LEGISLATIVE COUNCIL

Tuesday 19 February 1991

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 101 to 112 and 114 to 118.

TOURISM

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

1. Does the Minister support the extension of gambling facilities to hotels and clubs with revenue generated by such facilities being directed towards tourism marketing activity?

2. What consideration, if any, is being given to this proposition as a means of improving Tourism SA's budgetary position without further impact on State Treasury?

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

1. and 2. The honourable member's question, and the following 17 other questions, arise from her reading of Tourism SA's submission to the Minister of Finance for consideration by the Government Agency Review Group. This is a confidential internal document that proposes a phased series of internal investigations of the activities of Tourism SA in order to identify areas within its divisions that may benefit from a range of options for change. Until it has received proper consideration and the investigations that it specifies are completed, I do not propose to comment in detail on portions of it that have been selectively quoted out of context. For instance, that document proposes that a study of alternative funding options, including the use of revenue generated from the extension of gambling facilities, may be appropriate. My support for this option would of course be dependent on the outcome of the study being undertaken.

102. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: Further to the Minister's submission to the Minister of Finance as Chairman of the Government Agency Review Group has she received confirmation that any savings found through reorganisation within Tourism SA will be retained by the agency?

The Hon. BARBARA WIESE: No. This matter has not yet been considered.

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

1. Does the Minister believe that the options for amalgamation of Tourism SA with either Industry, Trade and Technology, Arts and Cultural Heritage or Recreation and Sport, as outlined in her submission to the Government Agency Review Group, would eventuate in any cost savings?

2. What other merits, if any, does the Minister conclude would flow to the tourism industry in South Australia from an amalgamation of Tourism SA with any of the above agencies?

3. Have instructions been issued to the Minister that Tourism SA must amalgamate with another Government agency?

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

1. and 2. As the honourable member will know from her reading of my submission to the Minister of Finance, only preliminary internal assessment of the benefits or otherwise of amalgamation of Tourism SA with other agencies has been made. Based on that preliminary assessment I stated that I doubted that cost-savings or other benefits to the industry would eventuate. However, the submission also indicated a schedule for further examination of the issue and I will comment as may be appropriate when that examination has been completed.

3. No.

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

1. Has Tourism SA been granted a 21C exemption under the Government Management and Employment Act to establish within the Marketing Division a senior position to manage international activities as well as promotional tours and associated work and to advertise for a person from the private sector?

2. Has the level of the position been formally assessed?

3. When is it envisaged applications will be called?

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

1, 2 and 3. The honourable member's question evidently has been prompted by her reading of a confidential internal memorandum from the Managing Director of Tourism SA to the staff. That memorandum outlined proposed restructuring of the Marketing Division and was an invitation to staff to participate in providing feedback about the proposals. Decisions about whether such a position will be created will depend on the outcome of discussions yet to occur between the Managing Director, staff and DPIR.

105. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: In relation to the Marketing Division, Tourism SA:

1. What current positions are deemed to be no longer required and what arrangements have been made to accommodate the officers who hold such positions at present?

2. If redundancy packages are involved, what are the costs and will such costs be borne by the agency?

3. What cost savings are anticipated to stem from the proposed management rationalisation?

4. What are the terms of appointment for the Manager of the division?

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

1, 2 and 3. The honourable member will know from her reading of the internal document I mentioned in my response to the previous question that restructuring of the Marketing Division to increase its productivity is to take place. No staff changes have yet occurred and I do not consider it appropriate to comment further on them.

4. The Marketing Division is headed by a General Manager who has been employed under a contract.

106. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: What options are being explored by Tourism SA in relation to the Planning and Development Division to satisfy GARG's brief for restructuring?

The Hon. BARBARA WIESE: My submission to the Minister of Finance details a staged examination of restructuring options for all its divisions. It states that options for the restructuring of the Planning and Development Division are to be examined in Phase II of the department's internal investigations. When that examination has been completed I will comment further as may be appropriate.

107. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: As I note the Minister's submission to GARG in relation to the region's division notes—'the phasing out of regionally based officers and offices and conversion to a cash grants system based on State needs and priorities will

be examined as this has potential for savings after existing contracts expire in 1993-94':

1. Is it intended that the views of Regional Tourism Associations and regional operators will be canvassed as part of the examination and, if not, why not?

2. Will an independent consultant be engaged to conduct the examination and, if not, why not?

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

1. As was the case during previous reviews, yes.

2. Major issues relating to possible rationalisation of the Regions Division are to be examined as Phase III of our internal investigation. The need or otherwise for an independent investigation has therefore not yet been addressed.

108. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: As I understand that relative to most other Government tourism agencies in Australia Tourism SA attracts very limited resourcing:

1. What are the dollar amounts comprising total State tourism expenditure budgets in all States over the past five financial years?

2. What are the State staffing levels in all States over the past five financial years?

3. What are the per capita State tourism budget figures per Australian adult population over the past five financial years?

The Hon. BARBARA WIESE: Expenditure budgets, staff complement figures and budgets per Australian adult population for all States in 1990-91 were included in my submission to the Minister of Finance in order to put Tourism SA's resources into national perspective. While I am happy to provide additional budget figures for South Australia for past years in answer to the honourable member's question, I am not prepared to use my already busy staff in determining these figures for other States. If the honourable member still wishes to know those details I suggest she approach their tourism agencies herself.

1. Tourism SA's expenditure budgets: 1986-87, $9.664 million; 1987-88, $9.894 million; 1988-89, $12.476 million; 1989-90, $15.029 million; and 1990-91, $15.802 million.

2. Tourism SA's staffing levels in full-time equivalents: 1986-87, 131.1 (which included 11.3 ASER staff not included in subsequent years); 1987-88, 123; 1988-89, 129.1; 1989-90, 136.9; and 1990-91, 141.

3. Tourism SA's per capita budgets for Australian adult population: 1986-87, 78c; 1987-88, 79c; 1988-89, 97c; 1989-90, $1.15; and 1990-91, $1.18. These figures are based on ABS statistics for Australian resident population aged 15 years and over in the years June 1986 through June 1990. The above 1990-91 per capita expenditure figure differs from that specified in my GARG submission because in that submission the June 1988 population figure was used. Since the same figure was used for all States this did not of course invalidate the expenditure comparisons.

109. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: What are the forecasts for market share growth in both domestic and international tourism in South Australia?

The Hon. BARBARA WIESE: Our stated position has been that South Australia should at least maintain its market share of domestic and international tourism. In terms of visitor nights this has been 7 to 7.5 per cent of the Australian domestic total and 6 to 7 per cent of the international total.

This does not imply zero growth because national annual growth targets are 8 per cent in the international market and 2.5 per cent in the domestic market. By maintaining our share of those markets, and, very importantly, by continuing to restructure our visitations into higher yield areas, we expect to achieve long-term sustainable growth in the net value of tourism activity in South Australia.

110. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: What arrangements have been negotiated for the airlines Cathay Pacific and Garuda to fly into Adelaide?

The Hon. BARBARA WIESE: Cathay Pacific was granted rights to fly to Adelaide with effect from April 1991 during renegotiation of the air service agreement between the Australian and the UK Governments in June last year. Further discussions in October concerning capacity increases ended without agreement, and at present it appears that Cathay Pacific may be reluctant to commence service to Adelaide while the capacity issue remains unresolved. In any event, Cathay Pacific has indicated that it has no plans to commence service before November 1991.

Garuda and Qantas have reached agreement on a formula for capacity and landing rights exchanges that each will recommend to its Government be accepted. Adelaide landing rights and capacity to operate up to two flights per week were part of that agreement. Confirmation of the agreement by the Australian and Indonesian Governments will be considered during formal talks between the Governments scheduled in late February 1991.

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

1. What is the current status of the proposed strategic plans for tourism in the areas of the Barossa, Flinders Ranges, Mount Lofty Ranges and Kangaroo Island?

2. What further processes are required is respect to each of the above areas before the strategic plans are finalised and adopted?

3. In what further areas of the State, if any, is it proposed that strategic plans for tourism will be undertaken?

The Hon. BARBARA WIESE: Strategic planning and policy development for tourism by Tourism SA is the responsibility of its Planning and Development Division. This includes preparation of the State Tourism Plan and general tourism planning policies and guidelines as laid out in its June 1990 document 'Planning for Tourism—A Handbook for South Australia' which provides State and local government planners, investors and developers and existing tourism operators in South Australia with a sound framework effectively to implement the State's tourism strategy. It also includes planning at the regional and local level which may take the form of participation in interdepartmental reviews or by the provision of advice and assistance to local government.

1 and 2. Tourism planning in the Barossa is being undertaken in conjunction with the Barossa Valley Review. Tourism SA contributed $10 000 to the tourism component of the consultant study and has worked closely with the consultant and community. The consultant's draft report is presently being subjected to community comment.

Tourism planning for the Flinders Ranges has been completed following the Cameron McNamara Report 'A Tourism Development Framework for the Flinders Ranges, 1986'. Since that time Tourism SA has worked closely with the Department of Environment and Planning and will integrate tourism policies into the proposed Flinders Ranges Supplementary Development Plan.

Tourism SA has contributed to tourism planning in the Mount Lofty Ranges through its contribution to the Mount Lofty Ranges Review. This has consisted of an examination of the broad issues and has resulted in the production of a document containing broad tourism directions. Production of a more detailed strategy plan is proposed as a matter of priority.

Tourism planning on Kangaroo Island is being undertaken in conjunction with the District Councils of Kingscote and Dudley and has involved extensive community consultation. Public comment on the draft report produced closed at the end of January, and comments are being assessed by the working party for inclusion in a final document to be presented to the councils for endorsement. This will then be used as the basis for amendment of the present supplementary development plan.

3. Numerous other tourism planning projects at the regional or local level have been undertaken or commissioned by Tourism SA, the most recent being the Murray Valley Recreation and Tourism Plan, 1988, the Mintaro Tourism Study, 1988, the Robe Tourism Strategy, 1990, and the Kapunda Tourism Strategy which is still in progress. Among future priorities for planning initiatives are the Mount Lofty Ranges (as noted above), the Fleurieu Peninsula and Adelaide.

112. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: As planning approvals have been gained for proposals to develop the Barossa Country Club and the Barossa Retreat Hotel, will the Minister advise when it is envisaged that construction will be commenced and finalised on both developments?

The Hon. BARBARA WIESE: The two Barossa developments for which planning approvals have been gained are the Lyndoch Valley Country Club and the Marananga Retreat Hotel. Construction of both is planned to commence in mid-1991 and be completed by mid-1992, subject to availability of financing.

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

1. Has Tourism SA developed plans to increase our network of travel centres beyond our current representation in Sydney, Melbourne and Perth?

2. What is the cost of operating each of these centres?

3. What is the estimated cost of operating centres in each of the following cities—

(a) Brisbane;

(b) Hobart;

(c) Darwin?

4. What, if any, consideration has been given to sharing office space with interstate agency representatives and what costs or savings would be involved?

The Hon. BARBARA WIESE:

1. The honourable member should be aware that Tourism SA maintains a trade office in Brisbane as well as travel centres in Sydney and Melbourne and agency representation in Perth. Tourism SA does not have plans to extend our network of representation beyond this level at this point in time. However, the agency is constantly monitoring trends in tourism and visitors to this State with the view to servicing the market in the most effective manner.

2. The costs of operating our present travel centres in the 1989-90 financial year were as follows:

	$
Melbourne	335 000
Sydney	595 000
Perth	36 000

The figures for Melbourne and Sydney include office rental, staffing, equipment and telephones, etc., while the Perth cost is for the representation fee paid to the company representing us in Western Australia.

3. I cannot answer this question without a level of representation and office location being first established. Obviously costs would depend on a number of factors such as the number of staff required, the classification level of the staff, the location secured, the rental cost of the space, and so on. The cost of maintaining our present representation in Brisbane, which consists of a single staff member providing liaison with the industry but not public contact, amounts to approximately $32 500 for salary and vehicle. This cost is included in the Sydney travel centre budget.

4. In 1988, informal discussions were held with the Queensland Tourist and Travel Corporation (QTTC) to establish an 'Australian Travel Centre' in Brisbane, with costs to be shared with QTTC, Victoria, New South Wales and Tasmania. No agreement was reached, mainly because of lack of interest of the other three States. Although Tourism SA is willing to enter into further discussions concerning the sharing of accommodation with other States' agencies, cost savings would be limited if we were to retain our own representation in a shared facility. I believe this to be necessary if an appropriate level of product knowledge and State representation is to be maintained. Since other States, with their own parochial interests, share this belief, it may be difficult to achieve a sharing of facilities.

115. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: In relation to computerised information technology:

1. Does Tourism SA propose to follow the lead set by several States to move into regionalised tourism information, booking systems and interactive touch screen video disc technology?

2. If so, what plans have been developed to pursue such an initiative and what are the estimated initial capital costs and recurrent costs?

The Hon. BARBARA WIESE:

1. As the honourable member will be aware from her reading of my submission to the Minister of Finance, Tourism SA is assessing its priorities in this regard.

2. Plans and cost estimates are subject to the above.

116. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: As the current telephone situation at the Travel Centre is widely acknowledged to be unsatisfactory leading to lengthy delays on the queuing system, what initiatives have been taken to address this situation?

The Hon. BARBARA WIESE: StateLink are presently engaged on a comprehensive evaluation of the Travel Centre's current and future telephone equipment needs. The recommendations advanced by StateLink will be given due consideration when they are received.

117. **The Hon. DIANA LAIDLAW** asked the Minister of Tourism: In relation to Tourism SA's proposal to commission a detailed study on alternative funding options, including an accommodation/bed tax, a levy on airline ticket sales, a dedicated proportion of gambling revenue and/or a local government differential rating:

1. Who has been appointed to undertake the investigation and at what cost?

2. What is the time frame for completion of the work?

The Hon. BARBARA WIESE:

1. and 2. Issues of alternative funding mechanisms for tourism are under investigation at the national level at the request of the National Tourism Ministers' Council. Preliminary studies have also been undertaken for Tourism SA by the South Australian Centre for Economic Studies, which have indicated that potential to boost marketing resources may exist in these areas and that further study should be undertaken. Tourism SA, in conjunction with the Treasury Department, is developing terms of reference for further study which will be finalised when the results of the national study are known.

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

1. What is the estimated additional cost to ensure the Travel Centre is open to the public on a 9 a.m. to 5 p.m. basis seven days a week or a 10 a.m. to 4 p.m. basis on the weekends?

2. What is the estimated additional cost to ensure booking facilities are available at the centre between 11.30 a.m. and either 4.00 p.m. or 5.00 p.m. on Saturdays and from 9.00 a.m. to 5.00 p.m. or 10.00 a.m. to 4.00 p.m. on Sundays?

The Hon. BARBARA WIESE:

1. and 2. A review of the Travel Centre's operations and opportunities for changes to them was also specified in my submission to the Minister of Finance as being an appropriate part of a program of internal investigations. The options for different opening times and availability of booking facilities, and their cost, will be examined in the context of likely demand for them. The present hours of operation are 8.45 a.m. to 5.00 p.m. from Monday to Friday (except Tuesday which are 9.00 a.m. to 5.00 p.m.) and 9.00 a.m. to 2.00 p.m. on Saturdays, Sundays and public holidays. The centre is open every day of the year except on Christmas Day.

Without wishing to pre-empt the review I can say that the most likely preferred alternatives for extended opening hours have been costed as follows:

(1) Friday—8.45 a.m. to 9.00 p.m.
Saturday—8.45 a.m. to 5.00 p.m.
Sunday/public holidays—9.00 a.m. to 2.00 p.m. (limited booking service)
Cost: $20 000 per annum in addition to existing costs.

(2) To extend full booking service and 5.00 p.m. closing for entire weekend cost $50 000 per annum in addition to existing costs. (This does not include Friday evening or public holiday extensions to hours or services as in option (i)). It has been costed on the basis of utilisation of existing staff but would impose substantial strain on those staff and an eventual requirement for additional staffing at higher cost.

It should be borne in mind that after noon on Saturday many operators cannot be contacted to make bookings, and our experience is that most tourists have made commitments for the day, before the existing closure time of 2.00 p.m. It is therefore important that the review estimates the cost effectiveness of additional opening hours.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Local Government Relations (Hon. Anne Levy):

Civil Aviation (Carriers' Liability) Act 1962 (Commonwealth)—Regulations.
National Trust of South Australia 1955—Rules and Branch By-laws.
Regulations under the following Acts—
Botanic Gardens Act 1978—Fees.
National Parks and Wildlife Act 1972—Belair Recreation Park Fees.
Planning Act 1982—Coastal Development and Commission Power.
Corporation By-laws:
West Torrens:
No. 1—Permits and Penalties.
No. 2—Streets and Public Places.
No. 3—Garbage Containers.
No. 4—Park Lands.
No. 5—Inflammable Undergrowth.
No. 6—Foreshore.
No. 8—Caravans.
No. 10—Animals and Birds.
No. 12—Bees.
No. 13—Repeal of By-laws.
Town of Naracoorte:
No. 2—Streets and Public Places.
No. 3—Park Lands.
No. 4—Caravans.
No. 6—Animals and Birds.
No. 7 Bees.

QUESTIONS

STATE BANK

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

1. Has the Government yet considered the composition of the proposed royal commission into the State Bank?

2. Has the Government agreed that three royal commissioners should comprise the royal commission as proposed publicly by the Leader of the Opposition, with experience in the legal area, banking and finance, or has the Government agreed that only one commissioner should be appointed?

3. When will decisions be taken with respect to the structure and composition of the royal commission if that has not yet been done?

The Hon. C.J. SUMNER: Obviously the Government has given some consideration to this matter. I anticipate that we will be in a position to finalise the terms of reference and other matters relating to the royal commission probably by early next week, but obviously a number of things have to be done. In the meantime, I will not speculate on the Government's approach. I understood that we were in discussion with the Liberal Party on the topic and that, when the Government had firmed up its attitude to certain matters, it would have further discussions with the Liberal Party. However, despite the fact that there were discussions, the Liberal Party now comes into the Parliament and raises questions about it. Well, I suppose that is its prerogative. That is the sort of thing that it usually does.

It is fair to note that the Liberal Party had discussions with me last Wednesday, when it released its original terms of reference on Tuesday. On Wednesday it told us that it had some further amendments to those original terms. They were received on Thursday and it is now the following Tuesday, so hardly a long time has elapsed since the final considered Liberal position was put to the Government.

The Government will determine the matter in due course. Obviously, we are working on it at the present time, the issues are being considered and, at the appropriate time, an announcement will be made.

STATE BANK

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in the Council, a question about the State Bank of South Australia.

Leave granted.

The Hon. L.H. DAVIS: The *Financial Review* of Monday 18 February—that is, yesterday—carried a major article on State banks in Australia, leading off with a comment from Stephen Martin, the Chairman of the Federal Government's inquiry into the banking industry. The article stated that Stephen Martin, the Labor Chairman of the Federal Government's inquiry into the banking industry, had little sympathy for the State Bank of South Australia. The article continued:

Nor can he stem his anger or hold back his damning criticism of the managers and the directors of the South Australian Government-owned bank, which last week was revealed to have loan losses of more than $1 billion.

For sitting on Martin's Parliament House desk in Canberra is a submission from the SBSA to the Government inquiry dated 22 January 1990. Signed by the bank's deputy chairman, Bob Bakewell, it makes absolutely no mention of any financial strife or loan problems being faced by the bank.

'That to me is astounding,' says Martin. 'Here we are running the biggest parliamentary inquiry ever into Australia's banks, and the SBSA doesn't even bother to tell us of its real financial position.

'Yet even I can look at its August annual report and accounts and see that alarm bells should have been ringing then, especially over their provisions for bad debt. What were those managers and directors doing?'

The article stated further:

The outspoken Stephen Martin—despite being a politician of the same colour as the South Australian Labor Premier—believes that Bannon has to accept the blame for the downfall of his $15.4 billion State bank.

The article continued:

'Bannon has already said the problem was he wanted the bank to be at arm's length from the Government,' Martin said. 'But you should never be at arm's length when you are dealing with the people's money.

'It might be all right for Governments to talk about arm's-length control. But when the State banks get into areas outside their traditional ones and where they lack the expertise to handle them, then that's exactly when you need more supervision and a tighter watch on them.'

They are the remarks of the Chairman of the Hawke Government's inquiry into banks and a Federal colleague of the Attorney-General. My question to the Attorney-General is very simple: as Leader of the Government, as a key adviser to Premier John Bannon and as someone who has been around for a long time, does he agree with the comments of his Federal colleague, Mr Stephen Martin and, if not, why not?

The Hon. C.J. SUMNER: It is all very well for Mr Martin to say that Governments cannot be at arm's length with respect to State banks, but the fact is that the legislation passed by this Parliament, which established the State Bank of South Australia, specifically put the Government at arm's length from the bank. That was insisted upon in particular by the Liberal Party in Parliament. It made a great fuss about ensuring that the bank had a charter within which it could operate without interference from Government—without political interference.

So, the philosophy of the Government's being at arm's length from the State Bank was enshrined in legislation with the full support of the Liberal Party. Therefore, when Mr Martin criticises that approach he is criticising the South Australian Parliament, including the Liberal Party. If there is now to be a change in the relationship between Government and the State Bank, that will flow from the current situation and, of course, it may be one of the matters that will be considered by the royal commission.

It may be that there do need to be changes to the State Bank Act to deal with the relationship between the Government and the State Bank. That is one of the matters that the Liberal Party has suggested should be examined by the royal commission, and I assume that the Hon. Mr Davis, although I know he is not at the centre of the action or the centre of power within the Liberal Party, is probably aware of that. In so far as Mr Martin made those comments, I can only assume that he is not aware of the legislation in South Australia or of the philosophy behind the legislation which was agreed to by the Parliament in 1984.

The Hon. L.H. DAVIS: I have a supplementary question. Is the Attorney-General saying that he rejects the proposition advanced by his Federal colleague, Mr Martin, that the Bannon Government has to accept the blame for the downfall of the State Bank?

The Hon. Barbara Wiese: It hasn't fallen down.

The Hon. C.J. SUMNER: No. In fact, the Premier and the State Government—and I think that this has been overlooked—should be congratulated for the package that was put together to save the State Bank.

Members interjecting:

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

The Hon. C.J. SUMNER: I would suggest that members opposite—

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The honourable Attorney-General.

The Hon. C.J. SUMNER: I should have thought that members opposite would concede that, had they been applying any fair-minded approach to the issues relating to the State Bank. The Premier has dealt with the question of responsibility for the situation in which the State Bank found itself. He is on the public record, and I refer the honourable member to his comments and he can draw whatever conclusions he likes from those. In any event, the relationship between the Government and the State Bank, and the reporting mechanisms, I imagine, will be issues that will be looked at by the royal commission.

CENTREPOINT BUILDING

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

Leave granted.

The Hon. M.J. ELLIOTT: In 1987, as an adjunct to the Remm-Myer project in Rundle Mall, Remm bought the Centrepoint building on the corner of Rundle and Pulteney Streets for $8.5 million. The building was extensively redeveloped at a reported cost of $20 million and on 14 September 1989 the building was auctioned.

I have been told that the auction was a farce. I have been told that the only serious bidder and final purchaser, SGIC, had to buy the building because Remm had earlier purchased a put option from the SGIC to guarantee its sale. I have also been told that, in exercising that put option, Remm was paid $17 million over the market value of the building by SGIC.

The price paid, $43.1 million, was reported in an *Advertiser* article on the auction to be a record amount for a building in the Adelaide central business district. The implication made to me was that, in taking up the put option with Remm, SGIC was doing a favour for the State Bank. Myer's move to Centrepoint was crucial to the future of the Rundle Mall development in which the State Bank had a significant financial interest.

When Myer inevitably moves back to its address in Rundle Mall, SGIC could well be left holding the baby for the State Bank. It will have a department store at the wrong end of town with little hope of recouping the high price it paid for the building. My questions are:

1. Was Remm exercising a put option when SGIC bought the Centrepoint building in 1989? If so, what are the details of that arrangement?

2. What is the current market value of the Centrepoint building and what was the market price believed to be in September 1989?

3. What is the prudence of paying a record price for a department store with no secure long-term tenant?

4. What are SGIC's plans for the building when Myer moves back to Rundle Mall?

The Hon. C.J. SUMNER: I will refer the question to the appropriate Minister.

TANDANYA

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

Leave granted.

The Hon. DIANA LAIDLAW: Last Tuesday in this place the Minister advised that in December 'the Government made available to Tandanya an accounting consultant to look at the accounting and financial management systems in place at Tandanya'. She also advised that 'an immediate plan of action was devised for Tandanya to cut expenses and to reduce the anticipated deficit'. That day, of course, she indicated that the anticipated deficit was $900 000, which she subsequently revised to $500 000.

In view of these statements by the Minister, it is a matter of some interest to persons such as myself who are keenly interested in the welfare of Tandanya that the Minister continues to plead that she has no knowledge of financial practices and problems at Tandanya, including the final costs of an overseas trip. As the board met with the Minister last Wednesday and the board met again yesterday, I trust the Minister is now in a position:

1. to advise the details of the plan of action devised last month for Tandanya to cut expenses and to reduce the anticipated deficit, including the closure of the cafe and, I understand, the sacking of some 11 of the 17 staff and trainees;

2. to advise what the forecast deficit will be at the end of this financial year, if and when all the proposed cuts are implemented;

3. to advise what additional funds have been sought by the board to ensure Tandanya is not forced to close its doors; and

4. to advise whether the Government has agreed—and on what terms—to provide Tandanya with a further special injection of operating funds for the remainder of the financial year.

The Hon. ANNE LEVY: There were four questions, Mr President, to which I am happy to respond. I do not have with me at the moment the details of the suggested plan of action for Tandanya. It certainly includes the immediate closing of the cafe, savings in salaries, and very strict control and a cut-down on general expenses.

The Hon. Diana Laidlaw: Such as lunches and things like that?

The Hon. ANNE LEVY: I do not know that they were detailed, but it includes very strict control and a cut-down on expenses, including general running costs. A number of these actions have, of course, already been undertaken by the board of Tandanya, and I presume decisions will doubtless soon be made about the others if they were not made yesterday.

The plan of action which was put forward with the suggestion that it be implemented immediately would, it was hoped, reduce from $500 000 to $350 000 the deficit for this financial year. In other words, savings of $150 000 were expected to be made from those actions. Tandanya has had discussions regarding the necessity for additional funds to enable it to continue in existence. The Government has on many occasions this financial year made quite clear to Tandanya that there are no additional grant funds available and that, right from August last year, Tandanya was to work within its budget; it was told that it could expect no further grants at all.

I want to correct a comment made by the Hon. Ms Laidlaw. I did not meet with the board last week; I met with some members of the board last week. The whole board was not able to attend the meeting. In meeting with those members from the board of Tandanya, I indicated that it might be possible to make some loan provisions to the board, but details on this are still being discussed, and there has been no finalisation. In like manner, any conditions relating to a loan have not been determined. This matter is still under discussion. As honourable members would know, a temporary executive director for Tandanya has been announced. We are indeed very fortunate to secure the services of George Lewkowicz.

The Hon. L.H. Davis: You should have advertised in the first place.

The Hon. ANNE LEVY: Also, we are very pleased indeed that he will be able to—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Mr President, he is at it again!

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Minister has the floor.

The Hon. ANNE LEVY: We are indeed fortunate that Mr Lewkowicz will be able to commence at Tandanya next week. It is fortunate that his agency, CEO, and Minister, were able to make him available from as early as next week. Mr Lewkowicz will obviously have as one of his first responsibilities—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: That babble in the background is really most infuriating.

Members interjecting:

The PRESIDENT: Order! The Minister has the floor.

The Hon. ANNE LEVY: One of Mr Lewkowicz's first tasks at Tandanya will obviously be to thoroughly evaluate the financial situation at Tandanya and take various steps.

The Hon. Diana Laidlaw: Haven't you got an accountant doing similar work?

The Hon. ANNE LEVY: In response to the interjection from the Hon. Ms Laidlaw about an accountant, I point out that the accountant there was advising on systems management, computing programs and record management there—not doing any investigation of what the accounts were but looking at the system of managing the accounts.

As a result of his advice, changes are being made in terms of the management of financial records. I am sure that Mr Lewkowicz will give equally high priority to the financial situation, to the management of programs and staff at Tandanya and to helping to restore morale amongst its staff. I have been told that the announcement of his appointment was greeted with great pleasure amongst the staff of Tandanya, many of whom know him personally, and others of whom have heard of him and, indeed, have a high respect for him.

The Hon. DIANA LAIDLAW: As a supplementary question, further to the Minister's—

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: Well, this is quite an important matter, the Hon. Mr Roberts, which, as I have indicated before, it would be easy to—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I would not have had to get up if the Minister had been prepared to make a statement.

The PRESIDENT: Order! The honourable member is asking a supplementary question.

The Hon. DIANA LAIDLAW: Of course, Mr President. Further to the Minister's statement that anticipated cuts and expenses would leave an operating deficit of $350 000, have members of the board sought an injection of that amount of funds in terms of grants or loans from the Government? In relation to the Minister's discussion about the possibility of a loan, if a loan of $350 000 is not provided and the board cannot pay the interest, what does the Minister see as the future for Tandanya?

The Hon. ANNE LEVY: At this stage no specific sums have been discussed. It is a question of determining the basic essential needs of Tandanya. The sum of $350 000 is a guesstimate only. I am sure that Mr Lewkowicz will be able to provide more accurate estimates when he has had a chance to examine some of Tandanya's books and accounts. Certainly, I believe there has been discussion in principle only without any particular sum being mentioned.

COUNTRY RAIL SERVICES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister for Local Government Relations, representing the Minister of Transport, a question relating to country rail services.

Leave granted.

The Hon. I. GILFILLAN: Once again it appears that Australian National is disregarding the people of South Australia and this Parliament over its management of non-metropolitan rail services in this State. Despite a parliamentary select committee having been established late last year to investigate AN's management of rail in this State, AN has continued with a program of systematic line closures and dismantling of vital infrastructure.

One of the latest incidents involves more than 80 km of line between Balaklava and Gulnare in the State's Mid North. This line was closed at the end of 1990 by AN and recently the rail authority called for tenders to rip up the line. This line had, until its closure, provided the grain carrying services for both Gulnare and Balaklava.

The 1989-90 harvest from both towns produced approximately 30 000 tonnes of grain each, stored in silos located near railway sidings. That amount of grain required between 30-40 train loads to move but, since the line closure by AN, that transportation job has been handed over to road. This has placed an enormous strain on the country road network in that area with more than 4 000 semitrailer trips now being required to transport the grain previously carried by train. What the eventual damage and cost to the local community will be has yet to be fully calculated, but it is clear from previous experience that the cost will be dramatic. The closure of this line and the dismantling that is about to take place has been agreed to by the State Government, an act that is in blatant disregard of the process of the select committee. My questions are as follows:

1. Will the Minister give an undertaking to impose a complete moratorium on all future line closures and dismantling until the select committee has completed its investigations and reported to this Parliament and, if not, why not?

2. Will the Minister offer a complete and detailed explanation to the Council as to why he agreed with AN's move to close the Balaklava to Gulnare line and, if not, why not?

3. Has the Minister agreed to any other line closures and/or dismantling of infrastructure and, if so, will he provide Parliament with the details?

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

TEACHERS INSTITUTE SCHOOL SURVEY

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question on the subject of the Institute of Teachers school survey.

Leave granted.

The Hon. R.I. LUCAS: I refer to a survey recently conducted by the South Australian Institute of Teachers and reported, in part, in today's press. The survey so far of 369 schools has reportedly revealed that more than 2 000 classes in State schools are larger than the Education Department's specified limit, and that three out of four schools have had to drop subjects or special programs. The survey clearly places a huge question mark over the supposed protection that was to be built in against curriculum loss to smaller high schools and areas schools.

The Hon. M.J. Elliott: That was a lie!

The Hon. R.I. LUCAS: The Hon. Mr Elliott says it is a lie, but Standing Orders probably do not permit me to agree with him. However, I would be sorely tempted. More disturbingly, the SAIT survey claims that teacher misplacement is widespread. It found special education classes were being taught by untrained teachers, senior classes being taught by non-specialists, maths and science classes being taught by teachers with English, humanities and technical studies backgrounds, and physical education being taught to students by teachers trained in business education, English, social science, art and German.

The institute's study revealed most secondary schools have between one and 12 teachers teaching subjects out of their area of expertise but, more alarmingly, one country high school has 11 out of its 19 teachers in this category! Of particular concern is the institute's claim that 1 211 practical classes in 45 schools are excessive in size. It also says 71 per cent of secondary schools and 76 per cent of primary schools have reported losses in curriculum. In special education, SAIT claims to have had reports of major deficiencies, including the loss of an intense physical activity program and signing program for hearing impaired students in one school. In yet another school, there was an inability to provide continuing support for deaf and blind students with severe disabilities.

If these claims are correct, they prove the lie to the Minister of Education's claim in another place on 20 November 1990 that:

> ... I can assure the honourable member that the core curriculum ... is to be provided in each school ... [and] we are able to say that the quality of education will not be diminished by the decisions we have taken.

My questions to the Minister are:

1. Does the Minister concede that his statement of 20 November last year and similar statements by the Premier were incorrect and that the quality of education in our schools has been diminished by the Government's policies?

2. Will he order an investigation into the results of this survey to see what corrective action can be taken by the Government?

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

DISUSED RAILWAY STATIONS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister for Local Government Relations, representing the Minister of Transport, a question on the subject of disused railway stations.

Leave granted.

The Hon. J.C. BURDETT: I understand that all railway stations in South Australia are owned by the STA. I understand that this was part of the agreement between the State and the Commonwealth whereby the State's Railways were flogged off to the Commonwealth. If the railway stations are not owned by the STA, will the Minister please advise who does own the railway stations?

I have been informed and have in part observed that disused railway stations have got into an appalling state of disrepair—and many of them are very fine buildings. One example is the Tanunda Railway Station, a magnificent bluestone, which is on the point of falling down. Another example is the NorthAdelaide station which is another bluestone in an advanced state of disrepair. My questions are:

1. What are the plans of the STA in regard to these stations?

2. Will they be kept in a reasonable state of repair?

3. Is it intended to turn the North Adelaide station into a restaurant?

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

TEACHER NUMBERS

The Hon. M.J. ELLIOTT: Has the Minister for the Arts an answer to a question I asked on 4 December 1990 in relation to teacher numbers?

The Hon. ANNE LEVY: My colleague the Minister of Education has advised that each year a number of teachers apply for long service leave, compassionate leave and sick leave for periods of less than a year. In the case of long service leave, this is usually taken in units of one term with more than 400 such term periods being granted in any school year. In the past, many of these shorter term vacancies were filled by contract appointments. However, following discussions with the South Australian Institute of Teachers, agreement was reached on the reduction of the level of contract appointments progressively by 1991. These shorter term vacancies will therefore be filled increasingly by permanent teachers. During their teaching career, teachers can expect to work in teaching positions with varying periods of tenure. All existing permanent ESL teachers, who wish to continue teaching in this program in 1991, will be able to do so. It is likely that there will be additional vacancies after they have been placed. There has been no deduction in the overall staffing allocation to the ESL program across the State.

EDUCATION DEPARTMENT STAFF

The Hon. M.J. ELLIOTT: Has the Minister for the Arts a reply to a question I asked on 20 November 1990 with respect to Education Department staff?

The Hon. ANNE LEVY: My colleague the Minister of Education has advised that the figure of $23 million quoted by the honourable member refers only to the approximate amount of the shortfall in the 1990-91 education budget caused by the teachers' pay rise. It ingores the fact that the actual cost of the teachers' pay rise for 1991-92 will be $60 million.

MOTOR VEHICLE REGISTRATIONS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question on the registration of motorcycles and motor vehicles in unincorporated areas.

Leave granted.

The Hon. PETER DUNN: Recently the police from Iron Knob visited a number of the pastoralists in the Gawler Ranges, which is in the unincorporated area, suggesting to them that they had to register the motorcycles and vehicles which they used on their properties if they travelled on roads that happened to join the main roads that go through the area, although those roads have been created by the pastoralists for travel around their property, for the transport of livestock or for the maintenance of water runs, etc.

The complaint came to me and I rang the Iron Knob police, who informed me that the situation was correct and that it came about because of an incident where youths had been taken to court in Whyalla for riding their motorbikes without permission and doing damage to ecologically fragile hilly areas. However, during the court cases, the youths who were charged said that the local people were allowed to ride unregistered bikes or to drive unregistered motor vehicles in that area.

Apparently, the police looked at the Pastoral Act, found the relevant definition to be unclear, and applied either the Roads (Opening and Closing) Act or the Road Traffic Act. They came to the conclusion that, if the road ran off a main road and was used by a pastoralist, he had to register his vehicle. That is the advice that was given to me. It is still unclear, because, as far as I am aware, if I have a vehicle on my property but I do not take it onto a main road, there is no compunction for me to register that vehicle or to take out third party insurance on it.

If that is the case and if the police action was correct, the financial burden on a number of properties will be quite harsh because the cost of registering a vehicle is about $200 or $300 and it is about $150 for a motorcycle. On some of the larger stations, that figure could be multiplied by up to 20 which, I suggest, will be a very high cost. Will the Minister inform me and the residents of that area, first, whether there is any compunction to register motor vehicles that are not used on Government or declared roads and, secondly, whether roads made by pastoralists or broad acre farmers are deemed to be declared roads under the Roads (Opening and Closing) Act?

The Hon. ANNE LEVY: I have always understood that there were discounts for vehicles registered in country areas, but I am very happy to refer that question to my colleague in another place and bring back a reply.

ETHNIC GRANTS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Ethnic Affairs, a question on ethnic grants.

Leave granted.

The Hon. J.F. STEFANI: I have been informed that grant applications from various ethnic organisations for 1990-91 were to be received by the SA Multicultural and Ethnic Affairs Commission before the closing date late last

year. Earlier this year, the Grants Advisory Committee considered all applications, made its recommendations to the commission and allocated all available funds from the grants budget line. In due course, the commission will receive and consider the advisory committee's recommendations and forward its report to the Minister for final approval. All these procedures are in accordance with the administration practices established by the commission when dealing with ethnic grants.

On Sunday, 10 February 1991 the Premier, Mr Bannon, announced the allocation of a $10 000 grant to assist the Federation of Campani clubs with the administration costs associated with the Adelaide-Campania sister city twinning project. A number of commissioners from the SA Multicultural and Ethnic Affairs Commission have expressed their great disappointment and their strong concerns that such a large amount was allocated without any consultation or reference to the commission or, indeed, to the Grants Advisory Committee. They have expressed the view that, for political expediency, the Government has completely bypassed the commission, overriding its functions. In view of this disturbing situation and the concerns expressed to me by the commissioners within the commission, my questions are:

1. In the true spirit of fairness and equity, will the Government consider making available similar financial support to other ethnic groups who are willing to undertake and develop twinning or cultural exchange programs with their country of origin?

2. As the amount of the grant line within the SA Multicultural and Ethnic Affairs Commission for 1990-91 has been completely allocated for other grants, thereby exhausting the budget, will the Minister advise which department will pay the amount promised by the Premier?

The Hon. C.J. SUMNER: I am disappointed that the honourable member does not approve of the grant that was made to the Federation of Campani organisations. I would have thought that this is something that he would support, but apparently he does not and I suppose that that is a matter about which he is able to make up his own mind. However, I would have thought that it is something that should have the support of the honourable member and, indeed, all members of the Council, and that such a grant in this year would have been supported generally to get things under way with the twinning arrangement. However, I will refer the honourable member's specific questions to my colleague and bring back a reply.

JOINT PARLIAMENTARY SERVICE COMMITTEE

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

That the Hon. R.J. Ritson be appointed as the alternate member for the Hon. J.C. Irwin on the Joint Parliamentary Service Committee in place of the Hon. M.B. Cameron (resigned).

Motion carried.

ROSEWATER RAILWAY CROSSING

The Hon. BERNICE PFITZNER: I understand that the Minister for Local Government Relations has an answer to my question of 22 November concerning the Rosewater railway crossing.

The Hon. ANNE LEVY: The Minister of Transport has indicated that the line referred to by the honourable member is an Australian National line and, as such, is the responsibility of the Federal Government.

CHILDREN'S SERVICES OFFICE

The Hon. BERNICE PFITZNER: I understand that the Minister for Local Government Relations has an answer to my question of 21 November concerning the Children's Services Office.

The Hon. ANNE LEVY: The Minister of Children's Services has advised that the Government will pursue recommendations submitted to the Government Agencies Review Group by the Children's Services Office in accordance with the procedures laid down for the review.

COUNCIL RATES

The Hon. J.C. IRWIN: My questions are to the Minister for Local Government Relations. What plans are in hand to consider a further option for setting local government rates, in particular, a two-tiered model put forward by the Marion council? Will any new option be available to consider amendments to the Local Government Act before council rates are set for the 1991-92 year?

The Hon. ANNE LEVY: A proposal has been put forward by the Marion council with a number of detailed charts showing the effects of its proposal. I have had discussions with representatives of the Marion council in relation to this matter and have suggested a modification to its plan which would be far more acceptable to me. I had hoped that the council would get back to me with the charts and graphs which would indicate the effect of the modification which I suggested, but it has not yet done so.

There will obviously be further discussions relating to this matter. The City of Salisbury has also indicated interest in a changed base rating, but discussions with that council are at a much earlier stage. I would think it most unlikely that any changes could be made in time for the next financial year as to do so would require completing all consultations, obtaining Cabinet approval, getting Parliamentary Counsel to draft amendments and getting such amendments through both Houses of Parliament before the Parliament rises in April; I should think the chance of that occurring is extremely low, to put it no more strongly than that.

In view of that, I do not feel that these discussions are of extreme urgency and that they can proceed with more consideration. But, I feel that there is a disadvantage to what Marion council has initially proposed, and I certainly would like further investigation of a modification to it, and I suggested that as a possibility.

LAND VALUATION

The Hon. K.T. GRIFFIN: Has the Minister for Local Government Relations, representing the Minister of Lands, an answer to my question of 13 December 1990 about land valuation?

The Hon. ANNE LEVY: The Minister of Lands has advised that the current approach to numbering parcels of land is not new. It is an approach that has its foundations in the original outlay of the State and that is quite simply to ensure that every individual piece of land has a separate identification number so that the recording authorities can refer to it unambiguously. That is irrespective of whether the recording system is manual or computerised.

What has happened is that, in the past, procedures have crept in where subdivisions of land began creating pieces of land which did not have their own separate identification and the 'new' system has sought simply to return the system

back to its original state. Some misunderstanding could have arisen between this initiative and the Valuer-General's approach to raising separate assessments. The Valuer-General will raise a separate assessment if a portion of a property is separately saleable, and this could be where the property is divided by a road (which, coincidently, might be a factor which leads to its being allocated a separate number). The valuation is determined on the basis of one saleable allotment and where separate assessments are necessary such value is apportioned between the pieces.

REPLIES TO QUESTIONS

The Hon. ANNE LEVY: I seek leave to have the following replies to questions inserted in *Hansard.*

Leave granted.

EDUCATION DEPARTMENT NOTICE

In reply to **Hon. R.I. LUCAS** (6 December).

The Hon. ANNE LEVY: My colleague, the Minister of Education, has advised that the principals management group of the 'Mitchell Park' cluster, after a survey, decided that specific needs of individual schools could partly be met by an allocation of temporary relieving teachers (TRT) days converted from the .4 salary, rather than by making an immediate advisory appointment. Schools that met specific guidelines for staff training and development received five TRT days.

When the appointment of the adviser was not finalised until Term 4, and because some of the schools were not able to use all of their allocations, additional days became available. This was a totally separate exercise from the annual allocation of TRT days for illness and training and development. As the exercise was not a part of the normal procedure for the allocation of TRT days and was within the authority of the principals group, no action is required to change the annual process. A maximum of 10 days was available for each of the nine schools involved. All days were used to further the professional development of teachers from those schools.

CURRICULUM GUARANTEE

In reply to **Hon. R.I. LUCAS** (8 November).

The Hon. ANNE LEVY: I refer the honourable member to the Premier's reply to an almost identical question asked by Mr S.J. Baker in another place on 8 November 1990; *Hansard*, page 1685 refers.

PHYSIOTHERAPY EDUCATION

In reply to **Hon. R.I. LUCAS** (11 December).

The Hon. ANNE LEVY: As the honourable member will appreciate, the issues raised are complex ones involving numerous interested parties and it may take some time to find a satisfactory resolution. The Minister of Employment and Further Education has advised that discussions have commenced between the Health Commission and the Office of Tertiary Education. This issue may come before the Health Sciences Education Review. The Minister will also commence discussions with the Commonwealth should the investigations show that this action is warranted.

QUESTIONS RESUMED

HOUSING COOPERATIVES

The Hon. J.F. STEFANI: Has the Minister of Tourism an answer to a question I asked on 17 October 1990 about housing cooperatives? I would have no objection if the answer were incorporated in *Hansard.*

The Hon. BARBARA WIESE: I am happy to seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

In response to the honourable member's questions, the Minister of Housing and Construction has provided the following:

1. The total value of moneys unaccounted for is $6 369.
2. The internal audit review was conducted by the South Australian Housing Trust.
3. The following associations and cooperatives are in breach of the conditions of their agreement:
   - Associations—AUSSAL, CASA, Portway, SAACHA and TAASHA;
   - Coperatives—Central Districts, Gawler, Latamer, Marion Community, Naru, Parqua and Saphire.
4. The South Australian Housing Trust is taking the following action to remedy the situation:
   - the trust's Community Housing Unit is maintaining a file of audited returns and surpluses;
   - associations/coops are now required to complete a statement to attach to monthly mortgage repayment cheques which shows what the cheque represents. Associations/Coops which do not send their mortgage payments and statements are now contacted immediately; and
   - as cheques are received in the unit without identifying documentation, the Association/Coop is contacted to clarify what the cheque represents.

STATE FLEET

The Hon. L.H. DAVIS: Has the Minister for Local Government Relations an answer to a question I asked on 6 December 1990 about State Fleet, as I am sure it will be of considerable interest? I would be happy for her to have the answer incorporated in *Hansard.*

The Hon. ANNE LEVY: At the honourable member's request, I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

State Fleet and the Office of Energy Planning have continued to examine the prospect of introducing LPG converted vehicles into the Government fleet. However, at this stage, the economics are unfavourable. The largest single cost in operating the Government fleet is the depreciation factor, together with the additional funds that are required when replacing the vehicle. Calculations undertaken by the Office of Energy Planning suggest that the break-even point for LPG vs petrol is in the mid 40 000 km. This conclusion is only applicable within the Government cost structure and cannot be used as a guide elsewhere. While the latest study suggests the economics for LPG are still unfavourable, it may now be appropriate for the Government to carry out a demonstration program to:

- be seen to be actively promoting LPG by using LPG vehicles in its own fleets;
- establish the effect on resale value of having LPG equipment fitted to a Government vehicle at auction;

- establish the net cost of reusing LPG equipment on a replacement vehicle;
- increase the number of LPG vehicles on the road in the longer term; and
- expose more drivers to LPG fuelled cars.

An internal survey has been carried out within State Fleet and this should enable a proposal to go forward to the responsible Ministers shortly.

INTERPRETING SERVICES

The Hon. J.F. STEFANI: Has the Attorney-General an answer to a question I asked on 8 November 1990 about interpreting services? I have no objection to the answer being incorporated in *Hansard.*

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

Leave granted.

The Minister of Industry, Trade and Technology has provided the following response to the honourable member's questions:

1. The Director, Department of Industry, Trade and Technology authorised the interpreting as part of the overall approval for production of the video.

2. The services offered by the Language Services Centre are utilised by the department wherever possible. However, the process of foreign language translation of a video involves more than translation of text. It involves the translator and narrator working together to establish coincidence of vision and language.

This is a specialist skill, particularly in cases where the direct foreign language translation could result in text of greater length. This process determines the personnel to be selected, since the narrator is an integral part of achieving the highest possible standard of presentation.

In the case of the German and French versions, professional media/voice-over narrators were sought in France and Germany which dictated that translation also occur in those countries in a cooperative effort.

In the case of Italy, in order to meet severe time constraints, the translation and narration were arranged at a very competitive price through the Adelaide branch of the Italian Chamber of Commerce and Industry in Australia Incorporated. The person who undertook the work held the appropriate qualifications and was also an experienced narrator.

3. French and Italian translations were undertaken by NAATI Level 3 interpreters.

The German translation was undertaken by a German national with many years experience as a foreign media correspondent in English speaking countries.

4. Translation fees were paid as follows:

German—DM1 000 (approximately A$770)
Italian—$390 (translation and voice-over)
French—The fee was part of an overall consultancy fee for arrangements undertaken in relation to the recent Premier's mission.

5. Response already provided (*vide Hansard* 8 November 1990).

TANDANYA

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

Leave granted.

The Hon. DIANA LAIDLAW: The Minister stated earlier that, if savings are able to be made to the forecast operating deficit of $500 000, an amount of $350 000 or thereabouts may remain as an operating loss for Tandanya by 30 June. I appreciate that the Minister has had discussions with members of the board about this matter, but I am not sure whether she has also had discussions with her colleagues in Cabinet about the matter in terms of providing either a grant or a loan to Tandanya.

With others who have spoken to me and who are keen to see Tandanya continue to exist at least in some form in the future I am agitated about the survival scenario for Tandanya, because we are not aware of all the financial facts and figures about operating losses or about whether the Government can see fit to help Tandanya without compromising the arts budget as a whole or other arts organisations in this State. Will the Minister provide some survival scenario for the future of Tandanya?

The Hon. ANNE LEVY: I certainly do not wish in any way to compromise any discussions that are being held at the moment with the board of Tandanya. I certainly do not wish to see Tandanya forced to close, and have never suggested anything regarding that. I object strongly to suggestions from the honourable member opposite which imply that I have made such suggestions, as she did on the radio this morning. I have never suggested that, and I certainly wish Tandanya to continue in existence. It is an admirable institution that has achieved a great deal and, in terms of its programs and achievements, is something of which all South Australians can be proud.

Obviously, there are considerable financial difficulties at Tandanya at the moment. As soon as there was any suggestion that difficulties might be arising, there were inquiries and assistance from my officers and we have had endless discussions and tried to sort out matters at Tandanya. I certainly expect Tandanya to continue in existence, but there obviously needs to be more discussion before any final statement can be made.

VALUATION OF LAND ACT AMENDMENT BILL

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

WORKERS REHABILITATION AND COMPENSATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 13 February. Page 2878)

The Hon. K.T. GRIFFIN: This Bill does not make the sorts of fundamental changes to workers compensation and rehabilitation that the employer groups would like to see but, notwithstanding that, it is an important piece of legislation for some of the changes which it does seek to make to the WorkCover scheme. WorkCover is, by anyone's reckoning, becoming a significant albatross around the neck of the Government, as well as the employers, and of course, ultimately, as that albatross gets heavier, so the costs to the community at large will increase because of the passing on of the costs by employers—the producers of goods, the providers of services—to the community.

With this Bill, the WorkCover Corporation moves even more to being a jack-of-all-trades, a determiner of policy, an administrator, in some respects a prosecutor, a judge, a jury, even executioner. Appeals against WorkCover administrative decisions are limited and in some respects non-existent or, if they are available, they may be to the board of WorkCover or to a Minister. The right to review by Parliament, the body which one would ordinarily expect to make the law, or even by an independent body, is significantly limited. One needs only to refer to the power of the WorkCover Corporation to make pronouncements about what should or should not be in salaries and allowances to recognise that there is no right of independent review of a declaration made by the WorkCover Corporation.

The tentacles of the WorkCover Corporation extend to every facet of policy and administration. As a matter of philosophy and, I think, of practice as well, where any body or person becomes less accountable to the public, in many respects to the Parliament, or to some other body, it moves more and more to become a law unto itself. It tends towards arrogance, to a dictatorial attitude, in some respects to ruthlessness, and particularly to insensitivity. I suggest that as more and more legislation comes before us to release some of the mechanisms for accountability over WorkCover, so the temptation will be more and more to adopt those characteristics.

In the operation of the WorkCover Corporation and its administration of the Act there are numerous conflicts of interest, and one I will address during the course of this debate comes immediately to mind—that is the relationship of exempt employers to the WorkCover Corporation and the rights of exempt employers to manage their affairs consistently with the Workers Rehabilitation and Compensation Act. Another conflict is in the fixing of levies, for which there is very little review, and the levies for exempt employers towards administration. Of course, with the way in which WorkCover operates, it is given responsibility to do certain things in relation to exempt employers, including to register them, to monitor them and then to fix levies for administration. It is in fact a competitor with the exempt employers and, therefore, there is an immediate conflict of interest in respect of which the corporation is not independent.

I do not intend to repeat at length the many criticisms that the Liberal Party has received (and many of which it has expressed) in relation to WorkCover and its activities. The focus on a weekly, and sometimes daily, basis in the public media is on difficulties, inconsistencies and problems with the operation of the whole scheme. That focus will, I suggest, be a continuing one, particularly as the economic environment gets tougher, as employers find it more difficult to meet levies and their other obligations, and as more and more of them find that the Government taxes and charges and costs make up a more significant proportion of their overheads than they do at present.

Suffice to say that, in relation to WorkCover, from the point when the scheme became operational about four years ago (and the Act requires the liabilities to be fully funded) we now have a situation whereas at 30 June 1990 the unfunded liability of WorkCover was $150 million, and only six months later that had blown out by a dramatic $48 million, to a total of $198 million, and obviously that will continue to grow in the context of the limited emoluments which are being proposed by this Bill. The Bill, of course, does not grasp the nettle in relation to benefits paid to workers, except in relation to overtime, and even then it only touches the nettle. It feels the sting and then largely withdraws from the major issue in relation to the explosion in unfunded liabilities and the operating costs of WorkCover.

The General Manager of WorkCover Corporation, Mr Owen, in his presentation to the joint select committee on the Workers Rehabilitation and Compensation Act, made the point that one of the major problems with the WorkCover scheme is the level of benefit paid. In that submission he made clear that the benefit being paid in South Australia is the highest level of benefit in Australia and it is one of the major reasons why WorkCover has the significant unfunded liability to which I have referred. Of course, I must say that Mr Owen must be given credit for his attempts to adopt a tough approach to the administration of WorkCover. He is trying hard to come to grips with the problems of administration and the claims, but I would suggest that he faces a significant uphill battle unless the question of benefits is addressed, directly by the Government ultimately and also by the joint select committee.

This is essentially a Committee Bill but I think it is important to flag a number of issues that I will be addressing during the course of the Committee consideration of the Bill. Clause 2 provides that it is to come into operation, if the Bill passes, on a date to be fixed by proclamation. Of course, we can speculate as to how the Bill will pass the Legislative Council and, if it goes to a conference with the House of Assembly, how it might come out of that conference. It may be that there will be significant changes, particularly in the area of overtime, which the Government, for one reason or another, might not wish to bring into operation in the short term, or even in the longer term.

Under the provisions of clause 2, if the Bill passes, the Act is to come into operation on a day to be fixed by proclamation and, under the Acts Interpretation Act, that will allow the Government to postpone the proclamation for as long as it likes. And when it does proclaim the Bill the Government need proclaim only portions of it and can suspend the operations of other portions. If there is to be a reduction in benefit, it seems likely that, if that provides a source of embarrassment for the Government, the decision to proclaim that provision may be postponed indefinitely. It is to overcome that issue that I believe we ought seriously to consider amending clause 2 and provide that the Act will come into operation on a day to be fixed by proclamation or, if no proclamation is made in respect of any section, then within a period of, say, three months after assent is given to the Bill.

Clause 3 of the Bill is an interpretation clause, but it is interesting to note that in paragraph *(d)* it deals with regulations. It provides:

> (7) The regulations may exclude (either absolutely or subject to limitations or conditions stated in the regulations) specified classes of workers wholly or partially from the application of this Act.

Yet, proposed subsection (8) provides:

> A regulation under subsection (7) cannot be made unless the board, by unanimous resolution of the members present at a meeting of the board, agrees to the making of the regulation (but this requirement does not extend to a regulation revoking, or reducing the scope of an exclusion).

This provision is making it very difficult to exclude any class, because that exclusion must receive the benefit of unanimous support of the members present at a meeting of the board and yet when that exclusion is to be revoked or reduced, that revocation or reduction may be by a simple majority of the members present at a meeting of the board.

It seems to me that, if it is good enough to have the exclusion undertaken by unanimous resolution, it is good enough to have the revocation or reduction, or that, if it is good enough to provide for a revocation or reduction of

the scope of an exclusion to be undertaken by a simple majority, it is good enough also to exclude originally by ordinary majority of the members present at a meeting of the board. It is my preference that we do limit the opportunity to exclude to those occasions where an ordinary resolution, or a simple majority in fact, agree with that proposition. That, I might say, is the view of a number of the bodies that have made submissions to the Liberal Party on this Bill.

Clause 4 is probably the most wide-ranging and contentious provision affecting workers and employers across the board. Of course, other provisions of the Bill such as those which relate to exempt employers are in themselves contentious. The clause seeks to provide a scheme within which regular overtime will be taken into consideration when calculating average weekly earnings. A number of organisations and groups have drawn attention to the problem which this creates. The employer managed Workers Compensation Association says that this clause should be deleted. It states:

> The proposed subclause would give workers in receipt of compensation an advantage over their co-workers in that where a co-worker's overtime is reduced the effect is immediate. Similarly, where a worker is incapacitated due to sickness or off-duty injury their income is immediately affected by any increase or decrease in their capacity to work. It would be inequitable for workers with a compensable disability to be placed in a better position than their colleagues.

That relates to both the overtime provision and another provision in the Bill. However, it is significant that, in the whitegoods industry, for example, there are employees who are getting some $200 to $400 per week in excess of the current workers, where the incapacitated workers who are off work have had their compensation calculated according to a period of overtime which is no longer relevant to those who are not incapacitated and who are currently at work.

The Engineering Employers Association says that it has reservations as to whether the amendments will lead to a different interpretation by the courts as to what presently exists. It makes the point that a small number of claimants genuinely deserve consideration in respect of overtime but, due to the inherent legal problems which would lead to a wider application than the best intentions allow, that association is of the view that it is necessary completely to delete overtime from average weekly earnings considerations. In relation to clause 4 the South Australian Employers Federation states:

> Whilst the proposal to refine and subsequently limit the degree of overtime which would be included in the calculation of average weekly earnings is a step in the right direction, we do not support the proposal as outlined in the Bill. Overtime is not included in any other workers compensation system in Australia, and its inclusion in any form is inappropriate, adds to the cost of running the system and acts as a definite disincentive for rehabilitation and early return to work; that is, whilst the requirement to have a substantially uniform number of hours of overtime and consideration as to whether the overtime would have continued in accordance with that pattern may represent a better position than is currently set out in section 4, we believe that the only satisfactory position on this matter is the total removal of overtime from the calculation of average weekly earnings.

The United Farmers and Stockowners Association makes a similar observation, as follows:

> Whilst the Bill makes an attempt to define how overtime is to be calculated, the employer community would submit that all overtime should be disregarded in the calculations. The benefits to the system would be enormous not only in reduced costs and average weekly earnings but in better return to work statistics. Return to work statistics are directly related to the benefits levels received by injured workers.

Some interesting figures have been provided to the Liberal Party in relation to the weekly compensation being received by injured workers compared with normal weekly rates received by employees currently employed. These figures, which are as at February 1991, provide the following examples: a machine operator on workers compensation presently receives $538.67, when those who perform exactly the same tasks and are presently at work receive $475.20. So, the injured machine operator is better off remaining incapacitated to the extent of $63.47.

Another example provided is that of an electrician on compensation getting $915.99, whilst the electrician's employed counterpart is currently getting $624.40—a difference of $291.59, which is a massive incentive for the injured electrician to stay at home and not return to work. An injured trades assistant presently receives compensation of $728.19 per week, whilst that person's counterpart currently at work is getting $599.80—again an incentive of $128.39 to stay on compensation and not be rehabilitated. Another electrician is currently on compensation of $898.58, whilst the counterpart is getting $624.40. The incentive to stay on compensation is $274.18. A load checker is currently on compensation of $562.16, compared with the current weekly wage of $438.70 for a person who is actually working—a difference of $123.46.

Those five examples indicate quite clearly that there is no incentive to return to work, because those who are on compensation had their weekly compensation fixed in accordance with overtime which was being paid and which had been paid in the period preceding their injury, whereas in the current economic climate, because whitegoods manufacturers are gearing down rather than gearing up, food manufacturers and car manufacturers are all suffering from depressed conditions, little overtime is being paid, and the normal rates of pay are very much less than the compensation being received by those injured workers.

As the United Farmers and Stockowners said, there is an incentive to stay on compensation by building in an allowance for overtime, whereas there is no incentive to undertake rehabilitation and get back to work because the very generous compensation being paid is very much more attractive than going back to work. The Liberal Party has taken the view that, in the context of workers compensation, the whole area of overtime ought to be eliminated from the calculations of average weekly earnings, and an amendment to clause 4 will address that issue.

Compensation for medical expenses is a difficult question. Clause 6 establishes a mechanism by which the corporation may reduce any medical charge or disallow charges, and may actually fix the charges. As a result of some amendments moved by my colleague Mr Graham Ingerson in another place, a change was made to the basis upon which the scales of fees might be fixed to provide for consultation, but it was clear that he intended also that there be an agreement on the scales and that there could not be a unilateral decision by the corporation to reduce or disallow charges and then to escape a liability for what would be a normal and reasonable charge out in the workplace. The amendment which he moved was deficient in some respects, and he acknowledges that that did not fully address the issue. I will be giving further attention to that matter.

When one fixes the scales of fees which one has to pay, it puts the corporation in a position in which anyone in the community who has to pay a bill would dearly love to be, and that is, as a monopoly, to set the fees, to determine whether or not the fees ought to be paid when the bills come in, to be able to reduce the charges, to disallow the charges, to refuse to pay them, and to leave the provider of goods and services whistling in the dark. I do not think that that is fair and reasonable. It is one of those areas that I focused on in my introduction where the corporation has tremendous power, where there are obvious conflicts, and

whilst the corporation must consult with associations or persons who provide services or represent persons who provide services, there must also be an agreement as to the scales of charges which are appropriate.

One of the medical practitioners who has written to the Opposition made an observation in relation to clause 6 *(c)* and stated:

> The whole of clause 6 *(c)*, where the corporation will act to recover from the provider the difference between the provider's fee and what the corporation considers a 'reasonable fee', causes concern because it undermines standard medical practice. A doctor has the right to set a fee which he or she determines as appropriate. The difference between the fee and any rebate is a matter for negotiation between the patient and the doctor. If this remains in dispute, then it can be represented to the medical board for action. It is self-evident that any doctor charging unreasonable fees would not attract the patients, and in that way the issue is self-regulating.

I do not altogether agree with that conclusion. It is not unreasonable for some agreement to be reached as to a scale of fees which would be appropriate for particular services, but it is inappropriate for the corporation not only to fix the fees but also to be able to decide whether or not to pay them, because ultimately it is responsible for those fees.

Clause 7 has caused concern to some employers in that, where the corporation makes a decision that a worker's payments should be reduced because of a partial capacity to work or that the compensable disability no longer is the basis for a person's not being able to work, the weekly payments should be reduced or even discontinued. In that context, the corporation must immediately reinstate weekly payments and pay arrears where the worker has taken the matter to a review officer. Until the review officer makes his or her decision, the weekly payments and other amounts continue at the old rate. The concern is that, unless the review is given some priority, it may be six months or even two years in some country areas before the review is completed and the decision handed down, and in all that time the old weekly payments continue. The view is that there ought to be some provision in the Bill which requires the matter to be dealt with expeditiously.

It is interesting to note at this point that the system which the Government introduced in the Workers Rehabilitation and Compensation Act is now more tardy in making decisions than the old system where matters went to the Industrial Court. That is disturbing when it is considered that one of the rationales for this legislation originally was to speed up the resolution of disputes and the decisions in relation to compensation.

The next major area of contention relates to exempt employers. Exempt employers cover a wide range of employers—major banks, statutory authorities, universities, major companies, the Health Commission and many others. They employ between 30 per cent and 40 per cent of the State's employees, so they form a significant body of employers within the community.

Exempt employers have the responsibility for managing the operation of the Workers Rehabilitation and Compensation Act without the general intervention of the WorkCover Corporation. Obviously, exempt employers have an incentive to prevent accidents at work as well as to speed up rehabilitation and to ensure that employees are dealt with fairly. My information is that, in their administration of the Workers Rehabilitation and Compensation Act, employers have a much better relationship with their employees and a much better record in rehabilitation and in the reduction of accidents and injuries at work.

It is somewhat disturbing that the WorkCover Corporation collects one-third of its administration costs from exempt employers. In doing that, it places a significant burden upon employers in terms of costs. The fear is with the way in which WorkCover seeks to intervene in the affairs of exempt employers to place standards upon them which WorkCover itself is unable to meet and to impose levies which is high compared with the service which is provided by WorkCover and the system, the ultimate goal will be to make it so unattractive for exempt employers to be exempt that they will come into the WorkCover fold, pay high levies and prop up a system that is creaking and groaning under the strain of the obligations placed upon it by the Act.

Exempt employers pay some $9 million to cover the administrative costs of WorkCover in monitoring exempt employers but, in all other respects, they pay their own costs in full. As I said, they pay about one-third of the total WorkCover administrative budget but make very little use of any of the services of the WorkCover Corporation.

Under clause 13, the Bill seeks to provide, among other things, that WorkCover may establish performance standards that the corporation would regard as essential for registration as an exempt employer. Where the employer ceases to conform with these standards, a company's registration as an exempt employer will terminate. Again, that is a problem because it is the corporation which determines the standards and it is the corporation which enforces the standards and determines whether or not the standards have been complied with and whether or not the exempt employer will cease to be an exempt employer. Of course, one has to note that, in the first place, it is the corporation that determines whether or not an employer is to be an exempt employer. Let me read what the Employer Managed Workers Compensation Association Inc has to say about clause 13:

> The proposed amendments to section 60 are totally unacceptable to exempt employers. We find it intolerable that a corporation who by their track record have demonstrated they are incapable of administering the legislation in an effective and efficient manner, who has incurred an unfunded outstanding liability of between $150 million and $200 million in two years can dictate to exempt employers how they will conduct the administration of the legislation. As this State slides deeper into recession, it is the exempt employers being the major employers in this State who will pull the State through.
>
> The impositions being proposed under this amendment will bite the hands of exempt employers to such an extent that they will be forced into administering the workers compensation and rehabilitation components of their business in an inefficient manner. This could jeopardise the future viability of many employers. In light of the current financial status of the corporation they would be far better off relinquishing any control over exempt employers and leave them to administer the scheme as they see fit, and to utilise the considerable resources which they are deploying into the area of monitoring and controlling exempts to improve the performance of the corporation itself and decrease their unfunded liabilities.

That is a sentiment with which the Liberal Party and I certainly agree. The performance standards are extensive. One area relates to claims administration standards and applies a greater onus on an exempt employer than does the Act itself. For example, there are standards in relation to the way in which accounts should be dealt with. Standard 8.1 provides that all incoming account documents should have recorded the date received by the employer. Under Standard 8.2, there must be an assessment that the expense is relevant to the compensable disability. Standard 8.3 provides that there must be an assessment that the expense is fair and reasonable. Standard 8.4 provides that the expense must be paid promptly within six weeks of receipt by the employer. Those standards provide incredible interference in the affairs of an exempt employer.

The Act itself does not stipulate any time frame for the payment of accounts. In any event, what business is it of WorkCover whether or not an incoming account document

is date stamped in a particular way or when the employer determines to pay it? It seems to me that, if the employer wants to pay an expense which it regards as fair and reasonable but which, if WorkCover investigated it, WorkCover might not regard as fair and reasonable, it does not impact in any way upon the WorkCover Corporation because it is an expense that comes out of the employer's own funds. When it is paid is a matter for the employer and the person providing the service to the employer.

There are a variety of other standards. I do not want to go through them all, but many of them seek to impose time frames, which are not imposed by the Act and with which WorkCover does not comply, or standards which do not affect quality of care or service being provided by the employer to the injured worker.

So, it seems quite unrealistic that WorkCover should get itself into some of those areas of concern, and outrageous that it should be seeking to impose them on an employer where that decision does not impact on the operations of the WorkCover Corporation.

It is interesting to note also that there is another problem with clause 13, that is, the attempt by the Bill to provide that, in the case of application for registration as an exempt employer, the effect on the fund of the employer becoming exempt must not be taken into consideration. Proposed subsection (6) provides:

> . . . the corporation must not, in deciding whether to renew the registration, consider the effect of the registration on the compensation fund.

So, it is implied there that it can certainly take that effect into consideration in deciding whether the initial exemption ought to be granted.

There are a number of other employer associations which say that the powers in relation to exempt employers and the way in which they conduct their affairs should be eliminated from the Bill. The Engineering Employers Association says that it wants to ensure that exempt employers as an entity continue; that the standards that the corporation regards as essential should not be used as criteria to exclude exempt employers. The United Farmers and Stockowners states:

> This area of the Act requires change together with a change in the attitude of Government and union towards this group. WorkCover should not be involved in the renewal process as they are in direct competition to the exempts. Does WorkCover pass the test by themselves for the exempts? I believe that the renewal period should be a full three year period; however, there should be intermediate smaller reviews each 12 months by a body that can independently assess a company's record during that period.

The South Australian Employers Federation indicates that it has a concern about the broad agenda of WorkCover and the Government in terms of exempt employers, that agenda being perceived to be to force many of the exempt employers to seek registration under the normal WorkCover provisions affecting other employees who are not exempt. Clause 13 will be substantially opposed by the Opposition. Of course, we will want to leave in the reference to an 'indemnified maritime employer' as an exempt employer, but that is where the support for the clause will end.

Clause 14 deals with the delegation to exempt employers of certain powers. The Employer Managed Workers Compensation Association wants to ensure that sections 32 and 26 of the Act as amended by this Bill are delegated to exempt employers, and we will certainly be endeavouring to ensure that they do have the powers that are granted by those sections to ensure that rorts, even in the exempt area by employees, are investigated and dealt with appropriately. There is no reason at all for those two provisions not to be the subject of a delegation by virtue of the operation of the Act.

Clause 17 deals with the special levy for exempt employers and seeks to include the requirement for exempt employers to conform to or exceed standards. What the clause seeks to do is again to introduce the concept of conforming to performance standards fixed by the corporation, and again we have concern with that and it seemed that the best course of action that one could follow was to oppose that clause.

I make several observations in relation to clause 19, and will raise some questions about it during the Committee stage. Clause 19 deals with a review of levy, penalty interest or fine. Remember, of course, that the corporation fixes or assesses a levy, imposes a penalty interest or a fine, and imposes or varies conditions that may lead to the imposition of supplementary levies. Now, where an employer considers a decision of the corporation to be unreasonable, the board of WorkCover reviews the decision; there is no other right of review—it is the board. The board itself determines the procedures by which that review will be conducted. Again, it is Caesar appealing to Caesar. We have some concerns about that, and also about the sort of procedures which might be determined by the board for the conduct of that review.

Clause 25 deals with the issues of confidentiality. This clause inserts a new section 85a, and it relates to the disclosure of matters arising before a medical advisory panel. New section 85a provides:

> A person must not disclose a matter arising before a Medical Advisory Panel except—
>
> *(a)* in the course of the administration of this Act or for the purposes of proceedings under this Act;
>
> or
>
> *(b)* in the course of proceedings before a court or a tribunal constituted by law.

That provision seems to me to be particularly limiting. It does not take into consideration that there may be other laws which require the answering of questions. For example, a parliamentary select committee may even wish to require information if it is investigating a particular matter. This section would suggest to me that that would not be permitted because it is only in the course of proceedings under the Act or before a court or tribunal constituted by law that answers to questions could be compelled.

What about the police, investigating a matter of fraud? It seems to me that that would be excluded. What about the National Crime Authority? I suppose there is a difference between the National Crime Authority and the police, since the National Crime Authority is a federally constituted body and may, to that extent, override the provisions of new section 85a. However, let us take the police: if there is an investigation into fraud, this section would preclude information arising before a medical advisory panel being disclosed to the police. It seems to me that an amendment to new section 85a is needed to allow the disclosure of matters before a medical advisory panel, where the law generally may require that disclosure. I hope that is uncontentious.

I turn now to clause 28 which deals with 'notice of proceedings' and other matters. It introduces into section 89 a provision that 'a review officer is not obliged to hear evidence from a witness—either generally or on a particular subject—if satisfied that the evidence is not relevant, or if of the opinion that the evidence would merely provide unnecessary corroboration of other evidence admitted by the review officer'. This is of particular concern. Remember that the review officer is generally not legally trained. The review officer is a person who is meant to be dealing with the matters expeditiously, but remember also that a matter can go on appeal to the tribunal. The tribunal can deal only with matters which are in fact given in evidence before the

review officer. The amendment would give too much power to the review officer. An employer or a worker should not be prevented from providing whatever evidence he, she, or it may deem appropriate.

I can understand the concern that a lot of evidence given to a review officer may not be necessary or repetitious, but that occurs in courts. However, in some respects you have to be given the opportunity to submit your evidence, to support your case, because you do not know what decision the review officer will take or whether or not you want to appeal.

There are two ways of overcoming this: one is to delete that provision, and that would be my preference. The other alternative is to provide that, if paragraph *(a)* remains in the Bill, the appeal tribunal can, notwithstanding the exclusion by the review officer, nevertheless hear fresh evidence or material which the review officer would not permit to be presented. That would overcome the problem. However, it is an issue which has to be addressed and it really cuts both ways: it affects employers and employees.

Clause 31 deals with the question of costs, which are subject to limits fixed by regulation. I do not have any difficulty with that, but there are two areas of concern: one is that in new section 92a (3), the 'review authority may decide against awarding costs to which a party would otherwise be entitled under this section, or reduce the amount of such costs, if of the opinion that the party acted unreasonably in bringing, or in relation to the conduct of, the proceedings'. The focus is on 'unreasonably'. That is a relatively new concept in terms of costs. The normal context is to either determine not to award costs or to award them against the other party, where the applicant has brought the proceedings frivolously or vexatiously, and that is a common description in the law. It is easily understood and its meaning is well documented in a number of cases. But what is 'unreasonable' in the context of bringing a case? It tends to suggest that all sorts of subjective rather than objective connotations might be addressed, and that frivolousness and vexatiousness are irrelevant. So, I want to have some clarification of that, but it is possible that that too will be the subject of an amendment.

I would have some difficulty with subsection (5) of that same new section, providing that 'an award of decision of a review authority... is not subject to review or appeal' because this is an open invitation for the review officer to become a kangaroo court, unaccountable, with decisions not subject to review. Where that occurs, in any area of the law or of public administration, it is an open invitation to become unaccountable, to make decisions regardless of the consequence and to act arrogantly.

I turn now to clause 38, which deals with certain matters affecting exempt employers. It is basically in the same context as the present subsection (1) of section 98a, although there are some differences. However, I merely draw attention to it, because in an earlier provision of the Bill—clause 13—dealing with exempt employers, it seemed to me that there was an elimination of groups of employers as being eligible to be an exempt employer, yet this clause 38 refers to groups of employers. I may have misunderstood the context, but it is important that we retain the right for groups of employers to be registered as exempt employers and not limit it to any one employer.

Clause 42 deals with the powers of inspectors. The first observation in relation to this clause is that the Engineering Employers Association (and other employers) expresses the view that it hopes that this widened power of entry and inspection will not be used for fishing expeditions. I share that view. They are wide powers. I suppose that they exist in other pieces of legislation relating to occupational health, safety and welfare and related matters, but they are very wide. There are two aspects about it, though, that do cause concern.

In the present section 110 (4), there is a protection against self-incrimination. That has not been included in clause 42. In fact, under proposed section 110 (1) *(g)*, an authorised officer may require any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under the Act. I do not know whether or not it was a conscious decision of the Government to exclude a protection against self-incrimination but, if so, I think we ought to have a reason for that. I certainly have very great concerns about excluding it, but I am prepared to listen to the Government's position on that. I think that, where it comes to criminal or statutory offence proceedings, protection against self-incrimination ought generally to be maintained, unless there are some special and compelling reasons why that is not so, and then those reasons must be established with a significant degree of material to back up the removal of an established protection against self-incrimination.

The other matter which I think needs to be addressed is proposed subsection (4), which provides:

> An authorised officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.

There is no provision for the return of that material, either within a particular period of time if proceedings have not been issued or when proceedings have been completed. It seems to me that that matter ought to be addressed. It is addressed in some of the national parks and wildlife-type legislation, where articles may be seized but, in certain circumstances, are required to be returned if prosecutions are not initiated or convictions not achieved.

Clause 44 extends to three years the period within which a prosecution for an offence against the Act must be commenced. Generally speaking, I would not support that sort of proposition, but, where there are offences for dishonesty and it may take a long period of time for these to be discovered, I am prepared to go along with an extension of time for investigations and inquiries, to something like three years.

Clause 45 deals with expiation of offences. I am proposing that this be opposed. I can see nothing appropriate about the WorkCover Corporation handing out expiation notices to employers who are already harassed by the WorkCover Corporation where in the past some caution would have been permitted. With expiation fees it is always the concern that inspectors, authorised officers and police will resort to handing out a ticket without consideration of the issue and without issuing a warning first, or a caution, and that those who receive the ticket or expiation notice will pay it rather than go to court. The hassles of going to court are significant and the costs are significant, and even if they feel that they are not guilty they do not believe that they can afford the time, effort and trauma associated with it, nor the cost involved in defending a prosecution.

Nothing has been produced by the Government to demonstrate that giving to WorkCover Corporation the power to issue expiation notices is in the interests of the administration of the Act or in the interests of employers and employees. I think it is a very strong power which ought not to be added to the armoury of the power which the corporation already has. For those reasons, that provision ought to be opposed. The other curious thing is that the expiation fee is to be paid to the corporation and not to Consolidated Revenue. That compounds the pressure on the corporation to get out into the community and issue as

many expiation notices as possible because that will increase its own revenue. It is judge, jury and executioner, as well as prosecutor.

I turn now to the final clause in the Bill, clause 46, which gives to WorkCover Corporation the right to intervene and be heard in any proceedings before a review officer or the tribunal, or any proceedings before a court, in which the interpretation or application of this Act is in issue or in which the corporation's interest may be directly or indirectly affected. I cannot believe that the corporation ought to have a right to intervene in all those proceedings merely because there might be something which affects WorkCover's interests or which might relate to an interpretation or application of the Act.

Again, there seems to be no justification for giving to WorkCover an automatic right of intervention, which can have the effect of prolonging proceedings and of increasing costs and giving the corporation a significant weapon to use against parties in legal proceedings. So, I have some very grave concerns about that, and at this stage I intend to oppose clause 46.

There are a number of issues to which I have not referred, but the ones I have addressed are the major issues that cause concern. I would have thought that, apart from the question of overtime and some of the matters which address questions of policing the administration of the Act so far as WorkCover is concerned, the bulk of these amendments are not really urgent and probably could effectively be considered by the select committee and a report presented on those matters. Notwithstanding that, we will further address the issues in the Bill in Committee, move amendments, and then determine whether or not the third reading of the Bill ought to be supported. For the purpose of enabling the Committee consideration of the Bill to continue, we will support the second reading.

The Hon. I. GILFILLAN: The Democrats support the second reading of the Bill. Recognising that there is a joint House select committee that is having a wide-ranging and profound review of the WorkCover legislation and its operation, I still believe it is appropriate that we consider certain clauses in the Bill and support them at this time. As to several of the matters dealt with in this Bill, I remind the Council that on 10 April 1990, when we were debating the Workers Rehabilitation and Compensation Act Amendment Bill, I raised similar matters.

I believe it was for some rather petty and insignificant reasons that those proposals were not accepted then. In relation to many of the matters in the Bill, and also responding in part to some of the observations made by the Hon. Trevor Griffin about whether these matters should be delayed, I point out that a large number of them, if not all, have been unanimously supported by the board of WorkCover. I remind members that the board does comprise a mixture of the various interested parties, such as the unions, the employer organisations and health and rehabilitation experts. It is a wide and diverse group. So, I believe that we should certainly consider seriously many of the amendments that they have asked for prior to the select committee handing down its report, which may not be for some time.

I would like to comment on a couple of matters before I address the significant matters in the Bill one of which I would like to mention while the Hon. Trevor Griffin is still in the Chamber. The honourable member said in his contribution that the exempt employers—those who are exempted from WorkCover and authorised to conduct their own worker compensation—were competitors with WorkCover. I believe that that is an erroneous interpretation. Exempt employers always had the support of the Democrats prior to WorkCover being established. My previous colleague, the Hon. Lance Milne, was quite strong in his recognition of the unique value that exempt employers had in relation to handlers of workers compensation. It can potentially be so much more a personalised situation where there is no sense of alienation from the workplace of the injured worker, and there is scope for a quicker and more effective rehabilitation. So, without itemising all the aspects supporting the concept of exempt employers, I would like to make quite clear again that the Democrats support the exempt employer concept.

However, this is not as a competitor with WorkCover: it is a privilege (and I would use the word advisedly) in some cases that is awarded to companies that have asked for and been granted the opportunity to work as exempt employers outside the direct structure of WorkCover. It is an augmenting arrangement where certain employers are in a position to run their own cover effectively. I believe it is preferable that they do so rather than to be included in the WorkCover structure. However, there is a much higher proportion of exempt employers in South Australia than in any other workers compensation scheme in Australia, and that needs to be considered in balance.

This is basically an insurance activity. It is a workers compensation insurance scheme and, by the very essence of insurance, it needs a wide number of contributors to a fund which will cover from time to time the extraordinary, and, unfortunately, very expensive—both in human and cost terms—accidents that may occur in certain workplaces. But, one must bear in mind that it is an insurance; it is not a fee for service or not a pay as you injure system. So, it is reasonable that the exempt employers do contribute to the overall scheme. I think it is fair that they should contribute to a fund which will cover the cases where they fail and the cost of continuing care for their injured workers falls back on WorkCover.

I want to comment on the fully-funded concept. The news in relation to the WorkCover blow-out being well above $150 million was spectacular and sensational. However, in reacting to this figure it is essential that two things be taken into account. First, it is totally unreasonable to have a scheme that is fully funded from its inception. Otherwise, in the first year or two years it will be an astronomical task to accumulate the funds to cover the liability for injuries which are sustained in those two years or which might have occurred before the two years and will fall into the cost of the scheme. So, WorkCover's projection that it will be fully funded by 1995—meaning that by 1995 it believes it will have accumulated capital assets adequate to carry the liability of injured workers at that time on a fully-funded basis—is in my opinion a reasonable and responsible fiscal target.

The inability to be fully funded with a deficit of $150 million, $180 million or $190 million is related directly to a misinterpretation of the intention of the original Act which may have occurred because of inappropriate wording or an erroneous interpretation. However, whatever the cause, we must address this problem as being singularly the most important dilemma confronted by the WorkCover management and board.

When an injured worker moves from the two-year work period into a time of indefinite duration when he is no longer described as being totally incapacitated, we are left with a problem. Where an injured worker has been left after the two years with, say, a 15 per cent or 20 per cent incapacity, but an 80 per cent or 85 per cent capacity to

work, the intention of the original Act was quite simply that the obligation of WorkCover was to continue compensation only for the continuing incapacity. Unfortunately, the actuaries and interpreters of the Act have expected WorkCover to be liable for the total compensation of injured employees who are not employed, regardless of the level of their continuing incapacity.

On that basis, the unfunded liability, or the so-called deficit blow-out, is due almost entirely to the extremely large increased cost through calculating WorkCover's continuing obligation to fund 80 per cent, which is the formula that will apply after two years, of the full earning capacity of the injured worker. I believe that the work of the select committee, and maybe amendments to this Act and, if need be, some challenges in courts, will adjust that. It is important that we recognise that the obligation for making up the difference between the incapacity factor and the capacity factor of an injured worker to work is the obligation of the Federal Government, as it is an unemployment problem, not an incapacity problem.

I made that point earlier in debate, and I have repeated it over and over again, and it has been referred to again in the select committee. It is unfair for us to say categorically that there is a massive unfunded liability in WorkCover when it is calculated on what was patently not an intention of the original Act. Until that is adjusted, it is inaccurate to put with any authority figures in relation to the current unfunded liability of WorkCover.

I am sorry to have taken so much time, but I am convinced that it is important that we get this figure in balance and in proportion; otherwise it distorts, and at times it brings a tone of hysteria into the way that we view the current economic situation in WorkCover.

I will refer to some of the points in the Bill which I think are important. I believe that the employers' role in the management of claims is a worthwhile amendment. The system will be more efficient, it will be more closely scrutinised and the relationship between the employer and employee will benefit from the amendment to establish a more intimate involvement of the employer in the management of the claims. The fact that employers will be able to require the corporation to have a worker examined by a recognised medical expert nominated by the corporation is also welcomed. It should do a lot and go a long way to remove the suspicion that certain medical assessments have in fact been warped, if not downright dishonest. I am sure that this—

The Hon. T.G. Roberts: Both ways?

The Hon. I. GILFILLAN: Well, employees can pick whomever they want.

The Hon. T.G. Roberts: The diagnosis—will it go both ways?

The Hon. I. GILFILLAN: I do not see why not. The interjection was whether the diagnosis will go both ways. I have not had discussions about it, but I cannot understand how anyone could ask for a recognised medical expert nominated by the corporation to examine an injured worker and then to take note only if that examination comes forward with a finding which is to the employer's advantage or to the corporation's advantage, so I put it into the record that I believe it must be taken totally honestly and objectively.

In relation to fraud, the Bill proposes a period of three years from the date of an alleged offence during which time a prosecution must be commenced. Several of these areas have developed an emotional notoriety out of proportion, but that still does not mean that we ought not to address them. In my opinion it is very important that WorkCover not only does the job as efficiently and honestly as it possibly can but it needs to be seen to be doing so, and the feeling abroad is that there is a lot of fraud in the operation of WorkCover. I do not believe that that is the case statistically, but this measure of extending the time from three months to three years from the date of the alleged offence during which a prosecution must be commenced is a welcome amendment, as is the issue of overcharging and overservicing, which has been a matter of major concern to WorkCover.

Under the Act, WorkCover has the ability to approve or disapprove of certain programs for rehabilitation or medical attention, but it does not have the power to intervene in the actual cost charged. I look forward to some discussion in the Committee stage because, having listened to the Hon. Trevor Griffin, I realise that there are different points of view in these matters. As in previous debates during the Committee stage, I expect that it will be a productive discussion and I will be interested to follow through the point that he made (as put to him by the AMA) that the medical profession and the rehabilitation servicing professions should retain the right to charge. If I remember correctly, the Hon. Trevor Griffin said that he saw no reason why there should not be some form of scale determined.

The Hon. K.T. Griffin: Yes.

The Hon. I. GILFILLAN: He acknowledges that. There may not be very much difference between our points of view in that regard. However, I still retain support for the WorkCover Corporation being able to have an effective intervention where it believes that overcharging is taking place. Overtime, as it is included in the benefits under section 3 of the Act, is a significant issue. It is excluded from the calculation of the worker's average weekly earnings except overtime that is worked in accordance with the regular and established pattern. I welcome amendments relating to overtime in this Bill, because of the confusion that was thrown into this matter as a result of the Supreme Court test case, and my very clear recollection of the intention of the Act when it was debated. Clause 4 of the Bill, which will amend section 4 (8) of the Act, provides:

(8) For the purposes of determining the average weekly earnings of a worker—

(a) any component of the worker's earnings attributable to overtime will be disregarded unless—

(i) the worker worked overtime in accordance with a regular and established pattern;

(ii) the pattern was substantially uniform as to the number of hours of overtime worked;

and

(iii) the worker would have continued to work overtime in accordance with the established pattern if he or she had not been disabled.

and

(b) any prescribed allowances will be disregarded.

I believe that spells out quite clearly the original intention of the Act. A later clause deals with the flexibility of overtime as part of the compensation payment, providing for a situation where overtime varies in a place of employment. It is sensitive to the issue raised by the Hon. Trevor Griffin, and I have no misgivings about it. Proposed new subsection 7 (3a) *(b)* (ii) provides:

The corporation is satisfied, in the case of a worker whose weekly payments include a component for overtime, that the worker would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;

I am sure we will look more closely at this during the Committee stage. As I read the Bill, I am content that the problem with the overtime dilemma has been addressed satisfactorily.

A further related amendment will allow the corporation to reduce weekly payments where the worker would not

have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have reduced had the worker not been disabled. The inevitable question must be asked: if they do have that power to reduce, do they also have the power or obligation to raise? On balance, to be even handed about it, that question must be asked, and I intend to do so in the Committee stage.

The Bill will enable the corporation to correct clerical errors. It seems absurd that we have had to wait so long for that simple and obvious amendment to the Act and I remind the Council that I sought energetically to have that amendment dealt with in April last year. Although I have already referred to the matter of exempt employers and recognised their value in this scheme, I do not feel particularly uneasy with the amendment that the renewal period will be up to a maximum of three years rather than a fixed three-year term. It is reasonable that exempt employers be under some form of surveillance.

I acknowledge that many of them, probably the vast majority, are conducting their workers compensation system in an extremely conscientious way, but they are exercising a community responsibility. The care of injured workers is not just the prerogative of the employer; obviously, that is why we have workers compensation legislation. So, I think that exempt employers are being over sensitive if they feel that they should be left to do their business on their own.

I intend to have further conversations with exempt employers in regard to their complaints and their criticisms of the Bill. I respect their opinion, but I believe that they tend to take a moral high ground, which does not become their argument, when they cast aspersions on WorkCover saying that because, in their opinion, WorkCover has not managed the scheme properly and has this unfunded liability, it should leave exempt employers alone. It is unfortunate that they saw fit to put those sorts of observations into their letter.

The clause which provides that the assessment of the levy for exempt employers should take into account an exempt employer's record of claims administration in occupational health and safety and accident and prevention programs, as well as the provision of proper rehabilitation facilities, does not concern me. On the face of it, it seems to be a sort of extension of the bonus penalty scheme which so many employers, employees and unions, representing employees, have requested as the right way to reflect good performances compared with poor performances in health and safety areas, and I think that the same principle can be applied in a modified form to exempt employers.

As I mentioned before, when determining the levy one must always bear in mind that it is an insurance cover and that there needs to be an accumulation of funds to cover the odd occasion when, for whatever reason, WorkCover has to take over the liabilities of an exempt employer. I am not comfortable with the proposal for the establishment by regulation of a minimum levy to cover registered employers who do not employ workers during the year. The corporation indicated that over 5 000 registered employers stated in their annual declaration that they did not employ workers during the past year but that they registered just in case.

The Bill provides that no offence will be committed by an employer in regard to registration provided that the employer registers within 14 days of commencing to employ. So, as this Bill becomes law, employers, who are not employing and who do not anticipate employing in the 12 month period, may quite comfortably drop off the registration. Rather than impose a fee on those who choose to remain registered, I suggest that WorkCover corresponds with those potential employers urging them to drop off the registration, pointing out that they would not be in contravention of the Act provided they sought to be registered within 14 days of employing an individual. That seems to be a far more suitable way of proceeding than imposing a $50 fee, and I indicate that the Democrats intend to oppose that provision.

The move to make the levy payment scheme more flexible is admirable. I have argued before in this place that, where there is an incentive to create safer workplaces, a situation is created in which everyone is a winner. There is no point in an employer deliberately ignoring the safety and health factors of a workplace when a system that is levying WorkCover payments will reflect poor performance immediately and quite dramatically. One of the questions that has been raised is how far that penalty should go. I know that some have expressed the opinion very strongly that it should be up to 100 per cent of wages so that the message for the negligent and the careless would be a very high cost penalty, but I will seek information in the Committee stage in relation to this matter.

In her second reading speech, the Minister gave some statistics which indicated that approximately seven per cent of employers contributing 34 per cent of the levy accounted for 94 per cent of the corporation's costs. It is important to identify whether that seven per cent comprises the same individuals who have remained poor performers or whether it contains a revolving population in which certain employers slip into that category but then improve their safety performance and move out. Before settling on any extreme penalties, one must be sure that they are imposed on continuing offenders.

There are many other matters in the Bill which I regard as of less significance to the workings of WorkCover. Without exception, all were commented on by my colleague the Hon. Trevor Griffin, and I do not intend to emulate him, but I conclude by saying that I believe it is important that this Bill be considered at this time regardless of the fact that the select committee is sitting. I believe that the select committee is addressing its task extremely diligently. Enormous volumes of evidence have come before us and we have benefited from a first-class submission from WorkCover, which I encourage all members to read, and from submissions from the Chamber of Commerce and Industry, the Employers Federation and the Metal Industries Association. I look forward to the Committee stage of this Bill where some amendments might be addressed, and I indicate that the Democrats support the second reading.

The Hon. J.F. STEFANI secured the adjournment of the debate.

FREEDOM OF INFORMATION BILL (No. 2)

Adjourned debate on second reading.

(Continued from 14 February. Page 2935)

The Hon. K.T. GRIFFIN: This Bill is long overdue. It does not meet all the requirements of the Opposition but at least it addresses some. In that respect, this Bill ought to be considered and passed by both Houses during this session. Freedom of information in Australia has a long history. With the introduction of legislation at the Commonwealth level and in Victoria, the move towards freedom of information in other States gained momentum. Unfortunately, in this State the present Government has been decidedly reluctant to expose itself and the decisions

and proceedings within departments and agencies to public scrutiny.

It had the opportunity four or five years ago when the Hon. Martin Cameron introduced a Freedom of Information Bill which was passed on several occasions in the Legislative Council but just did not get through in the House of Assembly. The 1989 State election, with the pressure on the Government from being in a minority in the House of Assembly, and the very keen support of Mr Martin Evans (the member for Elizabeth) for freedom of information, obviously prompted the Government to become more serious about the consideration of freedom of information and undoubtedly that prompted the introduction at the beginning of 1990 of a Government Bill which was considered by the community, and now the Bill before us has been amended but reflects that decision forced upon the Government.

As I said initially, the Bill does not satisfy all the requirements of the Opposition. In fact, it is very narrow in many respects. But, I hope that during the course of the Committee stage, I will be able successfully to move amendments which, hopefully, will then be passed with the support of the independent Labor members in the House of Assembly. I know that the Hon. Mr Elliott has also had an interest in freedom of information legislation, and I hope that in that context he not merely accepts the Government's Bill but also sympathetically considers the amendments that I will be proposing.

The Government Bill seeks to provide a framework for departments and agencies to disclose upon request documents and papers. Clause 4 provides:

'agency' means—
(a) a Minister of the Crown;
(b) a person who holds an office established by an Act;
(c) a body corporate (other than a council) established for a public purpose by, or in accordance with, an Act;
(d) an unincorporated body established by the Governor or a Minister;
(e) an administrative unit under the Government Management and Employment Act, 1985;
(f) the Police Force of South Australia;
or
(g) a person or body declared by the regulations to be an agency,
but does not include an exempt agency:

An 'exempt agency' is defined in clause 4 as follows:

'exempt agency' means—
(a) any council;
(b) an agency referred to in schedule 2;
or
(c) an agency declared by proclamation to be an exempt agency:

Schedule 2 sets out a number of bodies that are exempt agencies including the State Bank of South Australia and the State Government Insurance Commission. To be fair, I should say that in the Cameron Bill those two agencies were also exempted. Certain documents are exempt, and those exempt documents include Cabinet documents, Executive Council documents, documents that are exempt under interstate freedom of information legislation and documents affecting law enforcement and public safety.

Fees are required to be paid for access to documents, and there is a procedure of review internally and ultimately by the District Court, and in some cases by the Ombudsman and the Police Complaints Authority, of decisions not to give access to documents.

The Bill now before us is an improvement on previous Government proposals, but as I have already indicated a number of matters still require attention. There has been an extensive experience of freedom of information legislation at the Federal level and in Victoria, and I have no doubt that some of my colleagues will focus on the results of reviews of the legislation at those levels. One of the major areas of concern has always been that in Victoria, in particular, the Cain Government sought to progressively constrict the documents available for public scrutiny and, at the Federal level, the Hawke Labor Government endeavoured to discourage applications for access to information by increasing fees to what some have described as an extortionate level.

Of course, regulations, proclamations and the level of fees can be a disincentive to the application for access to information, and the making of that information available can be stifled by those Government officers who are intent on ensuring that the truth does not see the light of day. A number of matters arise from a consideration of the Bill, and I think it appropriate that I deal with them now because they will be reflected in amendments that I will be proposing. The first deals with clause 2, which provides:

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

The potential is there for the Government, because of the possible concern about the application of the Bill and what might be discovered under it, to delay the implementation of the legislation.

So, my proposal in relation to this Bill, as it was in relation to the Cameron Bill, is that the Act will come into operation on a day to be fixed by proclamation but, if it does not come into operation within a period of, say, three or six months, it will come into operation at the expiration of that period of time after assent is given to the Bill. That means that the Government will have a time frame within which to bring it into operation. If it does not do so, it will not be able to put it off indefinitely and stifle the opportunity of citizens to gain access to information.

Clause 3 follows a form that is followed on occasions with legislation, but not frequently, by setting out the objects of the Bill. It is a good idea to set out the objects because it gives people reading the Bill an opportunity to discern what the objects of the legislation might be. In respect of the objects in this Bill the means by which the objects are to be achieved include ensuring that information concerning the operations of the Government (including information concerning the rules and practices followed by the Government in its dealings with members of the public) is made available to the public; conferring on each member of the public a legally enforceable right to be given; and, enabling each member of the public to apply for the amendment of Government records relating to his or her personal affairs.

I make the point that there are bodies, other than individual members of the public, which could benefit from freedom of information legislation—they may be companies, associations or unincorporated bodies—and it is possible to argue that they are not included within the description of members of the public, although they ought to have the benefits of this legislation. So, I will suggest during the Committee stage that we broaden the objects to ensure that not only members of the public, that is natural persons, but also organisations, are covered by the objects provision and by the Bill.

In clause 4 it is possible, under the definition of 'agency', that private sector bodies will be covered by the reference to 'agency' as meaning a person or body declared by the regulations to be an agency. There is no limitation on the sorts of persons or bodies that can be declared to be an agency, and that means that private sector organisations, private individuals, can be the subject of this Act, when in fact the Act is designed to provide for access to governmental information, or information held by Government

agencies, or by companies in which the Government may hold all the shares or a majority of the shares or appoint the directors. So, I would see that this legislation should essentially apply to Government agencies, departments, subsidiaries and Government offices, but it should not be possible to extend the operation to what are private individuals or private agencies.

It is possible, of course, by virtue of the definition of 'agency', to extend the operation of this Act to the universities. The university is a body corporate, established for a public purpose, by or in accordance with an Act. The Chancellor of the new University of South Australia holds an office which is established by an Act. I do not see that it is appropriate for this legislation to extend to those sorts of bodies or offices. It is not clear, either, what body corporate is established for a public purpose. Does that extend to companies limited by guarantee? There is the case of a body corporate, established in accordance with an Act—the new Corporations Law—or perhaps the old Companies Act or the Companies Code. It may be for a public purpose, such as providing charitable relief. It may be one of the religious or charitable associations established under the Associations Incorporation Act. It is established in accordance with an Act and it is established for a public purpose. We must be very careful about the definitions to ensure that we do not catch a number of bodies for which freedom of information is not relevant.

It is possible, of course, for the Government to come back and say, 'Well, an exempt agency is any council, any agency referred to in schedule 2, or an agency declared by proclamation to be an exempt agency,' but I do not think it is good enough to have an all-embracing definition of 'agency' and then to rely upon a Government, by proclamation, to exclude bodies which might have been inadvertently, or even deliberately, caught. So, I want to focus attention particularly on the application of the legislation and the definition of 'agency', as well as the definition of 'exempt agency'.

I have already referred to the definition of 'exempt agency' in clause 4, but I make the point in relation to that that it seems to me that this gives the Government of the day an opportunity by proclamation, not subject to review by the Parliament, to exempt an agency, even an agency which is governmental in nature. At the very least, if there is to be an exemption of an agency it ought to be done by regulation. Clause 11 provides:

This Part—

that is Part II relating to the publication of certain information—

does not apply to—

(a) an agency that is a Minister (unless the agency is declared by regulation to be one to which this Part applies); or

(b) an agency that is exempted by regulation from the obligations of this Part.

I refer to that for two reasons: first, if it is good enough to exempt an agency by regulation, it is also good enough to exempt, for the purposes of the definition of 'exempt agency', that agency by regulation. However, I also want to make the point that I do not think it is appropriate to exempt all Ministers without having regard to what those Ministers do. Some Ministers are corporations sole—they have a corporate status. They undertake functions in two respects: one respect is as a Minister of the Crown, and the other is as a corporation sole. It is the latter context which should not be exempt from the provisions of the Act.

Clause 14 provides for an application to be dealt with by an agency as soon as practicable and, in any case, within 45 days after it is received. I draw attention to this because it is not clear whether the 45 days applies to each agency that might receive the application, maybe consecutively, particularly pursuant to clause 16, or in some other way. There is provision in clause 16 for one agency to refer the matter to another agency, and certainly it is open to the interpretation that in those circumstances the 45 days in clause 14 will run from the date of receipt by the agency to which it is referred. So, it is possible to have a series of 45 day periods running as a matter is transferred from agency to agency. It is my view that the 45 days ought to be an overall time limit, regardless of how many agencies are involved or to whom an application has been referred.

Clause 17 allows agencies to require the payment of an advance deposit, of such amount as the agency may have determined. This provision is offensive. It is outrageous that an agency can be allowed to fix an advance deposit, which may act as a deterrent to any person seeking access to information. The fixing of the advance deposit may be a means by which delay can occur, as well as discouragement. I do not see any need for an advance deposit. I said at the beginning of my second reading speech that at the Federal level, in particular, the use of advance deposits and high fees had acted as a disincentive to persons seeking access to information. For that reason I believe that the clause ought to be opposed, and I will do so.

Clause 18 allows an agency to refuse to deal with an application if it appears to the agency that there is such work involved in dealing with the application that it would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions. This provides the agency with yet another opportunity to avoid complying with an application for access to information. For that reason, I believe that clause 18 ought to be deleted. I will certainly propose that in Committee.

Clause 26 relates to documents affecting personal affairs. An agency must not give access to a document containing information concerning the personal affairs of any person, whether living or dead, unless the agency has taken reasonable steps to obtain the views of the person concerned as to whether or not the document is an exempt document. Quite obviously, unless the agency has some special power currently unknown to mere mortals it will not be able to consult with a dead person. Where a document does contain information relating to a dead person, it seems reasonable to me that there is also an obligation on the agency to consult with legal personal representatives of the deceased and members of his or her family.

Clause 29 deals with internal review. This relates to an internal review of decisions in relation to access to documents and provides that the application for review must be accompanied by such application fees as the agency may determine. It seems to me that, again, it is outrageous that the agency determines the fee that is to apply to an application for review. At the very least, any fee ought to be fixed by regulation and not by the agency.

Clause 40 and subsequent clauses provide for a review of determinations of an agency or appeal to a District Court. Clause 45 allows an appeal from a decision of the District Court, but only on a question of law. Dealing first of all with that question of appeals: I think that the appeal ought not to be limited only to questions of law. I think there may be questions of great moment, of a factual nature, that ought to be resolved by appeal to higher courts. Therefore, I propose that an appeal from the District Court ought to lie on all matters, both facts and law. I think that at the very worst any appeal to the Supreme Court on questions of fact ought to be by leave. But I prefer an open right of appeal to the Supreme Court.

Clause 42 (2) provides:

Where it appears that the determination subject to appeal has been made on grounds of public interest, and the Minister makes known to the Court his or her assessment of what the public interest requires in the circumstances of the case subject to the appeal, the Court must uphold that assessment unless satisfied that there are cogent reasons for not doing so.

Effectively, what this does is provide that, for all practical purposes, the decision of the Minister is to stand and that it is the judgment of the Minister in general that will prevail. I do not see any reason for that. I would have thought that, if the Minister says that it is in the public interest that the information not be available publicly, the court ought to be able to determine whether or not the Minister's reasons are adequate. I do not think it is good enough for the Minister merely to say that it relates to information which, in the public interest, ought not to be made available and then to place the onus upon the citizen rather than on the Minister to establish that basis. The part of clause 42 (2) that gives the benefit to the Minister rather than to the citizen ought to be deleted.

Clause 46 establishes a system of ministerial certificates to be conclusive evidence that a document is a restricted document by virtue of a specific provision of Part I of schedule 1, although a certificate is subject to review but cannot be overturned by the District Court (clause 43). I draw attention to this because it does give a Minister very wide power. I sympathise, though, that in the circumstances of the documents referred to in Part I of schedule 1, for example, Cabinet documents and Executive Council documents, we would probably have to have that system of exempt documents. But I think there is an issue here which has not really been addressed.

In Part I of schedule 1, let us take the example of clause 1 (2), where a document is not an exempt document by virtue of this clause:

(a) if it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of Cabinet; or

(b) if 30 years have passed since the end of the calendar year in which the document came into existence.

The difficulty I have is that it does not appear to be clear that it can do anything about it, when, under clause 43, the District Court is considering a document which is the subject of a ministerial certificate and it concludes that the document is not an exempt document under this clause 1 (2), for example. It can make a determination but it is not binding on the Minister. I would have thought it desirable to have here some mechanism by which the District Court can distinguish between exempt documents and documents which are said by the Minister to be exempt documents but which in fact are not, by virtue of clause 1 (2) of Part I of schedule 1 exempt documents. I think that issue ought to be addressed. The same applies with clause 2 (3) of Part I of schedule 1.

Clause 53 provides for the Minister, by notice in the *Gazette*, to establish guidelines for the imposition, collection, remittal and waiver of fees charged under the Act. In interstate experience and at the Commonwealth level, the charging of fees by Governments has been a major deterrent to freedom of information. To allow the Minister only to establish guidelines in relation to fees is to make the Minister unaccountable and to give tremendous power to deter those seeking access to documents from so doing. Clause 53 also allows the agency to review a fee which a person seeking access to documents believes is unreasonable. Where action is taken in court to recover a fee, the court may, if it feels the fee is excessive, reduce the amount of the fee.

There is a scheme in the Cameron Bill which is much more appropriate. The Cameron Bill provides for regulations to be made fixing the fees, and it sets certain criteria by which the fees will be established. Clause 19 of that Bill provides:

(1) Any charge that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given shall be calculated by an agency in accordance with the following principles or, where those principles require, shall be waived;

(a) a charge shall only cover the time that would be spent by the agency in conducting a routine search for the document to which access is requested, and shall not cover additional time, if any, spent by the agency in searching for a document that was lost or misplaced;

(b) the charge in relation to time made under paragraph *(a)* shall be fixed on an hourly rate basis;

(c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the material to which access is granted;

(d) a charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents, in providing a written transcript of the words recorded or contained in documents, or in providing a written document in accordance with section 16;

(e) a charge shall not be made for the time spent by an agency in examining a document to determine whether it contains exempt matter, or in deleting exempt matter from a document;

(f) a charge shall not be made for producing for inspection a document referred to in sections 6 (1) or 9 (1), whether or not that document has been specified in a statement published in accordance with sections 6 (2) or 9 (2) respectively;

(g) a charge shall be waived if the request is a routine request for access to a document;

(h) a charge shall be waived or be reduced if the applicant's intended use of the document is a use of general public interest or benefit or if the applicant is impecunious;

(i) a charge shall be waived if the applicant is a member of the Legislative Council or of the House of Assembly; and

(j) a charge (other than a charge for providing a written document in accordance with section 16) shall not exceed such amount, being not more than $100, as may be prescribed by regulation from time to time.

There are other provisions which follow in that clause. There is also a provision for the review of the fees charged, and my recollection is that that was done by a reference to the Auditor-General. I would certainly agree with some mechanism such as that which is quick and inexpensive to ensure that Government agencies are not over-charging for the production of and giving access to those documents.

Reports to Parliament are required to be made under clause 54 as soon as practicable after 30 June each year and, in any event, before 31 December. Such reports must be laid before both Houses of Parliament. The reports are to contain such information as the Minister considers appropriate to include therein. There are two aspects of this provision which ought to be tidied up.

First, the reports should be prepared by 30 September and tabled to bring them in line with other obligations of other Government agencies which file reports by that date. Secondly, there should be a specific reference to the minimum information which is required to be disclosed as set out in clause 63 of the Cameron Bill and which refers to a number of matters that must be included. I will not take up the Council's time by reading the Bill, but I refer members to that provision which is on file in the Council's Bill No. 4, introduced at the commencement of this session.

In relation to schedule 1, Part 1 of the Bill, relating to restricted documents which are exempt documents, several matters need attention. First, in relation to clause 1 (2) *(b)*, a Cabinet document is not exempt until 30 years have passed since the end of the year in which the document came into existence. Documents which came into existence before the commencement of this clause are not available.

The Cameron Bill provided for a period of 10 years after which Cabinet and Executive Council documents were prepared.

I think that period is too short, but I see no reason why documents which came into existence before the commencement of this Act should not be available after a period of 30 years. That is consistent, as I understand it, with provisions at the Federal level and also with provisions in the United Kingdom at least. I do not see any reason for a total prohibition against Cabinet and Executive Council documents becoming available if they came into existence before the commencement of this Bill.

Part II of schedule 1 provides that there are a number of documents which require consultation with other levels of government or where other Governments are referred to, and they require attention. Clause 5 (1) *(a)* and clause 5 (2) *(a)* (i) relate to documents the disclosure of which could reasonably be expected to cause damage to relations between the Government of South Australia and the Government of the Commonwealth or of another State in the first instance, and a document which could reasonably be expected to damage relations between councils and between a Government and the Government of the Commonwealth or this State. Both those areas require consultation before access may be given. I suggest that whether or not they affect relationships ought not to be a relevant consideration, and I will in due course be proposing that these provisions be deleted.

Clause 6 (2) of Part II of schedule 1 provides:

> A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) and the truth of those allegations or suggestions has not been established by judicial process.

It is not clear what is intended by this provision. For example, it is not clear whether it relates to a criminal trial in which some but not all the allegations have been put and the accused has been found guilty or not guilty or where, for example, they may have been put in civil litigation and the case won or lost. In legal proceedings, it is not the truth of allegations which is established by judicial process necessarily being identified in the judgment which is made. A number of allegations may be made and altogether some may be believed, some may not, but the decision may go one way or the other. It is a very difficult concept to suggest in this subclause that the truth of those allegations has or has not been established by judicial process.

Clause 7 provides that a document is an exempt document where it contains matter concerning the business, professional, commercial or financial affairs of any agency or any other person. I do not see why the reference to agency should be there, and I propose that it be deleted. Similarly, where a document contains matter the disclosure of which could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency, I do not think that ought to be a reason for exemption, particularly in circumstances where the effect referred to might be a reasonable consequence of revealing something in the Parliament which, for example, might be evidence of a cover up.

I wish to refer to only one other matter in the Bill. Schedule 2 deals with exempt agencies. The Legislative Council or a committee of the Legislative Council is exempt. The definition of 'agency' means a person who holds an office established by an Act. I suggest that, in the case of the office of the President of the Legislative Council, for example, unless that is included in schedule 2 as an exempt agency, it is arguable that the office of President, which is established by the Constitution Act, might be then caught by the Bill. The same would apply to the office of Speaker and there may be other officers of the Parliament to which some special reference ought to be made.

The Cameron Bill, to which I have referred earlier, contains several matters which this Bill does not address and to which I have not yet referred. Clause 8 of the Cameron Bill seeks to have established a Cabinet register detailing for public scrutiny the general terms of all decisions made by the Cabinet after the date of commencement of the Act with a reference number assigned to each decision and the date on which the decision is made. Whilst that is in this Bill, I am yet to be persuaded that that is appropriate, but it is not a matter on which I would expect the Minister to respond at the end of this debate.

Clause 9 of the Cameron Bill refers to a statement of certain documents in the possession of agencies where that statement must be published. Again, I do not intend to detail these in *Hansard* but clause 9 requires public information to be given about a range of documents within the agency which, if that information was not made public, would not alert members of the public to the availability of such reports or information. I propose to include that in my amendments.

Clause 10 of the Cameron Bill provides that a person may serve upon the principal officer of an agency a notice in writing stating that, in the opinion of that person, a statement published by the principal officer does not specify a document that should have been specified in the statement. Following that, the principal officer must respond to such a notice. I am of the view that there is value in including that procedure in this Bill, and I will move an amendment accordingly.

Clause 13 of the Cameron Bill provides that a principle is identified that Ministers and agencies should administer the Act with a view to making the maximum amount of Government information promptly and inexpensively available to the public. That is a useful statement of principle in my view and it ought to be included in clause 3 of the Government's Bill which identifies the objects of freedom of information legislation.

Clause 56 of the Cameron Bill provides that, in any proceedings before a court, the costs incurred by a party should be borne by that party, although the court may order that the costs incurred by an applicant should be borne by the defendant. In addition, clause 57 provides that a court may waive or reduce certain charges. Both provisions have merit, and I propose that they also be included.

Clause 59 of the Cameron Bill deals with disciplinary action where an officer or agency has been guilty of a breach of duty or of misconduct in the administration of the Act. That is important and ought to be included. Clause 64 of the Cameron Bill provides for the Government Management Board to provide to the Minister to table in Parliament a report on any difficulties in administration of the Act so far as agencies are concerned, and I propose that this also be included.

Clause 66 of the Cameron Bill provides for unlimited access to records for a person where those records are about himself or herself. That is already covered in the Government Bill, but the other aspect which needs to be focused upon is that an applicant for access to a document other than exempt documents can have access to documents which came into existence not more than five years prior to the date of commencement of the Cameron Bill. The concept is reasonable and I think it ought to be a period of at least 10 years. I believe that this Bill has not addressed a number of matters which ought to be addressed in the Committee stage of its consideration and, as members have heard, I

will certainly attempt to do that. It is an important Bill which ought to be supported in principle, but with those amendments. I support the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

WATERWORKS ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill amends the rating provisions of the Waterworks Act in order to introduce a new rating system for residential properties. The Government had been concerned about the rating system for some time and in February 1990 commissioned an independent review. This new system is the result of that review.

For residential properties there will be two distinct rates: an access rate payable for the right to a supply, and a water rate based on consumption. The access rate will be a flat rate for properties below as specified value, referred to in the Bill as the threshold value. Properties above this value will pay, in addition to the flat rate, a property value rate. This rate will apply only to that part of the value in excess of the threshold value.

The initial threshold value will be $111 000 (in 1990-91 values) and will be reviewed each year. The consumption charge will only apply for water consumed above an allowance of 136 kLs. The allowance will not be tied to the access rate.

The new system provides considerable flexibility as there can be independent changes to:

- the access charge
- the threshold value
- the rate in the dollar for the property value component
- the water allowance
- the price per kilolitre.

Residential properties will include houses, strata units, and land used for rural living if, in the Minister's opinion, the land is used primarily for residential purposes.

Non-residential properties will continue to be rated as before, that is, a property value charge with an allowance based on that charge. The consumption charge for water consumed above the allowance will continue.

The new system will be implemented from 1 July 1991. The charges will be set at a level that will be revenue neutral. This will also ensure that a high percentage of consumers will not be adversely affected by the changeover.

The purpose in commissioning a rating review was to seek a level of cost recovery consistent with economic considerations, and a charging system that will encourage the long term conservation of water resources, while maintaining social justice and equity within the community. The recommendations of the review that are reflected in this Bill, provide such a balance.

Clauses 1 and 2 are formal.

Clause 3 inserts Division I of Part V which sets out the new provisions relating to residential land. New section 65a provides definitions of terms. Residential land does not include land on which a hotel, motel, boarding house, hostel or two or more flats are situated or land that, in the opinion of the Minister, is used primarily for non-residential purposes. Rateable land is defined to exclude land in a country lands water district thereby excluding residential land from these districts. Rates in a country lands water district are based on the area of land. Section 65b provides for the rates payable in respect of residential land. Section 65c enables the Minister to fix the factors on which the rates depend by notice in the *Gazette*. Section 65d provides for the water allocation. The water allocation is deducted from the quantity of water consumed when determining the amount of the water rate. The water allocation is fixed by the Minister by notice in the *Gazette* and may be varied from time to time.

Clause 4 inserts a heading.

Clause 5 defines non-residential land for the purposes of Division II.

Clause 6 makes consequential amendments to section 66 of the principal Act.

Clause 7 inserts a heading.

Clause 8 inserts new section 66a. This section replaces the substance of section 66 (6), (7) and (8). These subsections are removed by clause 6 from section 66 which will now apply only to non-residential land. New section 66a will provide a definition of capital value of land applicable to both residential and non-residential land.

Clauses 9 and 10 make consequential amendments to sections 67 and 94 of the principal Act.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 3)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill inserts provisions dealing with freedom of information into the Local Government Act 1934.

The Government believes that there are no qualities inherent in the structure and functions of local government which render the democratic justification for freedom of information legislation less applicable to local government than to any other level of government. The Government therefore supports the extension of freedom of information provisions to local government.

Local governments have received different treatment in freedom of information legislation in Victoria and New South Wales. Victoria has excluded local government from the operation of the legislation. However, councils are subject to the Freedom of Information Code. The code embraces the principles and concepts of freedom of information but is not legally binding. In New South Wales, local governments are required to comply with aspects of the freedom of information legislation. The scheme provides access to personal records.

In New Zealand, the Local Government Official Information and Meetings Act 1987 requires local government to meet all obligations in respect of both publication of information and access to documents, subject to relevant exemptions.

The Victorian Legal and Constitutional Committee has recently released its report on freedom of information in Victoria. The committee has recommended that the legislation be extended to cover local governments.

The arguments put forward to the committee in support of extending the Act to cover the local government sector were:

(a) Local governments have significant powers and responsibilities.

(b) While council meetings may be accessible to the public, the deliberations, decisions and influence of council officers are often hidden from view.

(c) While some councils have been generous in providing information to citizens, the existing discretionary system of granting access has led to significant inconsistencies in approach.

(d) Local government is the level of government closest to the people, which provides greater justification for drawing them to greater account through freedom of information legislation.

(e) There are no differences between local government and state and federal governments which justify its exclusion from freedom of information legislation.

The committee commented as follows:

> In short, the democratic justification for freedom of information rests in the belief that government, at whatever level, will be fairer, more effective and more accountable if its constituents are given the means to inform themselves and hence evaluate the propriety of its actions. A reduction in government secrecy is a necessary pre-requisite for the restoration of a balance between electors and elected consonant with democratic ideals. From this process, local government should not be excepted. (Victorian Legal and Constitutional Report on Freedom of Information in Victoria at page 32).

The limited application of freedom of information to councils in New South Wales is also likely to be reassessed in any future review. The current provisions were introduced as a compromise. However, some councils are voluntarily adopting full freedom of information. The New South Wales experience is that the more open a council is, the less problems they encounter in the area of development issues, etc.

In April 1990 the Government first introduced the Freedom of Information Bill (No. 2) 1990 into Parliament. At the time the Bill was introduced the Government indicated that the Bill would be laid on the table until the Budget session to enable comments to be received on the Bill. In particular, it was made clear that consultations would occur with local government as to the form of coverage for local councils.

Subsequently the Bill was forwarded to local councils and the Local Government Association. The association also conducted a survey of councils to obtain their views on specific aspects of the Bill.

The Local Government Association and individual councils were generally consistent in their responses to the Freedom of Information Bill (No. 2) 1990. The local government sector was generally supportive of freedom of information principles extending to local council operations, but argued strongly that such provisions should be dealt with separately in the Local Government Act 1934. The Local Government Association was philosophically opposed to the inclusion of local government as an 'agency' under the current Freedom of Information Bill as such an approach does not recognise local government as a separate tier of Government.

The Local Government Association advised that the Local Government Act 1934, as amended, already allows access to a range of documents by ratepayers and the general public and that the Act was only recently reviewed to make local government accessible and accountable to the public.

The Local Government Association argued that the local government process, from policy formulation through to setting a budget, striking a rate and adopting expenditure priorities, is already a public one. The councils argued that the Bill, as originally introduced did not address potential areas of conflict between it and the Local Government Act 1934.

The association acknowledged that several changes to the Local Government Act would be required to reinforce a commitment to public access. The main changes which were identified included:

1. Provision for information statements.
2. Provisions to protect the privacy of individuals when documents held by councils relate to personal information.
3. Provision for the amendment of inaccurate personal records held by local government.
4. A review of the range of documents which are not currently available to the public.

Following representations from the Local Government Association and councils, the Government has decided that freedom of information provisions for the local government sector should be placed in the Local Government Act 1934.

The provisions in this Bill are similar to those in the Freedom of Information Bill (No. 2) 1990. Where possible, provisions are identical. This should make it easier for members of the public, in that the procedures regulating freedom of information will be similar in the State and local government sectors. A common approach will also assist local councils to work with the Government in the implementation of freedom of information, for example, the training of staff and the development of manuals and handbooks.

However, the Bill does take account of differences between the two levels of government. The main differences in the Bill are:

1. Documents subject to an order under section 64 (6) of the Local Government Act 1934 are 'restricted documents'. Section 62 of the Act allows certain designated matters to be considered by the council in confidence. The council can then make an order under section 64 (6) that documents relating to such a matter are confidential. Such a document is then a 'restricted document' for the purposes of the freedom of information provisions.
2. The removal of the 'objects' provisions. The Local Government Act 1934 is not set up with 'objects' provisions. It is inconsistent with the scheme of the Act to include objects relating to freedom of information.
3. The requirements dealing with information statements and information summaries have been modified. Under this Bill, it will not be necessary to publish an information statement in the *Gazette*. It will be sufficient for the statement to be available at the council office. In addition, the information summary need not be published in the *Gazette* but rather in a local paper distributed in the council area. The *Gazette* is not readily accessible to members of the public, whereas the local paper can be easily obtained by any member of the public.

4. Some provisions of the Freedom of Information Bill (No. 2) 1990 have not been included in this Bill as they are unnecessary, that is, they are not relevant to the local government sector or provision already exists in the Local Government Act 1934, for example, service of notices, delegation, fees and charges.
5. The schedule has been replaced by substantive provisions. I am advised that councils will find it easier to use the Act if the restricted and exempt documents are the subject of substantive provisions rather than set out in a schedule at the back of the Act.

I commend the Bill to honourable members. The provisions of the Bill are as follows:

Clause 1 is formal.

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

Clause 3 inserts new Part VA into the principal Act. Section 65a defines terms used in the Part and makes other provision with respect to interpretation of the Part.

Section 65b provides that if a document held by a council is deposited in the office of State Records (formerly known as the Public Record Office), the document is, for the purposes of Part VA, to be taken to continue in the possession of that council.

Section 65c provides that Part VA does not prevent a council from giving access to a document without formal application and without other formality, that Part VA does not derogate from other provisions of the Act under which access to documents is required or permitted and that nothing in Part VA is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or law.

Sections 65d to 65q set out classes of exempt documents.

Section 65r requires each council to prepare, within 12 months after the commencement of Part VA and at intervals of not more than 12 months thereafter, an up-to-date information statement and information summary and sets out what an information statement and an information summary must contain. The section does not require the publication of information if its inclusion in a document would result in the document being an exempt document.

Section 65s requires a council to make copies of its most recent information statement and information summary and each of its policy or administrative documents available for inspection and purchase by members of the public. Nothing prevents a council from deleting information from the copies of a policy or administrative document if its inclusion would result in the document being an exempt document otherwise than by virtue of section 65j or 65k (that is, because it is an internal working document or a document subject to legal professional privilege). The section provides that a council should not enforce a particular policy to the detriment of a person if the relevant policy should have been, but was not, made available for inspection and purchase in accordance with the section at the time the person became liable to the detriment and the person could, by knowledge of the policy, have avoided liability to the detriment.

Section 65t gives a person a legally enforceable right to be given access to a council's document in accordance with this measure.

Section 65u sets out how an application for access to a council's documents is to be made.

Section 65v sets out the time within which applications for access must be dealt with.

Section 65w prohibits a council from refusing to accept an application merely because it does not contain sufficient information to enable identification of the document to which it relates without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

Section 65x sets out in which cases a council may refuse to deal or continue dealing with an application.

Section 65y requires a council to determine an application for access within 45 days after it is received (unless the council has refused to deal, or continue to deal, with the application). If it is not dealt with within that time the council is, for the purposes of Part VA , to be taken to have determined the application by refusing access.

Section 65z sets out when a council may refuse access to a document.

Section 65aa sets out when a council may defer access to a document.

Section 65ab sets out the forms in which access may be given.

Section 65ac requires a council to notify an applicant for access of its determination or, if the document to which the application relates is not held by the council, of the fact that the council does not hold such a document.

Section 65ad provides that sections 65t to 65ac have effect subject to the provisions of section 65ae.

Section 65ae deals with the giving of access to the following documents:

(a) a document that contains matter concerning the affairs of the Government of the Commonwealth or of another State or of a council;

(b) a document that contains information concerning the personal affairs of any person (whether living or dead);

(c) a document that contains information concerning the trade secrets of any person or other information that has a commercial value to any person or any other information concerning the business, professional, commercial or financial affairs of any person;

(d) a document that contains information concerning research that is being, or is intended to be, carried out by or on behalf of any person.

Section 65af gives a person to whom access to a council's documents has been given the right to apply for amendment of the council's records if the document contains information concerning the person's personal affairs, the information is available for use by the council in connection with its administrative functions and the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

Section 65ag deals with applications for amendment of council's records.

Section 65ah sets out the time within which applications for amendment must be dealt with.

Section 65ai prohibits a council from refusing to accept an application for amendment merely because it does not contain sufficient information to enable identification of the document to which the applicant has been given access without first taking such steps as are reasonably practicable to assist the applicant to provide such information.

Section 65aj requires a council to determine an application for amendment by amending its records in accordance with an application or by refusing to amend its records. A council that fails to determine an application within 45 days after receipt of the application is, for the purposes of Part VA, to be taken to have determined the application by

refusing to amend its records in accordance with the application.

Section 65ak sets out in which cases a council may refuse to amend its records.

Section 65al requires a council to notify an applicant for amendment of records of its determination or, if the application relates to records not held by the council, of the fact that the council does not hold such records.

Section 65am provides that if a council has refused to amend its records the applicant may, by notice, require the council to add to those records a notation specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading and if the applicant claims the records to be incomplete or out-of-date, setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date. A council must comply with the requirements of a notice and notify the applicant of the nature of the notation. If a council discloses to any person any information in the part of its records to which a notice relates, the council must ensure that when the information is disclosed a statement is given to the recipient stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading and setting out particulars of the notation added to its records and the statement may include the reason for the council's refusal to amend its records in accordance with the notation.

Section 65an gives a person who is aggrieved by a determination of a council to refuse access to its documents or to amend its records, to a review of the determination and sets out how an application for review is to be made. On an application for review the council may confirm, vary or reverse the determination under review. A council that fails to determine an application for review within 14 days after its receipt is, for the purposes of Part VA, to be taken to have confirmed the determination in respect of which a review is sought. However, a determination made by resolution of a council is not subject to review under this provision.

Section 65ao provides that a person who is dissatisfied with a determination of a council that is liable to internal review after review by the council or who is dissatisfied with a determination not subject to internal review may apply for a review of the determination to the Ombudsman. Where such an application is made, the Ombudsman may carry out an investigation and, if satisfied that the determination was not properly made, direct the council to make a determination in specified terms. There is no power under this provision to inquire into the propriety of a council certificate given under section 65av.

Section 65ap provides that a person dissatisfied with a determination of a council after review by the council may appeal against the determination to a District Court. On such an appeal the court may confirm, vary or reverse the determination to which the appeal relates or remit the subject matter of the appeal to the council for further consideration and make such further or other orders (including orders for costs) as the justice of the case requires.

Section 65aq sets out the time within which an appeal must be commenced.

Section 65ar provides that an appeal will be by way of re-hearing and that evidence may be taken on the appeal. It also provides that where it appears that the determination subject to appeal has been made on grounds of public interest and the chief executive officer of the council makes known to the court his or her assessment of what the public interest requires in the circumstances of the case subject to appeal, the court must uphold the chief executive officer's assessment unless satisfied that there are cogent reasons for not doing so.

Section 65as deals with the consideration by a District Court of restricted documents.

Section 65at provides that if, as a result of an appeal, the District Court is of the opinion that an officer of a council has failed to exercise honestly a function under Part VA, the court may take such measures as it considers appropriate to bring the matter to the attention of the Minister.

Section 65au provides for an appeal to the Supreme Court on a question of law.

Section 65av deals with council certificates as to restricted documents.

Section 65aw puts the burden of establishing that a determination is justified on the council.

Section 65ax provides that if access to a document is given pursuant to a determination under Part VA and the person by whom the determination is made believes in good faith, when making the determination, that Part VA permits or requires the determination to be made, no action for defamation or breach of confidence lies against a council or an officer of a council by reason of the making of the determination or the giving of access and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the author of the document or any other person by reason of the author or other person having supplied the document to a council or the chief executive officer of a council.

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

Section 65ay provides that if access to a document is given pursuant to a determination under Part VA and the person by whom it is made honestly believes, when making the determination, that Part VA permits or requires the determination to be made, neither that person nor any other person concerned in giving access is guilty of an offence merely because of the making of the determination or the giving of access.

Section 65az empowers the Minister, by notice in the *Gazette*, to establish guidelines for the imposition, collection, remittal and waiver of fees and charges under Part VA, sets out the matters the Minister must have regard to in establishing such guidelines, provides for the recovery of fees and charges and empowers a court to reduce a fee or charge that in the court's opinion is excessive.

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

EDUCATION ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this Bill is to ensure that teachers who have worked or who are working parts of a teacher's normal duty day do not secure salary payments in excess of their fractional time entitlements.

Recently, a former Education Department teacher successfully sued the State for the payment of additional salary which he claimed was owed to him as a result of teaching appointments in 1983 and 1986. Each occasion involved approximately six week's employment at 6/10ths time secured by means of the standard contractual agreement which ties salary payments to the Teachers Salaries Board Award. The teacher's negotiated employment conditions required that he work part of the day, five days per week.

The crux of the claim centred on provisions of the award concerning the method of calculating a temporary teacher's pay. The formula provides for a daily rate for days actually worked but because the award is silent on part pay for part day's work the Local Court accepted the argument that the number of 'days actually worked', used as a multiplier in calculations, must be interpreted as whole days and not something less.

While the judgment related to the circumstances of a particular individual, it is possible that other claims incorporating comparable facts and legal argument may succeed. It is prudent to remove that possibility.

The Bill provides for the denial of both retrospective and prospective salary claims and extends to any category of teacher or employee employed on a part-time basis. This includes casual teachers who, unlike the permanent teachers appointed under section 15 of the Education Act ('officers of the teaching service'), are engaged under contracts of service pursuant to section 9 (4) of the Act.

The Bill also provides for the making of regulations in respect of the terms and conditions applicable to officers and employees appointed under section 9 (4). Currently, regulation making powers exist in relation to officers of the teaching service but they do not extend to appointments made under the other provision.

As is the case with matters of this nature the rights of the successful plaintiff in the Local Court action which prompted this Bill are preserved by the inclusion of a specific provision to that effect.

The clauses of the Bill are as follows:

Clause 1 is formal.

Clause 2 inserts a new provision that basically provides for a person employed on a part-time basis to be paid the equivalent part-time salary. Special allowances are included within the ambit of this section except where a particular award or contract of employment provides for payment of a full allowance. Subsection (2) makes it clear that this section as it relates to salary prevails over any other law and that it applies no matter how the part-time work is actually spread over any particular day or pay period. The subsection also provides that this section applies to past as well as to future pay entitlements, but of course the plaintiff's rights in the case that gave rise to this measure are to remain unaffected. Subsection (3) makes it clear that nothing in this measure invalidates the payment of a full allowance to any officer if the allowance was paid, or was already being paid in full, before the commencement of this section. Subsection (5) defines 'officer' to cover everyone employed under the Education Act.

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

The Hon. R.I. LUCAS secured the adjournment of the debate.

ADJOURNMENT

At 5.58 p.m. the Council adjourned until Wednesday 20 February at 2.15 p.m.