible in relation to actions taken out by these boards?

The Hon. DIANA LAIDLAW: As they are an instrumentality of the Crown, they are responsible to the Minister. They can be sacked or the Minister can put in an administrator if they are not performing properly.

The Hon. A.J. REDFORD: In the sense of their operation, would the normal responsibilities and the conventions under the Westminster system apply?

The Hon. DIANA LAIDLAW: They are an instrumentality of the Crown.

The Hon. A.J. REDFORD: If the Minister is responsible and under the Westminster system would have to resign in relation to actions carried out by the board, the Minister ought to have a reasonable say and reasonable discretion as to who should be appointed. I am dealing with the latter part of the honourable member's amendment. I assume that this is a test amendment for all the honourable member's proposed amendments to clause 59.

The Hon. M.J. ELLIOTT: No, not necessarily.

The Hon. A.J. REDFORD: This is not a test for the honourable member's amendment to clause 59, page 42, lines 27 to 31?

The Hon. M.J. ELLIOTT: No. In my view, lines 15 to 21 are more important.

The Hon. A.J. REDFORD: Then I will make the contribution at the appropriate time.

The Hon. M.J. ELLIOTT: I make it plain that by moving this amendment I am not trying to take away, in this case, any ability of the Minister to make appointments or change the role. Those questions, in part, are addressed elsewhere. I am trying to make sure that these boards have a composition which ensures that they are likely to function well. It is always useful to have as much expertise within the body rather than being reliant upon advice.

As I observe the way in which the Patawalonga Catchment Board is working at present, I think it constantly chooses the engineering solution—and that is not surprising when one looks at the composition of the board. There are many things that they could be doing in that catchment which they are failing to do. They are addressing their responsibilities in a somewhat lopsided fashion. It is a reflection of the expertise which exists within the board and which involves it in the debates they have around the table in terms of the way in which they will treat things.

As these boards will not have additional resources, they will be much more dependent on the relevant expertise of the board. If they are to prepare and implement catchment water management plans and they are to be what we hope they will be, that is, something which is advanced—the Government's phrase 'world best' and all those sorts of things—we will not achieve that unless we get the composition of the board right. I am talking not about naming individuals but about the types of experience and knowledge that we should insist resides within the boards.

Amendment negatived; clause passed.

Clause 58 passed.

Clause 59—'Other members.'

The Hon. M.J. ELLIOTT: I move:

Page 42, lines 15 to 21—Leave out paragraph (b) and insert paragraphs as follows:

(b) one must be a person who has, in the opinion of the Minister, significant knowledge of and significant experience in the management or development of water resources or any other natural resource;

(ba) one must be a person who has, in the opinion of the Minister, significant knowledge of and significant experience in the use of water resources;

(bb) one must be a person who has, in the opinion of the Minister, significant knowledge of and significant experience in the conservations of ecosystems;

(bc) one must be a person who has, in the opinion of the Minister, significant knowledge of and significant experience in local government;

This clause can still stand alone, despite the loss of the previous amendment.

The Hon. T.G. ROBERTS: I move:

Page 42, line 21—Leave out subclause (iv) and insert subclause as follows:—

(iv) knowledge of and experience in local government or local administration gained in the catchment area of the board as a member or employee of a council or a local administrative body in an out of council area.

The Hon. DIANA LAIDLAW: I indicate that the Government opposes the Democrats' amendment, which we consider to be too inflexible. The Bill as drafted provides for a list of skills to be represented amongst a pool of members rather than being strictly prescriptive as proposed in the amendment. I also indicate that the Government supports the amendment moved by the Hon. Terry Roberts in relation to persons representing local government or local administration and their knowledge and experience gained in the catchment area of the board as a member or employee of a council or a local administrative body, both in and out of a council area.

The Hon. M.J. Elliott's amendment negatived; the Hon. T.G. Roberts's amendment carried.

The Hon. A.J. REDFORD: In relation to this clause generally, I am strongly of the view that there ought to be one or the other: accountability to the Minister and then ultimate-

ly to the Parliament and through it to the community, or directly to the community. Quite frankly, I would have preferred these boards to be elected. You can hire the skills and expertise set out in these provisions. I have not moved an amendment to that effect, and therefore I am bound by the Government's position, but it seems to me that people elected to their local areas would be far more accountable than doing it through the Minister. I know that we all here would agree that over the past 60 or 70 years the concept of ministerial accountability, putting it kindly, has changed; putting it negatively, it has been severely undermined and diminished. I am sure the Hon. Michael Elliott would agree with that last statement. In any event—

The Hon. Diana Laidlaw interjecting:

The Hon. A.J. REDFORD: Let us not debate that right now, because it might be embarrassing.

The Hon. Diana Laidlaw: Not to me.

The Hon. A.J. REDFORD: I think that most constitutional commentators would agree with what I just said. At the end of the day I would prefer elected people, although the Government has put this position. One of the principal reasons why I have not been as critical of this Bill as I might otherwise have been is the indication by the Minister that the South-East Drainage Board is likely to be the appropriate body in relation to the South-East. If my amendments are successful, that will be directly accountable by vote and the people down there will have a much better say, rather than following through a series of experts and bureaucrats to a Minister and then to the Parliament and finally back to the people, which seems a very circuitous route.

The Hon. DIANA LAIDLAW: I move:

Page 42, lines 29 to 31—
Leave out subclause (3) and insert subclause as follows:

(3) When nominating persons for membership of a board the Minister must endeavour, as far as practicable, to include persons—

(a) who are aware of the interests of the persons who use or who benefit in any other way from the waster resources in the board's catchment area; and

(b) who have knowledge of and experience in the use of land or water for the purpose or purposes for which land or water is most commonly used in the board's catchment area.

This amendment replaces subclause (3) with a new subclause. I note that the Farmers Federation has been active in promoting the need for this amendment.

The Hon. T.G. ROBERTS: I support the Government's position. It is the Government's view that perhaps the best position would be for elected representation but, in the case of this Bill, the Government has gone for nominations from bodies that have a vested interest in outcomes. It would be a pretty foolish Minister who did not get the balance right and who tried to make the body unrepresentative by moving people onto these bodies without the general approval of those organisations they come from. As I understand the whole process, it will be under close scrutiny. It is not one of those organisational structures that will be isolated from Government. Most of these people will be doing a lot of work on behalf of their communities under very close scrutiny, and they will be given a very onerous task of managing, in many cases, a scarce resource.

The Hon. A.J. REDFORD: I only had an opportunity to read this last night, but what concerns me in relation to subclause (3)(a) is that it refers to persons who use or who benefit from the use of the water resource. The problem I have with that is the exact problem that I outlined in some detail in my second reading contribution; that is, that the water in various proclaimed areas in the South-East or in the border agreement area seem to me to have been managed in the best interests of irrigators to the detriment of future potential users. I am concerned that, if this is passed as is, then we are perpetuating that evil that I outlined at some length in my contribution. I wish to amend (3)(a) by inserting the words 'may use', so that it reads: 'who are aware of the interests of the persons who use, who may use or who benefit in any other way'. I want to make sure that we are not just putting on an irrigator who is mainly interested in perpetuating and protecting the interests of existing irrigators to the detriment of future users. I so move.

The Hon. Diana Laidlaw: I am relaxed about that.

The Hon. A.J. Redford's amendment to the Hon. Diana Laidlaw's amendment carried; the Hon. Diana Laidlaw's amendment as amended carried; clause as amended passed.

Clauses 60 and 61 passed.

Clause 62—'Board's responsibility for infrastructure.'

The Hon. M.J. ELLIOTT: I move:

Page 43, line 21—
After 'situated' insert 'if the owner or occupier agrees to the assignment'.

As I currently read clause 62, it appears that, where the board has care, control and management of some infrastructure within this area, it can assign its responsibility for maintenance and repair to the owner or occupier of land on which the infrastructure is situated. I presume that it is not the intention that the board could do it whether the land holder wanted it or not. It is one thing if the board feels that it is more efficient to get local landowners to maintain infrastructure and that there is some sort of compensation for doing so, at which point the person would come to some sort of agreement; but surely the owner or occupier has to agree to the assignment of the responsibility.

The Hon. DIANA LAIDLAW: The Government sees this as a pretty pointless amendment, rather unnecessary, but will not oppose it. As presently drafted, there is no power to force a person to accept liability for a board's infrastructure. But we are not opposed to it.

Amendment carried; clause as amended passed.

Clauses 63 to 67 passed.

Clause 68—'Bylaws.'

The Hon. T.G. ROBERTS: I move:

Page 47, lines 34 to 36—Leave out subclause (5) and insert subclause as follows:—

'(5) Before making a bylaw under subsection (1), a board—

(a) must consult the constituent council in whose area the water, watercourse or lake or infrastructure to which the bylaw will apply is situated; and

(b) must cause to be published in the *Gazette* and in a local newspaper a notice setting out the text of the proposed bylaw, stating the reasons for it and inviting interested persons to make written submissions to the board in relation to the proposal within a period (being at least six weeks) specified in the notice; and

(c) must have regard to the views of the council and to all submissions made in accordance with the notice; and

(d) may amend the text of the proposed bylaw in response to one or more of those views or submission.'

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 69 to 74 passed.

Clause 75—'Annual reports.'

The Hon. M.J. ELLIOTT: I move:

Page 50, after line 24—Insert subclauses as follows:

(4) A board must make copies of its annual reports available for inspection and purchase by members of the public.

(5) A board must not charge for inspection of a report and must not charge more than the fee prescribed by regulation for sale of copies of a report.

This amendment ensures that the board will make copies of its annual reports publicly available either for inspection and purchase, and that there be no charge for inspection and that any charge for purchase will be prescribed by regulation.

The Hon. DIANA LAIDLAW: The Government has an identical amendment on file; I will not move it and we support the Australian Democrats.

The Hon. T.G. ROBERTS: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 76 passed.

Clause 77—'Appointment of body established by or under another Act.'

The Hon. A.J. REDFORD: I move:

Page 51, lines 31 and 34—Leave out 'proclamation' and wherever occurring and insert, in each case, 'regulation'.

This amendment simply enables the Parliament to supervise the appointment of bodies and also their dismissal. It seems to me that if the Minister wants to appoint a particular body that the Parliament ought to supervise that and, more importantly, if the Minister wants to dismiss such a body then the Parliament ought to supervise that. Doing it by way of regulation, the Parliament has the opportunity to do so; doing it by way of proclamation, the Parliament does not have an opportunity to do so. I think that probably fully explains my position.

The Hon. DIANA LAIDLAW: The Government supports this amendment.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 52, lines 4, 5 and 6—Leave out 'proclamation' wherever occurring and insert, in each case, 'regulation'.

My reasons for this amendment are the same as for my previous amendment.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

The Hon. T.G. ROBERTS: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 78 to 80 passed.

Clause 81—'Establishment of water resources planning committees.'

The Hon. DIANA LAIDLAW: I move:

Page 52, lines 26 to 30—Leave out subclause (1) and insert subclause as follows:

(1) Where a prescribed watercourse or lake or a part of the State in which prescribed wells are situated or a surface water prescribed area is not situated within the catchment area of a catchment water management board, the Minister must, by notice in the *Gazette*, either—

(a) establish a water resources planning committee in relation to the prescribed water resource; or

(b) commit the water resource to an existing water resources planning committee.

This amendment replaces subclause (1) of clause 81 with a new subclause which recognises that, in some instances, it will be convenient for a water resources planning committee to be responsible for two or more water resources. For example, the underground and surface waters of the Barossa Valley are both proclaimed resources but under the management of one committee as is appropriate.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 52—

Line 31—Leave out 'The notice' and insert 'A notice establishing a committee'.

After line 35—Insert subclause as follows:

(2a) A notice committing a prescribed water resource to a committee must identify the resource and the committee.

Page 53, line 1—After 'notice' secondly occurring insert 'establishing a committee'.

Amendments carried; clause as amended passed.

Clause 82 passed.

Clause 83—'Membership of committees.'

The Hon. M.J. ELLIOTT: I move:

Page 53, lines 13 and 14—Leave out subclause (1) and insert subclause as follows:

(1) The members of the committee must be persons who, in the opinion of the Minister, collectively have—

(a) knowledge of and experience in the management or development of water resources or any other natural resources; and

(b) knowledge of and experience in the use of water resources; and

(c) knowledge of and experience in the conservation of ecosystems; and

(d) knowledge of and experience in local government.

I make the point that subclause (1), if one reads it carefully, provides that the committee must have collectively the attributes described in paragraphs (a), (b), (c) and (d). I am not saying that there should be any one individual who covers each of these areas: I am saying that all those areas are areas of knowledge that I would expect a water resources planning committee to have covered by its membership as a whole and, of course, the Minister may deem that there are people with other skills who also will make a useful contribution. It is not meant to be limiting in any way. It is trying to say that, at the very least, among the membership of the committee there will be a knowledge and experience base covering those four attributes in paragraphs (a) to (d).

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 53, after line 14—Insert subclause as follows:

(1a) When appointing members of a committee the Minister must ensure, as far as practicable, that a majority of the members of the committee are members of the group or groups that comprise the major user or users of the committee's water resource.

The Hon. DIANA LAIDLAW: The Government opposes this proposal for the same reasons that it did not support an earlier similar proposal. The responsibility of these boards cannot be compromised for such an imbalance in membership. This proposal is strongly opposed by the Australian Conservation Foundation and the Conservation Council of South Australia.

The Hon. T.G. ROBERTS: The Opposition supports the Government's position.

Amendment negatived; clause as amended passed.

Clause 84—'Functions and powers of committees.'

The Hon. DIANA LAIDLAW: I move:

Page 53, line 20—After 'water resource' insert ', or each of its water resources,'.

This is consequential on an earlier amendment to clause 81.

Amendment carried; clause as amended passed.

Clauses 85 to 89 passed.

Clause 90—'The State Water Plan.'

The Hon. M.J. ELLIOTT: I move:

Page 57, after line 9—Insert subclauses as follows:

(3) The plan must—

(a) assess the state and condition of the water resources of the State; and
(b) identify existing and future risks of damage to, or degradation of, the water resources of the State; and
(c) set out an order of priority for the management and monitoring of the State's water resources; and
(d) as far as practicable, be consistent with plans under other Acts for the management of natural resources.

(4) If the document 'South Australia—Our Water, Our Future' referred to in (1) does not meet one or more of the requirements of subsection (3), the Minister must, as soon as practicable after the commencement of this Act, amend it or substitute a new plan so that those requirements are satisfied.

The amendment seeks to define areas that must be covered by the plan and, in particular, provides that the plan will assess the State and condition of the water resources of the State, that will identify existing and future risks of damage to or degradation of the water resources, will set out an order of priority of the management and monitoring of the State's water resources and, as far as practicable, be consistent with plans under other Acts for the management of natural resources. In other words, we will seek to ensure that it is consistent with State soil plans and whatever else. I also make it plain that if the document 'South Australia—Our Water, Our Future', referred to in subsection (1), does not meet one or more of the requirements of subsection (3) that the Minister must as soon as practicable after the commencement of this Act amend it or substitute a new plan so that those requirements are satisfied.

The Hon. DIANA LAIDLAW: I oppose the amendment. I have my own amendment which is better. I move:

Page 57, after line 9—Insert subclauses as follows:

(3) The plan must—
(a) assess the state and condition of the water resources of the State; and
(b) identify existing and future risks of damage to, or degradation of, the water resources of the State; and
(c) include proposals for the use and management of the water resources of the State to achieve the object of this Act; and
(d) include an assessment of the monitoring of the changes in the state and condition of the water resources of the State and include proposals for monitoring those changes in the future.

(4) If the document 'South Australia—Our Water, Our Future' referred to in (1) does not meet one or more of the requirements of subsection (3), the Minister must, as soon as practicable after the commencement of this Act, amend it or substitute a new plan so that those requirements are satisfied.

The Hon. M.J. Elliott's amendment negatived; the Hon. Diana Laidlaw's amendment carried; clause as amended passed.

Clause 91—'Amendment of the State water plan.'

The Hon. M.J. ELLIOTT: I move:

Page 57, lines 12 and 13—Leave out 'to achieve the object of this Act' and insert 'to comply with section 90(3) or to achieve the object of this Act'.

I note that the Government has the same amendment.

The Hon. T.G. ROBERTS: We support the Australian Democrats.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 57, after line 30—Insert new subclause as follows:

(7) Where the Water Resources Council has made recommendations in writing to the Minister as to changes that should, in its opinion, be made to the State Water Plan, the Minister must, if he or she does not accept those recommendations in full—
(a) provide the council with a written statement of his or her reasons for not accepting its recommendations; and
(b) by notice published in the *Gazette* and in a newspaper circulating throughout the State inform interested members of the public of the address or addresses at which the council's recommendations and the Minister's reasons are available for inspection and purchase.

I do not think this amendment is consequential on earlier clauses, but it relates to the fact that there are a number of consultative bodies which are set up but which I think spend a lot of their time simply being ignored. There is no doubt that the ultimate political responsibilities and action reside with the Minister and with the Government. I must say that if I was working on a body that was asked to give advice I would like to know why that advice perhaps was not taken. That is effectively what this amendment seeks to do. It seeks to say that, if recommendations have been made to the Minister and the Minister chooses not to accept that advice, the Minister would inform them as to why. I think that that is a perfectly reasonable response to expect for an advisory body.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: I do not support the amendment for exactly the same reason as the Hon. Terry Roberts interjected. We see very strongly that, under this proposition, the Minister would effectively be forced to act on all recommendations of the water resources boards or else give the public notice of the precise reasons for rejecting any recommendation, even the smallest point. The suggestion is extraordinarily bureaucratic. The report of the Water Resources Council as to recommendations for changing the State Water Plan will be tabled in Parliament, where the Minister is accountable for all actions, including decisions not to act on recommendations or to act on only some recommendations or to act on recommendations in some modified or more appropriate form.

The Hon. T.G. ROBERTS: I made my comment tongue-in-cheek, but the answer given by the Minister is the one that the Opposition supports. I suspect that it would be a very brave Minister who totally disregarded the comments and recommendations of the council. I assume that the communication links would be both ways.

Amendment negatived; clause as amended passed.

Clause 92 passed.

Clause 93—'Proposal statement.'

The Hon. M.J. ELLIOTT: I move:

Page 60, lines 32 to 35—Leave out subclause (6) and insert subclause as follows:

(6) If the board has identified a change that, in its opinion, is necessary or desirable to a Development Plan, it must—
(a) submit proposals for the amendment of the Development Plan to the municipal or district council or councils whose area or areas will be affected by the amendment; and
(b) submit the proposals to the Minister for the time being administering the Development Act 1993 together with submissions relating to the proposals (if any) made to the board by a council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and
(c) if it has the agreement of the Minister to do so, include the proposals for the amendment of the Development Plan in the proposal statement.

Effectively, paragraphs (b) and (c) cover the ground currently within subclause (6). What is new is the requirement that proposals for an amendment to the Development Plan also be submitted to the municipal or district council. Since they have responsibilities under the Development Plan process, it is not unreasonable that they should not be notified. In fact, they should be.

The Hon. T.G. ROBERTS: On the basis that it makes it legislatively impossible to avoid talking to themselves, we support the Democrats' position.

The Hon. DIANA LAIDLAW: The Government does not oppose this amendment.

Amendment carried; clause as amended passed.

Clause 94 passed.

Clause 95—'Adoption of plan by Minister.'

The Hon. A.J. REDFORD: I move:

Page 63, after line 16—Insert subclauses as follows:

(8) Within seven days after adopting a plan that provides that the whole or part of the funds required for implementation of the plan should be raised by a levy under Division 1 of Part 8 or should comprise an amount to be contributed by the constituent councils of the board's catchment area under Division 2 of Part 8 (in this section referred to as a 'levy proposal') the Minister must refer the plan to the Economic and Finance Committee of Parliament.

(9) The Economic and Finance Committee must, after receipt of a plan under subsection (8)—

(a) resolve that it does not object to the levy proposal; or

(b) resolve to suggest amendments to the levy proposal; or

(c) resolve to object to the levy proposal.

(10) If, at the expiration of 21 days from the day on which the plan was referred to the Economic and Finance Committee, the Committee has not made a resolution under subsection (9), it will be conclusively presumed that the Committee does not object to the levy proposal and does not propose to suggest any amendments to it.

(11) If an amendment is suggested under subsection (9)(b)—

(a) the Minister may make the suggested amendment; or

(b) if the Minister does not make the suggested amendment, he or she must report back to the Committee that he or she is not willing to make the amendment suggested by the Committee (in which case the Committee may resolve that it does not object to the levy proposal as originally adopted, or may resolve to object to the proposal).

(12) If the Economic and Finance Committee resolves to object to a levy proposal, a copy of the plan must be laid before the House of Assembly.

(13) If the House of Assembly passes a resolution disallowing the levy proposal of a plan laid before it under subsection (12) the proposal ceases to have effect.

(14) A resolution is not effective for the purposes of subsection (13) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the plan was laid before the House.

(15) Where a resolution is passed under subsection (13), notice of the resolution must forthwith be published in the *Gazette*.

This is a lengthy amendment, but it seeks to bring some level of parliamentary supervision into this whole exercise. Although it may happen as an incidental, I am not seeking to have the parliamentary committees revisit the plan and go over everything that has been done through the community consultation process. However, I was a little concerned that, in the absence of this measure, the Executive arm of Government would have a complete, total and unfettered taxing power. We all know that Parliament, ultimately, through the Supply Bill, controls the level of taxation in this State.

At one stage I considered the other standing committees, but they have Upper House members and we have no constitutional responsibility in terms of taxation and revenue, and I do not want to argue that issue in the context of this Bill. That is why I have chosen the Economic and Finance Committee of Parliament. It is an appropriate check on those who might seek to build an empire. The example that I have given on earlier occasions is that a local water catchment committee might want to build the Aswan Dam, so it goes through the process and we finish up with a levy that puts everyone out of business. This at least puts a parliamentary check on that sort of unfettered, empire building, in the highly unlikely event that might occur.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clause 96—'Amendment of a development plan.'

The Hon. M.J. ELLIOTT: I move:

Page 63, after line 23—Insert word and paragraph as follows:

and

(c) consult the municipal or district council or councils whose area or areas will be affected by the proposed amendment of the Development Plan.

This requires consultation in relation to the Development Plan with the local, affected council.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

The Hon. T.G. ROBERTS: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 97—'Review and amendment of plans.'

The Hon. A.J. REDFORD: I move:

Page 64, line 18—Leave out 'If' and insert 'Subject to subsection (7), if'.

In moving this, I note that it is consequential upon the previous amendment that was passed by the Committee.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 64, after line 27—Insert new subclause as follows:

(7) If an amendment provides under subsection (3)(a)(iii) that funds should be raised by a levy under Part 8 Division 1 or should comprise or include an amount to be contributed by constituent councils, the procedures set out in section 95(8) to (15) must be followed when the plan is amended.

I repeat my earlier remarks.

Amendment carried; clause as amended passed.

Clauses 98 to 100 passed.

Clause 101—'Preparation of water allocation plans.'

The Hon. DIANA LAIDLAW: I move:

Page 65, line 34—After 'water resource' insert ', or each of its water resources,'.

This is a drafting amendment. It is consequential on an amendment made earlier to clause 81.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 66, after line 12—Insert paragraph as follows:

(ca) in providing for the allocation of water take into account the present and future needs of the occupiers of land in relation to the existing requirements and future capacity of the land and the likely effect of those provisions of the value of the land; and.

I refer members to my contribution in my second reading speech. This amendment specifically sets out the provision for the potential or future water users and will not allow those people to be ignored. This is the clause that the Government said was sufficient to justify the objection to the earlier amendments moved by the Hon. Mike Elliott in relation to whether or not there should be an object of fairness. I hope this meets with some approval although, as I said earlier, I would have liked the Hon. Michael Elliott's amendment also to be successful.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clause 102—'Proposal statement.'

The Hon. M.J. ELLIOTT: I move:

Page 68, lines 9 and 12—Leave out subclause (6) and insert subclause as follows:

(6) If the board or committee has identified a change that, in its opinion, is necessary or desirable to a development plan, it must—

(a) submit proposals for the amendment of the development plan to the municipal or district council or councils whose area or areas will be affected by the amendment; and

(b) submit the proposals to the Minister for the time being administering the Development Act 1993 together with submissions relating to the proposals (if any) made to the board or committee by a council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and

(c) if it has the agreement of the Minister to do so, include the proposals for the amendment of the development plan in the proposal statement.

In relation to the development plan, I believe the local council needs to be involved.

Amendment carried; clause as amended passed.

Clause 103 passed.

Clause 104—'Adoption of plan by Minister.'

The Hon. M.J. ELLIOTT: I move:

Page 70, after line 12—Insert subclause as follows:

(3a) The Minister must refuse to adopt a draft plan that includes a provision that changes the basis on which water is allocated from the resource if that provision would result in significant discrimination against a person or group affected by the plan.

This is one of my more important amendments. While there may be some argument about the precise wording, and I am prepared to get involved in such a debate, I think the principle is very important. There is no dispute that there will be times when a water plan may do things that may even be harsh at times. For instance, it may be decided that there will be an across the board cut in water usage because a particular catchment is using water in an unsustainable way. What concerns me, though, is that if there is a change in the daft plan which discriminates very clearly and significantly against one section of the total user community (and I gave an example when I spoke yesterday of some proposals in relation to the Willunga Basin), the argument is not whether, say, the Willunga Basin needs to be more careful with its water resources. Rather, the argument is whether there should be an overnight change in a plan which will cause grave economic hardship to just one section of the total user community. A plan should, whenever possible, attempt not to be discriminatory against one group. That is the intended effect of this amendment.

The Hon. DIANA LAIDLAW: I oppose the amendment most strongly. The suggestion would have the potential to put an entire plan at risk of challenge for many years to come and, as a result, the plan may not become evident for many years. The suggestion would be likely to result in wasteful litigation as parties attempted to prove 'significant discrimination'. The words used are very subjective. What is to the short-term detriment may be in their long-term interest, particularly with regard to questions of sustainable allocation of a water resource. The necessary element of fairly shaping the resources is adequately covered by the existing provisions of the object of the Bill and by the amendment moved by my colleague the Hon. Angus Redford to clause 101.

The Hon. P. HOLLOWAY: The Opposition is also concerned that this clause might encourage litigation, and consequently we oppose it.

Amendment negatived; clause passed.

Clause 105—'Amendment of a development plan.'

The Hon. M.J. ELLIOTT: Before I move my amendment, I must say that I should have responded to the Minister. I was disappointed that there was not some debate about the sentiment of that amendment, because it is important. She made a comment along the lines that what might be to the short-term disadvantage of some people might be to their long-term advantage. I can only say in reply: try to tell that to someone who has just gone broke. If they made an investment in equipment, plant, land or whatever, and are irrigating under the rules as they stand, and have their water entitlement suddenly cut by 20 per cent, that certainly has the capacity to break them.

The example I gave in Willunga really fits into that pattern. It would be one thing if conditions were so serious in Willunga that there had to be a cut and everybody took an equal cut, but my understanding is that about 20 per cent of growers will take a huge cut in their water and the rest will not. The point is that a change is proposed there which is clearly discriminatory. It is the discriminatory nature of that thing which is of concern. A majority of people can prevail at the severe expense of a minority, and the argument is not about what is right for the long-term future of the waterway; I am not debating that. Rather, the debate is that if there is to be any change it really must be done in a fair and equitable fashion. I do not believe that there is adequate protection in this legislation in that regard, and I was disappointed when the Minister did to some extent worry more about the wording than debating the sentiment. However, that matter has now passed. I move:

Page 70, after line 34—Insert word and paragraph as follows:

and

(c) consult the municipal or district council or councils whose area or areas will be affected by the proposed amendment of the development plan.

This is identical to earlier amendments that were moved in relation to development plan and ensuring that councils are consulted.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 106 to 108 passed.

Clause 109—'Proposal statement.'

The Hon. M.J. ELLIOTT: I move:

Page 73, lines 11 to 14—Leave out subclause (6) and insert subclause as follows:

(6) If the council has identified a change that, in its opinion, is necessary or desirable to a Development Plan, it must—

(a) submit proposals for the amendment of the Development Plan to any other municipal or district council or councils whose area or areas will be affected by the amendment; and

(b) submit the proposals to the Minister for the time being administering the Development Act 1993 together with submissions relating to the proposals (if any) made to the council by another council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and

(c) if it has the agreement of the Minister to do so, include the proposals for the amendment of the Development Plan in the proposal statement.

This amendment relates to development plans and the involvement of councils.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 110 and 111 passed.

Clause 112—'Amendment of a development plan.'

The Hon. M.J. ELLIOTT: I move:

Page 75, after line 23—Insert word and paragraph as follows:
and
(c) consult the other municipal or district council or councils (if any) whose area or areas will be affected by the proposed amendment of the Development Plan.

This again relates to development plans and district councils.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 113 to 120 passed.

Clause 121—'Report as to management of water in water resource.'

The Hon. M.J. ELLIOTT: I move:

Page 78, after line 17—Insert paragraphs as follows:
(ab) identifying particular problems (if any) relating to the management of the water resource and suggesting solutions to those problems; and
(ac) identifying the activity or activities (if any) causing or contributing to those problems and identifying the person or persons who will benefit when those problems are addressed; and.

This amendment is essentially similar to an amendment that was moved and carried in relation to the South Eastern Water Conservation and Drainage Act which was passed last year in this place. I note that both the Farmers Federation and the Local Government Association have asked for this amendment to occur again. The purpose of it is to aid the community's assessment of reports. When the community has this information placed before it, there is a much better prospect of endorsement of levy proposals and whatever else will be associated therewith.

The Hon. DIANA LAIDLAW: I move:

Page 78, after line 17—Insert paragraph as follows:
(ab) identifying particular problems (if any) relating to the management of the water resource and suggesting solutions to those problems; and.

This new paragraph will require the Minister's report for setting a levy in areas where there is no catchment board to identify any problems relating to management of the particular water resource, propose solutions to those problems and include an explanation of why a levy is necessary. Because my amendment is more comprehensive than that moved by the honourable member, I understand that the South Australian Farmers Federation, on reflection, has agreed that the Government amendment is an improvement on that moved by the honourable member.

The Hon. M.J. ELLIOTT: I make the point that my amendment is one which I believe the Government accepted in relation to the South-East Drainage Board Bill only last year. I want to be convinced that the Government is not, for the sake of an argument, changing the wording but in this case diluting the effect. It is useful to identify the activities which are causing any problems as well as to identify the benefits of tackling those problems, as people can see why a levy is being raised and why particular activities are being carried out which follow the raising of such levies.

The Hon. DIANA LAIDLAW: We see some real issues concerning the difference between drainage and catchment and that everyone benefits in terms of catchment management issues; therefore it should be more embracing. The Government does not want any part of the amendment.

The Hon. P. HOLLOWAY: The Opposition also does not support the second part of the Hon. Mr Elliott's amendment.

The Hon. M.J. Elliott's amendment negatived; the Hon. Diana Laidlaw's amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 78, after line 18—Insert paragraph as follows:
and
(c) explaining why it is necessary to declare a levy or levies under this Division in relation to the water resource.

Having as we have in the previous part of this clause identified problems, and so on, this amendment explains why it is necessary to declare a levy under this Division.

Amendment carried; clause as amended passed.

Clause 122—'Declaration of levies by the Minister.'

The Hon. DIANA LAIDLAW: I move:

Page 79, line 13—After 'water' insert 'allocated or'.

This is a drafting amendment necessary for consistency with general levy provisions.

Amendment carried; clause as amended passed.

Clauses 123 to 125 passed.

Clause 126—'Determination of quantity of water taken.'

The Hon. DIANA LAIDLAW: I move:

Page 83, line 28—After 'taken' insert '(except for domestic or stock purposes).'

This is a drafting amendment. It provides that clause 126 (3) will not apply to water used for domestic or stock purposes. Without it the Minister would have to comply with subclause (3) in every instance because there would always be the possibility of someone using the water from the main supply for stock or domestic purposes without using the quantity used by meter.

The Hon. P. HOLLOWAY: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 127 to 141 passed.

Clause 142—'Right of appeal.'

The Hon. DIANA LAIDLAW: I move:

Page 96, line 5—Leave out 'a water licence or permit' and insert 'a water licence, a well driller's licence or a permit.'

This amendment enables an applicant for a well driller's licence to appeal against a refusal to grant the licence. It is consequential on clause 22.

The Hon. P. HOLLOWAY: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 143 to 145 passed.

Clause 146—'Compensation.'

The Hon. M.J. ELLIOTT: I move:

Page 99, lines 6 and 7—Leave out paragraph (a).

There will be some argument about what is fair compensation. Costs and values may not be related, and this is seeking that the value shall be taken to be the cost at the time of removal or replacement of the dam, embankment wall or other obstruction or object.

The Hon. DIANA LAIDLAW: The Government opposes this amendment and one that follows, which is consequential. The suggestion seems to have arisen from a misunderstanding of the provision in clause 146, which, as it stands, provides compensation for, first, the cost of removing the dam and, secondly, the value of the dam calculated by one of two methods, both reflecting the true value of the dam to the land itself, and the value of the water lost. The clause clearly provides that compensation is payable for the loss of a dam that has been removed. Subclause (4) merely states how that loss will be assessed. It is expressed as being the value that the dam added to the land; the loss of the water itself is separately compensated under clause 146(5).

The proposed amendment would see the compensation payable amounting to the cost of replacement, even if that bore no relationship to the value the dam added to the land. I cite the example of a dam built many years ago for $500, which in current values would cost $5 000 to replace. The dam adds about $3 000 to the value of the land. The clause as it presently stands would have the landowner compensated for $3 000. The proposed amendment would see the landowner compensated to the tune of $5 000, even though the dam would not be able to be replaced at all.

The Hon. P. HOLLOWAY: The Opposition is not persuaded by the merit of the amendment: we will oppose it.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 99, line 30—Leave out 'or to a council or controlling authority'.

As currently proposed, councils are ineligible for compensation. A council may have spent money carrying out works that are required to be removed. I do not understand why the council should be penalised in this way if it is going to incur an expense. It has no more say than does any private individual in relation to a decision that might be made by the Catchment Water Management Board. The Government seems to be increasingly good at transferring costs to local government but never picking up its own responsibilities. I think it unreasonable that local government in this matter, at least, should be treated differently from any body corporate.

The Hon. DIANA LAIDLAW: The Government opposes the amendment. The provision in the Bill before us is identical to that in the current Catchment Water Management Act 1995.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: This is a different matter. The Crown and its agencies are not entitled to compensation for the actions of a board unless the board is negligent. This clause does not affect the ordinary common law about liability of statutory authorities. Local government is therefore treated just the same as the State Government and this provision recognises the role and duties of both spheres of Government to effectively management the State's natural resources.

The Hon. P. HOLLOWAY: We oppose the amendment.

The Hon. A.J. REDFORD: I go on record as supporting the amendment, which is fairly academic. If the council is going to be hit with compensation, it will put up its rates to cover it and the ratepayers will get it anyway. I am sure that it will identify who is responsible for that cost. Be that as it may, as a matter of principle the Hon. Michael Elliott is absolutely correct.

Amendment negatived; clause passed.

Clauses 147 to 157 passed.

Clause 158—'Regulations.'

The Hon. DIANA LAIDLAW: I move:

Page 103, after line 31—Insert paragraph as follows:

(ia) make provisions for, or relating to, the composition, powers, functions and procedures of the Water Well Drilling Committee; and

The amendment adds a regulation making power in relation to the Water Well Drilling Committee. The same head of power appears in the existing Act in relation to committees generally. It is necessary to include it to enable the Water Well Drilling Committee to be properly constituted.

The Hon. P. HOLLOWAY: We support the amendment.

The Hon. M.J. ELLIOTT: I am persuaded too.

Amendment carried; clause as amended passed.

Schedule 1 passed.

Schedule 2—'Provisions relating to the Water Resources Council and to Catchment Water Management Boards and Water Resources Planning Committees.'

The Hon. DIANA LAIDLAW: I move:

Page 107, line 28—After 'water resource' insert 'or water resources'.

The amendment is consequential to an earlier amendment to clause 81.

The Hon. P. HOLLOWAY: We support the amendment.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 107, lines 35 to 40, page 108, lines 1 to 11—Leave out subclauses (5) and (6) and insert subclauses as follows:

(5) The council, a board or committee may order that the public be excluded from attendance at a meeting—

(a) in order to consider in confidence information or a matter within the ambit of subclause (6) if the council, board or committee is satisfied that it is reasonably foreseeable that the public disclosure or discussion of the information or matter at the meeting could—

(i) cause significant damage or distress to a person; or

(ii) cause significant damage to the interests of the council, board or committee or to the interests of a person; or

(iii) confer an unfair commercial or financial advantage on a person,

and that accordingly, on this basis, the principle that meetings should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential; or

(b) in order to consider in confidence information provided by a public official or authority (not being an officer or employee of the council, board or committee or a person engaged by the council, board or committee) with a request or direction by that public official or authority that it be treated as confidential; or

(c) in order to ensure that the council, board or committee does not breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty, or in order to ensure that the council, board or committee does not unreasonably expose itself to any legal process or liability.

(6) The following information or matters are within the ambit of this subclause:

(a) legal advice, or advice from a person employed or engaged by the council, board or committee to provide specialist professional advice;

(b) information relating to actual or possible litigation involving the council, board or committee or an officer or employee of the council, board or committee;

(c) complaints against an officer or employee of the council, board or committee, or proposals for the appointment, suspension, demotion, discipline or dismissal of an officer or employee of the council, board or committee, or proposals relating to the future remuneration or conditions of service of an officer or employee of the council, board or committee;

(d) tenders for the supply of goods or the provision of services (including the carrying out of works), or information relating to the acquisition or disposal of land;

(e) information relating to the health or financial position of a person, or information relevant to the safety of a person;

(f) information that constitutes a trade secret, that has commercial value to a person (other than the council, board or committee), or that relates to the commercial or financial affairs of a person (other than the council, board or committee).

The reason for this amendment is make provisions uniform with provisions of the Local Government Act 1934 which have recently been amended.

The Hon. P. HOLLOWAY: We support the amendment.

The Hon. M.J. ELLIOTT: We support the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 108, line 25—Leave out 'water resource is' and insert 'water resource or water resources are'.

This amendment is consequential to earlier amendments to clause 81.

The Hon. M.J. ELLIOTT: We support the amendment.

The Hon. P. HOLLOWAY: We support the amendment.

Amendment carried; schedule as amended passed.

Schedule 3—'Repeal and Transitional Provisions.'

The Hon. DIANA LAIDLAW: I move:

Page 112, after line 12—Insert subclause as follows:

(1a) A proclamation under the Water Resources Act 1990 referred to in subclause (1)—

(a) will be taken to be a regulation under this Act; and

(b) in the case of a proclamation proclaiming a well, will, unless varied by regulation, be taken to exclude the operation of section 7(5).

This amendment is required to ensure that transitional provisions between the new method of bringing water resources under the licensing regime and the old method under the 1990 Water Resources Act can operate smoothly.

The Hon. M.J. ELLIOTT: I support the amendment.

The Hon. A.J. REDFORD: Does that mean that if this amendment is accepted proclamation made under the existing legislation could be the subject of disallowance by this place?

The Hon. DIANA LAIDLAW: No.

The Hon. A.J. REDFORD: Why?

The Hon. DIANA LAIDLAW: Let me explain: paragraph (a) of the new subclause enables the declaration of a water resource by proclamation under the 1990 Act to be varied or revoked by regulation under the new Act. Paragraph (b) of the new subclause preserves the existing provisions in the 1990 Act relating to rights to assess underground water and, because we are bringing it in by proclamation, the answer is 'No' to the honourable member's question.

The Hon. A.J. REDFORD: What is the effect of it, given that a proclamation is taken to be a regulation?

The Hon. DIANA LAIDLAW: It was subject to disallowance; any time for disallowance has now passed.

The Hon. A.J. REDFORD: And if it is proclaimed between now and when this Act comes into existence?

The Hon. DIANA LAIDLAW: I do not think I understand the question.

The Hon. A.J. REDFORD: I will put it more clearly: if there is a proclamation next week, after this Bill is passed, under the existing legislation but before this Bill comes into effect, that would be the subject of disallowance by this place, would it not?

The Hon. DIANA LAIDLAW: The perception is that it would not be subject to disallowance but, if there is still uncertainty about that, we will move an amendment in the Lower House.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 113, after line 11—Insert subclause as follows:

(14a) The Minister must not adopt a management policy under subclause (14) that includes a provision that changes the basis on which water is allocated from the resource if that provision would result in significant discrimination against a person or group affected by the policy.

The argument in relation to this amendment is similar to the previous argument. I presume that members have not changed their mind, but I will go through the routine.

The Hon. A.J. REDFORD: The Hon. Michael Elliott made some further comments after that clause was dealt with to which I should respond by saying that this is a double-edged sword. I will cite an example for the honourable member. You could have a situation where a group of people might be adopting a poor irrigation process. I can think of places in the South-East where that is the case. In order to share the water better and to introduce better environmentally sustainable practices, you might need to disadvantage one group in order to achieve the objects of the Act. I understand the problem with the people in the Willunga Basin, but to deal with it in this way could mean that catchment management boards would be hamstrung to such an extent that they could be forced to continue with a water plan that ultimately does not fulfil the objects of the Act. That is the problem. I understand where the honourable member is coming from, but I do not think there is a way around it. The evil that I have addressed is probably greater than the evil that the honourable member is trying to remedy.

The Hon. DIANA LAIDLAW: The Government opposes the amendment.

The Hon. P. HOLLOWAY: So does the Opposition.

Amendment negatived; schedule as amended passed.

New Schedule 4.

The Hon. A.J. REDFORD: I move:

Page 113, after line 127—Insert new schedule as follows:

SCHEDULE 4

Related Amendments to the South Eastern Water Conservation and Drainage Act 1992

1. The South Eastern Water Conservation and Drainage Act 1992 is amended—

(a) by striking out 'eight members' from section 9 and substituting 'twelve members';

(b) by striking out paragraph (b) of section 9 and substituting the following paragraph?

(b) two members will be persons who reside in the South-East appointed by the Governor on the nomination of the Local Government Association of South Australia; and;

(c) by striking out 'three' from paragraph (c) of section 9 and substituting 'six';

(d) by striking out 'one, being an eligible landholder' from subparagraphs (i), (ii) and (iii) of paragraph (c) of section 9 and substituting, in each case, 'two, being eligible landholders';

(e) by striking out from subsection (2) of section 15 'Five members of the Board, of whom at least one is an elected member' and substituting 'Seven members of the Board, of whom at least two are elected members'.

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

A quorum having been formed:

The Hon. A.J. REDFORD: This is one of the most important of the amendments that I have submitted to this place. The basic background is this: the South Eastern Water Conservation and Drainage Board currently looks after surface water in the South-East of South Australia. Indeed, the South Eastern Water Conservation and Drainage Board has had that responsibility continuously since the 1890s. There have been occasions when the South Eastern Water Conservation and Drainage Board has been unpopular, but on the whole it has performed a remarkable job for those people in the South-East.

The Minister has given an undertaking both to me and to this Parliament that, subject to community consultation, this body would be the catchment water management board for the South-East of South Australia, and I accept that. Having accepted that, I looked at the constitution of that body. The constitution of that body is comprised principally of appoint-

ments by the Minister. I am not sure whether members are aware of this—I think members opposite would be, but I am not sure whether the Hon. Michael Elliott is—but there was recently a situation in which the Chairman of the South Eastern Water Conservation and Drainage Board was sacked by the Minister. I do not propose to go into the pros and cons of whether that was or was not a correct decision; I suspect it might well have been.

The Hon. Diana Laidlaw: Was he sacked?

The Hon. A.J. REDFORD: I will get it right: he was elected by the majority of his fellow board members at a meeting to be the Chairman. The Minister refused to accept that and the Chairman was then not appointed. I apologise for misleading this place by referring to that action as 'sacking'. Be that as it may, that caused significant consternation within the South-East. I have probably said it enough in my speech, but I will be quite blunt: the people in the South-East are not happy at the moment with the way this Bill was dealt with from the start and nor are they happy, generally speaking, with how the Chairman of the South Eastern Drainage Board was dealt with. I am not making any indication at this stage as to whether that decision was right or wrong.

The people in the South-East are very concerned. I move these amendments on the basis that the majority of people on the Southern Water Conservation and Drainage Board, if this amendment is successful, would be made up of landowners and land-holders who would control the destiny of their own future and their own water. That would then give them great confidence.

In terms of consultation, I have spoken to former members of the board, to members of water resource committees and to numerous landowners in the South-East. All have indicated that this would be an appropriate body, subject to a majority of people on that board being elected by the landowners who ultimately will either enjoy the benefit or suffer the detriment of the actions of this body as their local catchment water management board. The South-East is a very significant water resource and one that should not be ignored by this Parliament or the Government.

The Hon. DIANA LAIDLAW: The Government does not support the amendment at this stage as it did not form any part of the consultation on the Bill. However, the Government agrees that there may be some merit in reviewing the membership of this board and there will be an opportunity for Parliament to consider it further at a later date.

The Hon. CAROLINE SCHAEFER: I seek further clarification. I was in the South-East last weekend, and can but agree with the Hon. Angus Redford that the people down there are most unhappy. There is much confusion as between the formality of proclaiming water resources and this Bill's being foisted upon them at the same time. Why does the Hon. Angus Redford believe that enlarging the board will achieve what he hopes to achieve? I would support, although not at this time and not as part of this Bill but as an amendment to the Water Conservation Act, the majority of board members being resident and eligible land-holders. However, I cannot see that there is necessarily any great benefit to be gained by having 12 members instead of eight and making it an unnecessarily large board.

Having witnessed the agony that the Barley Board went through when it endeavoured to have selected rather than elected members in an endeavour to make it a more efficient management board, I would not necessarily like to see the drainage board go through that process some time down the track. I have no great difficulty with the Minister of the day appointing the majority of board members. However, I sympathise with the Hon. Angus Redford in his desire to see the majority having a real interest in the area. I will not support him but may at some time in the future support him in an endeavour to have that Act amended. However, I cannot see why there would be any great advantage in having a larger board than is already there.

The Hon. A.J. REDFORD: The reason for its going from eight to 12 persons is that we increase the elected members by three—two per zone—as the drainage board is broken up into three zones. Secondly, it doubles the representation in relation to the Local Government Association. That is done specifically because the South-East is distinctly known as an upper and lower South-East. What happens in the lower South-East can affect the water aquifer in the upper South-East, according to all the experts, and it is appropriate that local government have the opportunity to pick representatives—one from the lower South-East and one from the upper South-East. That is the basic reason behind it. I can understand some criticism that 12 may be too large, but I thought that cutting down the Minister's appointees by too many would be too traumatic. If people are to have confidence in the administration of this Bill, I urge the Minister at some stage to seriously consider this.

New schedule negatived.

Title.

The Hon. DIANA LAIDLAW: The Hon. Mr Elliott asked a question last night relating to clause 12. He considered that it might be possible under this clause for a developer to gain a development authorisation which approved an activity that would otherwise need a licence under the Water Resources Act; for example, the building of a dam on a small watercourse. Clause 12 is an important cost-saving measure which accords with this Government's policy for one-stop shopping for development approvals. However, obviously as the honourable member has pointed out, it is not environmentally acceptable to throw the baby out with the bath water and ignore delicate environmental requirements that may have been carefully addressed by a water management plan under the Water Resources Act.

The primary linkages between development organisations and the water plan should be through updating development plans to ensure that water resources issues are built into the development decision making. The Bill provides for this through very specific provisions which allow either a board's catchment water management plan or a water allocation plan to prepare what is effectively a plan amendment report, to amend the local government body's development plans to ensure that water resource issues, which are addressed by the water plan, are also adequately addressed by the Development Plan so that development authorisations address the environmental considerations.

However, it is acknowledged that some matters will require the local water management board to have a right of veto over a development authorisation. Mechanisms exist in the Development Act for this to occur through the addition of new items to schedule 8 of the development regulations. Items in schedule 8 are required to be referred on to a different body, for example, the Environment Protection Authority or, in future, a local catchment water management board for that body to consider the development application.

The Hon. M.J. Elliott: Are you saying that they are there or that they can be put there?

The Hon. DIANA LAIDLAW: I am saying that they can be put there. This is expected to be the exception rather than

the rule as, generally speaking, local councils need to be able to get on with the job of assessing development applications on the basis of their development plans. The Department for the Environment and Natural Resources has already identified the most important area that will need to be covered by the new item in schedule 8, and that is the building of dams in the Mount Lofty Ranges watershed or any proclaimed water resources area. The new regulations will be prepared by the Government to achieve this aim once the Bill has been passed.

The honourable member asked why the Government did not amend the Development Act to provide that development contrary to a water plan could not be approved. This option was looked into by the Government during consideration of these issues. It was concluded that, in line with Government policy in relation to development applications, it was better to allow the two-pronged approach that I have just mentioned.

The best approach to development authorisation for land use changes is that there should be a one-stop shop wherever possible and that the development plan should be the primary document for assessment, with the least number of ancillary plans to refer back to. However, experience shows that this option is needed. Mechanisms exist in the Development Act for that to occur also. Section 29 of the Development Act allows plans from different pieces of legislation to become a part of the development plan by regulation.

As to the question asked last night by the Hon. Angus Redford relating to clause 12 and the manner in which it might relate to water use, and whether development approval had been given subject to certain conditions, I undertook to provide a more specific answer. I do so now. Bordertown is in a proclaimed wells area under the 1990 Water Resources Act. This means that all use of underground water from bores requires a licence. The premises mentioned by the honourable member will need a licence to water their parks and gardens. This is likely to be counted as a part of the industries industrial water licence if the water is to be used in the course of the business. If not, it would be used as a domestic licence.

The Hon. A.J. Redford: As soon as it is proclaimed, every industrial site should have to obtain a water licence?

The Hon. DIANA LAIDLAW: Under this Bill, water use in proclaimed areas will still need a licence. Development authorisation under the Development Act cannot override the requirement to have a water licence in a proclaimed area. However, the Bill does require in the future that all water allocation plans, so far as practicable, be consistent with the relevant local development plans. This will mean that in future there will be liaison between local councils and water managers which will help to ensure that issues such as water availability and the requirement for licences are at least flagged for the assistance of intending developers.

In areas where water is fully allocated, those developers would need to purchase a water allocation from another licensee. I am informed by the department that the Bordertown area is fully allocated at this time and that allocation would need to be obtained on the transfer market.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I am surprised at that advice, but that is what I am told.

The Hon. M.J. ELLIOTT: I have received submissions, and I understand the Government also has done so, in relation to statutory drainage easements. I certainly know that the Burnside council and, I suspect, other councils have raised that issue. Can the Minister inform this place how the Government intends to react to a request for statutory easements over existing drainage systems?

The Hon. DIANA LAIDLAW: The Minster for Environment and Natural Resources has given an undertaking to the Local Government Association to raise the question of statutory easements with the Minister for Local Government. It is a matter that should be further considered in the context of the local government lands legislation review. Possibly, all that is required is an extension of a council's power to enter land where a stormwater drain is situated. The Minister will ask his colleague to investigate this matter further.

The Hon. M.J. ELLIOTT: I think it might involve more than the power to enter lands, considering the problems that Burnside now has. That council surveyed a relatively small number of properties—200—back in 1995, and of the 200 they found that 86 had drainage facilities on land which did not have easements. On 17 of these properties, the drainage facilities were under structures, such as dwellings or garages, on the allotment.

In fact, in many cases, as I understand it, many of the occupants themselves did not even know that they had a drainage system running through their property. It is a significant problem, and certainly the power to enter does not solve another problem, that is, that many people are purchasing properties with no idea that there is some form of drainage facility through their property. Of course, if they want to carry out any new building work, and so on, that can become a significant problem for them.

There is a significant issue here, and as time goes by more and more people will come across the problems created by this, not just the problems created for the council, particularly as many of these drainage structures are now getting on in years. If one looks at the age of developments in Burnside now, one sees that an awful lot of these structures have been built over the past 50 to 80 years or so and must be getting somewhere near the end of their life. This is an issue that really needs to be addressed as soon as possible.

The Hon. DIANA LAIDLAW: I acknowledge the difficulties of the Burnside council and other councils. However, clearly this issue needs to be addressed through legislation dealing with councils' infrastructure.

The Hon. P. HOLLOWAY: My colleague the Hon. Terry Roberts asked me briefly to raise one matter in relation to this Bill. Clause 57 provides for the membership of the catchment water management boards. These boards have a floating number of members: there can be at least five but not more than nine members. The gender balance clause in relation to that membership is that at least one member must be a man and one must be a woman. If there were five members, for example, there could be four men and one woman. My colleague raised the point that, should the number on the boards go to the higher number, that is, nine, the spirit as well as the letter of the gender balance provision should prevail.

The Hon. DIANA LAIDLAW: Why wouldn't it be reasonable to still have one man?

The Hon. P. HOLLOWAY: Or eight women. We believe that should that board go to the higher number the ratio should roughly be preserved, and we would like the Government to indicate that, should the larger number be used, the gender balance would accordingly be adjusted.

The Hon. DIANA LAIDLAW: I agree with you entirely and, if any membership should come before Cabinet, I hope that I am still there to ensure that the gender balance is good.

Title passed.

Bill read a third time and passed.

TOBACCO PRODUCTS REGULATION BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to merge the existing provisions of the Tobacco Products (Control) Act 1986, and the Tobacco Products (Licensing) Act 1986, into one consolidated Act regulating tobacco products in this State. The Bill also includes a change to the basis on which licence fees are calculated.

The Government recognises as does most of the community that tobacco use is injurious to the health of both smokers and non-smokers. It has also been recognised by the Government that the extent of the health effects of smoking are such that strong action is required to deter people from taking up smoking, and to encourage existing smokers to give up smoking. This legislation strengthens and consolidates the regulation and control of the advertising and promotion of tobacco smoking to continue our efforts to discourage children and young people from taking up smoking. Control of advertising and promotion ensures that smoking is not promoted as being associated with social success, business advancement and sporting prowess.

The link between the quantum of tar in tobacco products and the likely adverse impact on health, flowing from tobacco smoking is well documented. Those links are already reflected in the current requirements for tobacco product packaging to display the content of tar. Accordingly, and in an attempt to recover from smokers of high tar products, some of the costs incurred by the public health system in treating persons suffering from tobacco related illnesses, it is proposed to introduce a three-tiered licence fee structure that will involve a licence fee for tobacco products commensurate with the tar content. A similar structure, aimed at moving consumers to less harmful products, is currently used in connection with the sale of low alcohol beer and unleaded petrol. With no change proposed for low tar content products, the proposed licensing structure should encourage consumers to change their smoking patterns to less harmful products.

Under the existing Tobacco Products (Licensing) Act, the licence fee for tobacco merchants is based on 100% of the value irrespective of the tar content of the product. The proposed three tiered licence fee system does not provide for any reduction in the current price of cigarettes. The lowest licence fee rate in the proposal will be 100% consistent with the rate in force at the present time. To allow the price of lower tar content cigarettes to fall could send the wrong message to the community, with lower tar content products somehow seen to be 'safe'.

The provisions of this Bill also strengthen the regulatory and compliance aspects of current legislation by proposing that only 'fit and proper' persons will be permitted to be licensed as tobacco merchants. This will ensure that merchants do not take an irresponsible attitude towards the sale of tobacco products to minors. It will also prevent the issue of licences to persons who have, or are connected with a corporate entity that has committed offences. The Bill continues the general requirement that if tobacco is consumed by a person, that person either has to hold a consumption licence or have purchased the tobacco from a licensed tobacco merchant. The Bill sets out the fees for a consumption licence, and the basis on which a licence fee is calculated for a tobacco merchant.

Regulatory control of tobacco merchants is strengthened under the proposed legislation. For example retailers of tobacco product will only be permitted to purchase product in respect of which licence fee has been paid in accordance with the legislation. The provisions will also require that a person cannot conduct any business of tobacco merchandising unless that person holds a tobacco merchants' licence.

The Bill also strengthens the basis to be used in valuing tobacco products. This will eliminate the scope for argument that licence fees can be paid on anything other than the gross wholesale price. This ensures that artificially depressing prices cannot be used as a means of undermining the Government's commitment to discouraging smoking because of its harmful health effects.

Provisions in the Bill relating to licensing, sales, authorised officers, investigations, prosecutions, reviews and appeals, the South Australian Sports Promotion, and Cultural and Health Advancement Trust, remain substantially the same as under the existing Acts.

Consultation has taken place with the Health Commission and tobacco wholesalers in respect of this Bill and I thank them for their input.

Besides consolidating the regulatory requirements that currently apply, this Bill evidences the Government's clear aim of encouraging tobacco consumers to quit smoking altogether or, failing that outcome, at the very least to switch to lower tar content products.

The Bill includes provisions in relation to passive smoking. That passive smoking is associated with ill health is well documented and accepted by health and medical authorities worldwide (e.g. the International Agency for Research on Cancer (a branch of the World Health Organisation), the US Surgeon General, the US Environmental Protection Agency, the Independent Scientific Committee on Smoking and Health (UK) and the Australian National Health and Medical Research Council.

The health risk is imposed on people without their consent and, as opposed to some other risks that people voluntarily undertake, passive smoke exposure conveys no benefits.

The Bill accordingly seeks to minimise the risks of that exposure in certain circumstances by including provisions that ban smoking in enclosed public dining or cafe areas. Restaurants, cafes and shopping mall dining areas, for example, will be required to be 100% smoke-free.

It will not be an offence to smoke—

- in the case of a place that has two or more separate enclosed public areas used for the consumption of meals within licensed premises (other than restaurants that are the subject of a licence under the *Liquor Licensing Act 1985*)—in one of those areas if it is a bar or lounge and the licensee had designated the area as a smoking area for the time being; or
- in an entertainment area within licensed premises (other than a licensed restaurant) between 10 p.m. and 5 a.m. the next day; or
- in an area while it is not open for business; or
- in an area while a special arrangement exists (negotiated separately for a single occasion) under which it is given over to the exclusive use of members of a group; or
- in licensed premises (other than a licensed restaurant) with only a single enclosed public area for the consumption of alcoholic drinks.

If licensed premises (other than a licensed restaurant) consist of or include only a single enclosed public area for the consumption of alcoholic drinks and meals are available in the area, it will be an offence for a person to smoke in the area while meals are available or being consumed in the area.

An occupier of an enclosed public dining or cafe area will be required to display signs in the area in accordance with the regulations.

If smoking occurs in an enclosed public dining or cafe area in contravention of the provisions, the occupier will also be guilty of an offence. However, the occupier has a defence if he or she can prove—

- that he or she did not provide anything designed to facilitate smoking where the contravention occurred and that he or she was not aware and could not reasonably be expected to have been aware that the contravention was occurring; or
- that he or she did not provide anything designed to facilitate smoking where the contravention occurred and that he or she requested the person to stop smoking and informed the person that he or she was committing an offence.

The provisions will come into force on the first Monday in January 1999. There will be an extensive campaign over the intervening period to ensure that the legislation and its implications are well understood. Given the results of a number of surveys of both restaurateurs and community attitudes, it is likely that a large number will become 100% smoke-free before that date.

I commend the Bill to the House.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure on a day to be fixed by proclamation. Under the *Acts Interpretation Act 1915*, different provisions may be brought to operation on different days.

Clause 47 will come into operation on the first Monday in January 1999.

Clause 3: Objects of Act

This clause provides that, in recognition of the fact that the consumption of tobacco products impairs the health of the citizens of the State and places a substantial burden on the State's financial resources, the objects of the measure are—

- to create an economic disincentive to consumption of tobacco products and secure from consumers of tobacco products an appropriate contribution to State revenues (irrespective of the source of the tobacco products); and
- to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people; and
- to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke; and
- generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

The clause sets out how these objects are to be achieved by the measure.

Clause 4: Interpretation

This clause defines terms used in the measure. The most commonly used expressions are tobacco merchandising, tobacco merchant and tobacco product.

Tobacco merchandising includes the processing of tobacco for sale, the packaging of tobacco products for sale, the possession or storage of tobacco products for or prior to sale, the distribution of tobacco products, the sale or purchase of tobacco products by wholesale, or the sale of tobacco products by retail.

Tobacco merchant means a person who engages in tobacco merchandising.

Tobacco product means a cigarette, cigar, cigarette or pipe tobacco, tobacco prepared for chewing or sucking, snuff, or any other product containing tobacco of a kind prescribed by regulation, and includes any packet, carton, shipper or other device in which any of these products is contained.

Clause 5: Application of Act

This clause provides that the measure applies to tobacco merchants who carry on business in this State or who carry on business outside this State and in the course of that business dispatch tobacco products to purchasers in the State.

PART 2
LICENCES
DIVISION 1—PRELIMINARY

Clause 6: Interpretation—Certain transactions not sale or purchase

This clause provides that certain transactions are not to be taken to be a sale or purchase of tobacco products for the purposes of this Part.

Clause 7: Interpretation—Tobacco product categories and prescribed percentages for licence fee calculation

This clause creates categories of tobacco products and defines prescribed percentages for the purposes of the licence fee provisions.

Clause 8: Grouping of tobacco merchants

This clause sets out how to determine whether a tobacco merchant is a member of a group of tobacco merchants and empowers the Commissioner to determine that a tobacco merchant is not a member of a group in certain circumstances. Grouping of tobacco merchants is relevant to the calculation of licence fees for tobacco merchants' licences.

DIVISION 2—CONSUMPTION LICENCES

Clause 9: Unlawful consumption of tobacco products

This clause makes it an offence for a person to consume a tobacco product unless the person holds a consumption licence or obtained the product from the holder of a class A tobacco merchant's licence. The maximum penalty is a $5 000 fine and the expiation fee is $315.

Clause 10: Consumption licences

This clause requires the Minister to issue a consumption licence to a person if he or she applies in the specified manner and pays the specified fee. The licence is required to contain a warning in a form approved by the Minister for Health against the dangers of smoking.

DIVISION 3—TOBACCO MERCHANTS' LICENCES

Clause 11: Requirement for licence

This clause makes it an offence for a person to carry on the business of tobacco merchandising unless the person holds a tobacco merchant's licence. The maximum penalty is a $20 000 fine.

Clause 12: Classes and terms of licences

This clause creates the following classes of tobacco merchants' licences:

- unrestricted class A licences—licences not subject to any condition;
- restricted class A licences—licences subject to the condition that the licensee must not sell tobacco products except those purchased from the holder of a class A licence or purchase tobacco products for sale from the holder of such a licence;
- class B licences—licences subject to the condition that the licensee must not sell tobacco products by retail without obtaining from the purchaser a declaration (*see clause 22 and schedule 1 explanations*) before the purchaser leaves the licensee's premises or before the products are dispatched to the purchaser.

If a condition of a licence is not observed, the licensee commits an offence (maximum penalty $20 000 fine), and in the case of a restricted class A licence, the licence fee for each month in which the condition is not observed will be reassessed by the Commissioner as if the licence were an unrestricted class A licence.

Clause 13: Application for tobacco merchant's licence

This clause specifies the manner and form in which an application for a tobacco merchant's licence must be made. It empowers the Minister to refuse to grant a licence if satisfied that the applicant or any associate of the applicant has contravened the measure or a corresponding law or is not for any reason a fit and proper person.

Clause 14: Cancellation or suspension of licence

This clause empowers the Minister to cancel or suspend a tobacco merchant's licence if satisfied that the licensee or any associate of the licensee has contravened the measure or a corresponding law or is for any reason not or no longer a fit and proper person.

Clause 15: Licence fees

This clause sets out how licence fees payable for tobacco merchants' licences are to be calculated and provides for licence fees to be assessed by the Commissioner for State Taxation.

Clause 16: Valuation of tobacco products

This clause empowers the Minister, by notice in the *Gazette*, to set values for, or a basis for valuing, tobacco products by reference to a specified document, and to confer discretionary powers on the Commissioner to determine values for tobacco products in specified circumstances.

Clause 17: Reassessment of licence fee

This clause empowers the Commissioner to reassess or further reassess a licence fee at any time if—

- it appears that an error was made in the original assessment or a previous reassessment; or
- it appears that the information, or an estimate or assumption, on which the original assessment or a previous reassessment was based is erroneous or incomplete; or
- it is appropriate on account of amendments effected to the measure.

DIVISION 4—REVIEWS AND APPEALS

Clause 18: Reviews

This clause gives a person who is dissatisfied with a decision of the Minister or the Commissioner under this Part a right to a review of the decision by the decision-maker. An application for review of an assessment by the Commissioner of a licence fee for a tobacco merchant's licence may only be made if the licence fee as assessed or reassessed by the Commissioner has been paid.

Clause 19: Appeals

This clause gives a person who is dissatisfied with a decision taken by the Minister or the Commissioner on a review the right to appeal to the District Court against the decision.

DIVISION 5—MISCELLANEOUS

Clause 20: Refunds

This clause requires the Commissioner to refund an amount overpaid if a licence fee is reduced on reassessment or on a review or appeal.

Clause 21: Returns by class B licensees

This clause requires the holder of a class B tobacco merchant's licence to send to the Commissioner a monthly return containing certain information in relation to tobacco products sold during the month and all declarations obtained from purchasers during the month. The maximum penalty for non-compliance is a $20 000 fine.

Clause 22: Declaration by person purchasing from class B licensee

This clause makes it an offence for a person who purchases a tobacco product by retail from the holder of a class B tobacco merchant's licence to take the product from the licensee's premises without signing a declaration (*see schedule 1*) if requested to do so by the licensee or a person acting on the licensee's behalf. The maximum penalty is a $2 500 fine.

Clause 23: Notice to be displayed for the information of prospective purchasers from class B licensees

This clause prohibits the holder of a class B tobacco merchant's licence from engaging in tobacco merchandising unless notices are displayed in the premises making prospective purchasers aware that the merchant holds a class B licence, that purchasers will be required to sign a declaration, and that the products cannot be lawfully consumed without a consumption licence. The maximum penalty is a $20 000 fine.

Clause 24: Notice to be given to Commissioner

This clause makes it an offence for a person to act as a tobacco merchant within the State unless the person has given notice to the Commissioner not more than two months before commencing to so act and at not more than two monthly intervals while continuing to so act. The maximum penalty is a $20 000 fine.

Clause 25: Records to be kept by tobacco merchants

This clause requires a person who engages or has engaged in tobacco merchandising to keep and preserve certain records of his or her dealings in tobacco products. It requires a person transporting tobacco products prior to their sale by retail to keep and preserve certain records. The maximum penalty is a $10 000 fine.

Clause 26: Invoice to be prepared for sale by wholesale

This clause requires a person selling tobacco products by wholesale to prepare and tender to the purchaser an invoice containing certain particulars in respect of the sale. The maximum penalty is a $10 000 fine.

Clause 27: Endorsement to be made on wholesale invoices

This clause requires a licensed tobacco merchant who sells tobacco products by wholesale to make an endorsement on the invoice stating that the product is sold by a licensed tobacco merchant and specifying the licence number. The maximum penalty is a $20 000 fine.

PART 3

CONTROLS RELATING TO TOBACCO PRODUCTS

Clause 28: Interpretation

This clause defines "sell" and "sale" for the purposes of this Part.

Clause 29: Application of Part

This clause provides that this Part does not apply in relation to anything done by means of a radio or television broadcast.

Clause 30: Sale of tobacco products by retail

This clause makes it an offence for a person—

- to sell a tobacco product by retail unless the product is enclosed in a package that complies with the regulations and is labelled in accordance with the regulations; or
- to sell a tobacco product by retail that is enclosed in two or more packages unless each package complies with the regulations and is labelled in accordance with the regulations; or
- to sell a tobacco product by retail if the package containing the product is wrapped in a material that is not wholly transparent; or
- to sell cigarettes by retail in a package containing less than 20.

In each case the maximum penalty is a $5 000 fine.

Clause 31: Importing and packing of tobacco products

This clause makes it an offence for a person to import tobacco products that have been packed for sale by retail unless the packages in which the products are packed comply with, and are labelled in accordance with, the regulations and health warnings are distributed in approximately equal numbers between the packages imported by that person in each financial year. The maximum penalty is a $5 000 fine. The clause requires a person who packs tobacco products for sale by retail to ensure that the packages comply with these requirements. The maximum penalty is a $5 000 fine.

Clause 32: Tobacco products in relation to which no health warning has been prescribed

This clause provides that if no health warning is prescribed in relation to a tobacco product of a particular class, a product of that class need not be enclosed in a package and a package that contains such a product of that class need not display a health warning unless the package does not also contain a tobacco product of a class in relation to which a health warning *is* prescribed.

Clause 33: Advertisements of tobacco products

This clause makes it an offence for a person to publish, or cause to be published, an advertisement for a tobacco product unless the advertisement incorporates, or appears in conjunction with, a health warning of the prescribed manner and form. The maximum penalty is a $5 000 fine.

Clause 34: Information as to tar, nicotine, etc., content of cigarettes

This clause provides that a person who sells cigarettes by retail must, on demand by a customer considering purchasing cigarettes, provide information as to the quantity of tar and carbon monoxide that will be produced, and the quantity of nicotine that will be released, in the normal course of smoking each cigarette. The maximum penalty is a $5 000 fine. The clause requires the information to be provided in a form approved by the South Australian Health Commission. The maximum penalty is a $750 fine.

Clause 35: Sale of sucking tobacco

This clause prohibits the sale of sucking tobacco by retail. The maximum penalty is a $5 000 fine.

Clause 36: Sale of confectionery

This clause makes it an offence for a person to sell by retail confectionery that is designed to resemble a tobacco product. The maximum penalty is a $5 000 fine.

Clause 37: Sale of tobacco products by vending machine

This clause makes it an offence for a person to sell tobacco products by means of a vending machine unless the machine is situated on premises licensed under the *Liquor Licensing Act 1985*. The maximum penalty is a $5 000 fine.

Clause 38: Sale of tobacco products to children

This clause makes it an offence for a person—

- to supply, or offer to supply, (whether by sale, gift or any other means) a tobacco product to a child or a person who the supplier knows or has reason to believe will supply the product to a child; or
- to permit a child to obtain a tobacco product from a vending machine situated on premises that he or she occupies.

In each case the maximum penalty is a $5 000 fine but there is a defence if the defendant can provide that he or she had reasonable cause to believe that the child was 18 years of age or older, or, where a tobacco product was supplied by a vending machine, that he or she took all precautions reasonably required to ensure the tobacco product was not supplied to a child.

If a court convicts a person of such an offence and the person has previously been convicted of such an offence within the immediately preceding 3 years, the court can—

- disqualify the person from applying for or holding a tobacco merchant's licence for up to 6 months; or
- if the person supplies tobacco products by vending machine at two or more premises, order that for the purposes of the measure the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from specified premises for up to 6 months.

The court's powers do not limit or affect the power of the Minister to suspend or cancel a tobacco merchant's licence.

The clause requires a person who sells tobacco products by retail or who occupies premises on which a vending machine that is designed to sell tobacco products is situated to display a notice that it is an offence to supply tobacco products to children. The maximum penalty is a $750 fine and the expiation fee is $105.

Clause 39: Evidence of age may be required

This clause empowers an authorised person (ie., a tobacco merchant, an employee of a tobacco merchant or a member of the police force) to require a person seeking to buy tobacco products to produce evidence of their age if the authorised person suspects on reasonable grounds that the person may be a child. The clause makes it an offence for a person to fail to comply with such a requirement or give false information in relation to such a requirement. The maximum penalty is a $200 fine and the expiation fee is $75.

Clause 40: Certain advertising prohibited

This clause makes it an offence for a person—

- for direct or indirect pecuniary benefit, to display a tobacco advertisement so that it can be seen in or from a public place; or
- to distribute to the public any unsolicited leaflet, handbill or other document that constitutes a tobacco advertisement; or
- to sell any object that constitutes a tobacco advertisement.

The maximum penalty is a $5 000 fine.

However, these provisions do not apply in relation to—

- tobacco advertisements in newspapers, magazines or books; or
- tobacco advertisements on tobacco product packages; or
- tobacco advertisements that are an accidental or incidental part of a film or video tape; or
- tobacco advertisements of a prescribed kind displayed in a shop or warehouse within a prescribed distance from where tobacco products are offered for sale; or
- tobacco advertisements of a prescribed kind displayed at a prescribed distance from such a shop or warehouse; or

- tobacco advertisements displayed or distributed under a contract sponsoring a Sheffield Shield series, or international series, cricket match in this State; or
- documents ordinarily used in the course of business.

Clause 41: Prohibition of certain sponsorships

This clause makes it an offence for a person—

- to promote or publicise, or agree to promote or publicise, a tobacco product or a tradename or brandname, or part of a tradename or brandname under a contract or arrangement under which sponsorship is or is to be provided by another person; or
- to promote or publicise, or agree to promote or publicise, the name or interests of a manufacturer or distributor of a tobacco product in association with that tobacco product under a contract or arrangement under which sponsorship is or is to be provided by another person; or
- to provide or agree to provide a sponsorship under such a contract or arrangement.

The maximum penalty is a $5 000 fine.

The clause does not apply in relation to contracts under which sponsorship is provided for a Sheffield Shield series, or international series, cricket match in this State.

Clause 42: Competitions

This clause makes it an offence for a person to do the following in connection with the sale of a tobacco product, or for the purpose of promoting a tobacco product:

- provide or offer to provide a prize, gift or other benefit; or
- provide or offer to provide a stamp, coupon, token, voucher, ticket or other thing by virtue of which a person may become entitled to, or may qualify for a prize, gift or other benefit; or
- conduct a scheme declared by regulation to be a scheme to promote the sale of a tobacco product or to promote smoking generally.

The maximum penalty is a $5 000 fine, but there is a defence if the defendant can prove that the benefit or thing supplied, or participation in the scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products.

Clause 43: Free samples

This clause makes it an offence for a person to offer or give a member of the public a free sample of a tobacco product for the purpose of inducing or promoting the sale of a tobacco product. The maximum penalty is a $5 000 fine.

Clause 44: Smoking in buses

This clause makes it an offence for a person to smoke a tobacco product in a business carrying members of the public unless the bus was hired for the exclusive use of members of a group. The maximum penalty is a $200 fine and the expiation fee is $75.

Clause 45: Smoking in lifts

This clause makes it an offence for a person to smoke in a lift and requires a person who owns or occupies a building, or part of a building, in which a lift is situated to cause a prescribed notice to be displayed in the lift. In each case the maximum penalty is a $200 fine and the expiation fee is $75.

Clause 46: Smoking in places of public entertainment

This clause makes it an offence for a person attending a place of public entertainment for entertainment to smoke a tobacco product in the auditorium of the place at any time before, during or after the entertainment. The maximum penalty is a $5 000 fine.

Clause 47: Smoking in enclosed public dining or cafe area

This clause makes it an offence for a person to smoke in an enclosed public dining or cafe area. The maximum penalty is a $200 fine and the expiation fee is $75.

Enclosed public dining or cafe area means a public place that—

- is comprised of the whole or part of an enclosed public place; and
- is established or set aside for the purpose (whether or not the exclusive purpose) of—
  - in the case of premises licensed under the *Liquor Licensing Act 1985*—the consumption of meals; or
  - in any other case—the consumption of food or non-alcoholic drinks, or both, purchased at the place.

Enclosed area or place means an area or place that is, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a solid permanent ceiling or roof and solid permanent walls or windows, whether the ceiling, roof, walls or windows are fixed or movable and open or closed.

Meal means a genuine meal eaten by a person seated at a table.

However it is not an offence to smoke—

- in the case of a place that has two or more separate enclosed public areas used for the consumption of meals within licensed premises (other than restaurants that are the subject of a licence under the *Liquor Licensing Act 1985*)—in one of those areas if it is a bar or lounge and the licensee has designated the area as a smoking area for the time being; or
- in an entertainment area within licensed premises (other than a licensed restaurant) between 10 p.m. and 5 a.m. the next day; or
- in an area while it is not open for business; or
- in an area while a special arrangement exists (negotiated separately for a single occasion) under which it is given over to the exclusive use of members of a group; or
- in licensed premises (other than a licensed restaurant) with only a single enclosed public area for the consumption of alcoholic drinks.

Bar or lounge means an area primarily and predominantly used for the consumption of alcoholic drinks.

Entertainment area means an area in which live entertainment (within the meaning of the *Liquor Licensing Act 1985*) is being provided and that is being used primarily and predominantly for the consumption of alcoholic drinks rather than meals.

If licensed premises (other than a licensed restaurant) consist of or include only a single enclosed public area for the consumption of alcoholic drinks and meals are available in the area, it is an offence for a person to smoke in the area while meals are available or being consumed in the area. The maximum penalty is a $200 fine and the expiation fee is $75.

An occupier of an enclosed public dining or cafe area is required to display signs in the area in accordance with the regulations. The maximum penalty is $500 in the case of a natural person and $1 000 in the case of a body corporate.

If smoking occurs in an enclosed public dining or cafe area in contravention of this clause the occupier is also guilty of an offence. The maximum penalty is $500 in the case of a natural person and $1 000 in the case of a body corporate. However, the occupier has a defence if he or she can prove—

- that he or she did not provide anything designed to facilitate smoking where the contravention occurred and that he or she was not aware and could not reasonably be expected to have been aware that the contravention was occurring; or
- that he or she did not provide anything designed to facilitate smoking where the contravention occurred and that he or she requested the person to stop smoking and informed the person that he or she was committing an offence.

PART 4

SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST

Clause 48: Continuation of Trust

This clause continues the *Sports Promotion, Cultural and Health Advancement Trust* in existence.

Clause 49: Constitution of Trust

This clause provides for the Trust to be constituted of seven members appointed by the Governor and sets out qualification requirements.

Clause 50: Term and conditions of membership

This clause provides for members of the Trust to be appointed for terms of up to three years and makes them eligible for reappointment on expiry of a term of appointment. It also sets out the conditions under which members hold office.

Clause 51: Remuneration

This clause entitles members of the Trust to receive such allowances and expenses as the Governor may determine from time to time.

Clause 52: Vacancies or defects in appointment of members

This clause ensures that acts and proceedings of the Trust are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Clause 53: Proceedings

This clause provides that a quorum of the Trust consists of four members and makes other provisions regulating proceedings of the Trust.

Clause 54: Disclosure of interest

This clause requires a member of the Trust who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Trust to disclose the interest to the Trust and abstain from participating in any deliberation or decision of the Trust with respect to the matter. The maximum penalty is a $2 500 fine.

Clause 55: Delegation by Trust

This clause empowers the Trust to delegate its powers, functions and duties under the measure and allows delegated powers, functions and duties to be subdelegated.

Clause 56: Committees

This clause continues in existence the three advisory committees established by the *Tobacco Products Control Act 1986* and empowers the Trust to establish other advisory committees.

Clause 57: Functions and powers of Trust

This clause grants the Trust specified powers to enable it to perform its functions of promoting and advancing sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

Clause 58: Continuation of Fund

This clause continues in existence the *Sports Promotion, Cultural and Health Advancement Fund* and sets out how money of the Fund may be applied by the Trust.

Clause 59: Employees of Trust

This clause empowers the Trust to appoint employees.

Clause 60: Budget

This clause requires the Trust to submit a budget to the Minister for Health each year for the Minister's approval.

Clause 61: Accounts and audit

This clause requires the Trust to keep proper accounts of its financial affairs and prepare a statement of accounts in respect of each financial year, and requires the Auditor-General to audit the Trust's accounts at least once each financial year.

Clause 62: Annual report

This clause requires the Trust to deliver an annual report to the Minister for Health on its operations and requires the Minister to table the report in each House of Parliament.

PART 5
INVESTIGATIONS

Clause 63: Appointment of authorised officers

This clause empowers the Minister to appoint authorised officers and makes all members of the police force and authorised officers under the *Taxation Administration Act 1996* authorised officers for the purposes of the measure.

Clause 64: Identification of authorised officers

This clause requires an authorised officer other than a member of the police force to be issued with an identity card containing their name and photograph and a statement of the limitations (if any) on their powers. It also requires an authorised officer to produce his or her identity card (or in the case of a member of the police force not in uniform—his or her certificate of authority) for inspection, if requested to do so by a person in relation to whom the authorised officer intends to exercise powers under the measure.

Clause 65: Power to require information or records or attendance for examination

This clause empowers the Minister or the Commissioner to require persons to provide information, attend and give evidence (including evidence on oath), or produce records, for a purpose related to the administration or enforcement of the measure. The maximum penalty for non-compliance with the Minister's or the Commissioner's requirements is a $20 000 fine.

Clause 66: Powers of authorised officers

This clause sets out the powers of authorised officers.

Clause 67: Offence to hinder, etc., authorised officers

This clause makes it an offence for a person—

- to hinder or obstruct an authorised officer or person assisting an authorised officer; or
- to use abusive, threatening or insulting language to an authorised officer or person assisting an authorised officer; or
- to refuse or fail to comply with a requirement or direction of an authorised officer; or
- when required by an authorised officer to answer a question, to refuse or fail to answer a question to the best of the person's knowledge, information and belief; or
- to falsely represent, by words or conduct, that he or she is an authorised officer.

The maximum penalty is a $20 000 fine.

Clause 68: Self-incrimination

This clause provides that it is not an excuse for a person to refuse or fail to answer a question or to produce or provide a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty. If compliance by a person with a requirement to answer a question or to produce or provide a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- in the case of a person who is required to produce or provide a record or information—the fact of production or provision of the record or the information (as distinct from the contents of the record or the information); or
- in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under the measure).

Clause 69: Powers in relation to seized tobacco products

This clause provides for forfeiture of seized tobacco products to the Crown. The Commissioner may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine seized tobacco products to be forfeited to the Crown and sell them by public tender. If a court convicts a person of an offence against the measure in relation to seized tobacco products, the products are automatically forfeited to the Crown unless the court determines that the circumstances of the offence were trifling. However, the owner of seized tobacco products is entitled to recover the products, or, if they have deteriorated, is entitled to compensation in respect of them if—

- a prosecution for an offence against the measure in relation to the products is commenced but the defendant is acquitted; or
- a prosecution for such an offence lapses or is withdrawn; or
- the court determines the circumstances of the offence were trifling; or
- a prosecution for such an offence is not commenced within 3 years of seizure; or
- on application by the owner, the District Court determines that the justice of the case requires return of the products or compensation.

On the expiry of 3 years after the seizure of tobacco products, the products they are forfeited to the Crown if not returned to the owner (and the owner has no right of recovery or compensation except as mentioned above), and the Commissioner can sell them by public tender.

PART 6
APPLICATION OF FEES REVENUE

Clause 70: Application of fees revenue

This clause provides that licence fees must be paid into the Consolidated Account. Not less than 5.5 per cent of the amount collected by way of fees for unrestricted tobacco merchants' licences must be paid into the Fund for application in accordance with Part 4 of the measure.

PART 7
MISCELLANEOUS

Clause 71: Exemptions

This clause empowers the Governor, by proclamation, to grant exemptions from the operation of provisions of the measure.

Clause 72: Delegation

This clause empowers a Minister and the Commissioner to delegate or subdelegate powers or functions under the measure to any person or body and allows delegated powers and functions to be subdelegated.

Clause 73: Register of licences

This clause requires the Minister to keep a register of licensees and make it available for public inspection.

Clause 74: Unlawful holding out as tobacco merchant

This clause makes it an offence for a person who is not a licensed tobacco merchant to hold himself or herself out as a licensed tobacco merchant. The maximum penalty is a $50 000 fine.

Clause 75: False or misleading information

This clause makes it an offence for a person to make a statement that is false or misleading in a material particular in any information furnished, or record kept, under the measure. The maximum penalty is a $50 000 fine.

Clause 76: Minister may require verification of information

This clause empowers the Minister or the Commissioner to require that information furnished under the measure to be verified by statutory declaration and makes it an offence for a person to fail, without reasonable excuse, to comply with such requirement. The maximum penalty is a $20 000 fine.

Clause 77: Report from police

This clause requires the Commissioner of Police to provide to the Minister, at the request of the Minister, any information required by the Minister for the purpose of determining an application for a licence or whether a licence should be suspended or cancelled.

Clause 78: Confidentiality

This clause makes it an offence for person to divulge information relating to information obtained (whether by that person or someone else) in the administration of the measure except—

- as authorised by or under the measure; or
- with the consent of the person from whom the information was obtained or to whom the information relates; or
- in connection with the administration or enforcement of the measure; or
- to an officer of a State or Territory, or of the Commonwealth, employed in the administration of laws relating to taxation or customs; or
- for the purpose of legal proceedings arising out of the administration or enforcement of the measure.

The maximum penalty is a $10 000 fine.

Clause 79: General defence

This clause provides that it is a defence against the measure if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 80: Immunity from personal liability

This clause protects the Commissioner, members of the Trust, employees of the trust, members of advisory committees, authorised officers and other persons engaged in the administration of the measure from personal liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under the measure.

Clause 81: Offences by bodies corporate

This clause provides that if a body corporate is guilty of an offence against the measure, each director of the body corporate is, subject to the general defence in clause 77, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 82: Prosecutions

This clause provides that proceedings for an offence against the measure must be commenced within five years after the date on which the offence is alleged to have been committed.

Clause 83: Recovery of amounts payable under Act

This clause empowers the Commissioner to recover amounts payable under the measure as debts due to the Crown.

Clause 84: Recovery of amounts from third parties

This clause empowers the Commissioner to recover amounts payable under the measure from third parties instead of from the indebted person.

Clause 85: Evidence

This clause provides evidentiary aids.

Clause 86: Service

This clause sets out the manner in which service of notices, orders and other documents may be effected.

Clause 87: Regulations

This clause empowers the Governor to make regulations.

SCHEDULE 1

Declaration by person purchasing from class B licensee

Form 1 is the form of declaration to be made under clause 22 of the measure by a purchaser of tobacco products by retail from a class B tobacco merchants' licensee if the purchaser holds a consumption licence or is purchasing on behalf of a person who holds such a licence.

Form 2 is the form of declaration to be made if the purchaser does not hold a consumption licence or is purchasing on behalf of a person who does not hold such a licence. It contains an acknowledgment that it is an offence for a person to consume the tobacco products that are the subject of the declaration unless the person holds a consumption licence. It also contains an undertaking that if the declarant, the declarant's principal or a person acting with the consent of the declarant or declarant's principal, consumes these products in contravention of the measure, the declarant will pay an expiation fee of $315.

SCHEDULE 2

Repeal and Transitional Provisions

Clause 1 repeals the *Tobacco Products Control Act 1986* and the *Tobacco Products (Licensing) Act 1986*.

Clause 2 continues consumption licences and tobacco merchants' licence in force immediately before the repeal of the *Tobacco Products (Licensing) Act 1986* as such licences under the measure until the end of the period for which they were granted. Restricted licences continue as restricted class A licences. Unrestricted licences continue as unrestricted class A licences.

Clause 3 ensures that the requirements imposed under clause 25 of the measure to keep records in relation to tobacco products apply in relation to tobacco merchandising and transporting of tobacco products whether occurring before or after the commencement of that provision.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

LAND ACQUISITION (RIGHT OF REVIEW) AMENDMENT BILL

Returned from the House of Assembly without amendment.

SUBORDINATE LEGISLATION (COMMENCEMENT OF REGULATIONS) AMENDMENT BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 6.57 p.m. the Council adjourned until Tuesday 18 March at 2.15 p.m.