LEGISLATIVE COUNCIL

Tuesday 11 February 1992

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

DEATH OF HON. A.J. SHARD

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

That the Legislative Council expresses its deep regret at the recent death of Mr Albert James Shard, AO, former member of the Legislative Council and Minister of the Crown, and places on record its appreciation of his distinguished public service, and that as a mark of respect to his memory the sitting of the Council be suspended until the ringing of the bells.

Albert James Shard, known to his friends as Bert, died on 29 November last year aged 88. Mr Shard entered Parliament in 1944 and served for three years as the member for Prospect in the House of Assembly. In 1956 he was elected to the Legislative Council, where he was Opposition Leader from 1961 to 1965 and again from 1968 to 1970. He was Chief Secretary and Health Minister in the Walsh Government from 1965 to 1968 and, again, in the Dunstan Government from 1970 until his retirement from Cabinet in 1973. He retired from the Council in 1975, which was the year that I was elected to it.

During his parliamentary career, he served on many committees, including the Joint Committee on Subordinate Legislation, the Land Settlement Committee, the Industries Development Committee and the Public Works Committee. In 1977 he was made an Officer of the Order of Australia for distinguished service in the area of government.

Mr Shard left school at the age of 14 to begin work as a barber's assistant. He then worked in a cordial factory and as a bread carter, eventually rising to the position of State Secretary of the Bread Carters Union. He held a number of important trade union positions, including President and Secretary of the South Australian Trades and Labor Council and Vice-President of the Australian Council of Trade Unions. He also served as President of the South Australian branch of the Australian Labor Party.

During his time in the Walsh and Dunstan Governments, Mr Shard was responsible for a number of important advances in South Australian legislation. He regarded his greatest achievement as, when Minister of Health in 1965, convincing the Walsh Cabinet to introduce the School Dental Therapy Scheme, which has benefited hundreds of thousands of young South Australians.

In the 1970s Mr Shard pushed for a thorough investigation of South Australian medical services, which resulted in the Bright report—a report which was prepared by the late Sir Charles Bright, who was a Supreme Court judge at that time, and which resulted in a significant revamping of health services in South Australia.

Early in his career in the Assembly Mr Shard was instrumental in major overhauls of South Australian industrial legislation. These included the provision to South Australian unionists of annual leave and sick leave, and extending workers compensation claims to allow rebates for doctor and pharmacy fees.

As I said, I entered the Council in 1975, I suppose in a sense taking the place of Bert Shard, but I did not know him in a parliamentary sense, although I assume some members still in this place did know him as a parliamentarian. However, I did get to know him in the Labor Party and I knew him as a great stalwart of the Labor Party. Indeed, he made a significant contribution over many years to the Labor Party and the union movement and ultimately, in this Parliament, as a member of the Labor Government elected in 1965, the first for many years.

Mr Shard gave long and distinguished service to the Parliament, to the union movement, to the Labor Party and to the people of South Australia in the numerous public offices that I have mentioned. He is survived by his wife Muriel, sons Bruce and Ross, five grandchildren and six great grandchildren. I am sure the Council would concur with me in expressing our condolences to them.

The Hon. R.I. LUCAS (Leader of the Opposition): I join with the honourable Attorney-General in supporting this motion. I say at the outset that I did not know the Hon. A.J. Shard personally, but other members and former members to whom I have spoken briefly in the past day or two who did know him have indicated that in their view he was a very fine Labor man—to use their phrase—who represented workers' interests very well in his long and distinguished career in the House of Assembly and then in the Legislative Council.

As the Attorney-General indicated, the Hon. A.J. Shard was one of that rare breed of politician who served first in the House of Assembly, or the Lower House, and then saw wisdom by coming to the Legislative Council and having a long and distinguished career of almost two decades in this place. He perhaps may well be a role model for someone else, although I note, as the Attorney indicated, that there was a gap of some nine years between his finishing his service in the House of Assembly and recommencing parliamentary service here.

He was also one of the rare breed of Labor members who sat in this Council during that period of the 1950s and 1960s when the numbers were comfortably—if one was on the conservative side of politics—16 to four. He was one of that magnificent four—in Labor Party terms—who served that Government of the mid 1960s when there must have been three Ministers and one backbencher sitting in this Chamber with 16 opponents. I guess the backbencher was the Whip and the seconder for all motions, who did not leave the Chamber on any occasion whilst the Ministers went and had cups of coffee or something. So, he certainly was a rare breed in having moved from one House to another and in having been a Labor member of this Chamber during what was obviously a very interesting period in this Council.

When one has a brief look at the two Address in Reply speeches that the Hon. A.J. Shard delivered in this Parliament, in 1944 in the House of Assembly and in 1956 in this Council, one sees the breadth of interest that he demonstrated on behalf of his constituents, whether it be in the House of Assembly or in the Legislative Council during that 20-year period. Certainly, to go through the debates of that era makes for very interesting reading.

The honourable member started off his first speech in this Parliament, in 1944, indicating his great commitment to developing the education interests of his constituents. He argued passionately about the fact that students living on the northern side of the railway line at Pooraka had their fares to school paid, but the students who lived on the southern side of the railway line at Pooraka had to pay their own way. I cannot understand why that was the case, but I would be interested to follow it up. Why the railway line at Pooraka was the dividing line in relation to the payment of fares—

The Hon. Diana Laidlaw: Perhaps they were country area students.

The Hon. R.I. LUCAS: As my colleague indicates, it may well have been the division between city and country in those days. However, when one looks at the problems of school transport in the 1980s and 1990s—or any form of transport, as my colleague the Hon. Diana Laidlaw can attest—times really have not changed in trying to get equity into school transport and into the transport system generally.

The Attorney talked about Mr Shard's service to the Bread Carters Union. The Hon. Bert Shard had a lot to say about the Industrial Code of the time and about industrial conditions, and he made a passionate contribution about workers compensation and much needed amendments at that time to the Workers Compensation Act.

He argued passionately that no workman should receive less while absent from work because of an accident met with during employment than he would have received had he not met with such an accident. The Hon. Bert Shard was not quite into gender neutral language, but he nevertheless argued the case of the 1940s for what he saw as an improvement in workmen's compensation. Again, I am sure that workers compensation and WorkCover will be a debate that dominates some of the weeks of this session.

Let me refer quickly to the Hon. Mr Shard's 1956 speech in this Council because there was one aspect that I just had to pick up. Perhaps my colleague the Hon. Diana Laidlaw will be interested in this matter. It was an interesting speech that touched on many issues, and at the end of it the honourable member said:

> Just outside Parliament House on King William Road buses are allowed to make a U turn; that should not be allowed.

He went on to argue a passionate case and obviously his point held sway because soon after buses had to go along North Terrace in a straight line rather than causing problems by undertaking U turns in front of Parliament House. Without going through all the other details of his 1956 contribution which, as I said, was a long contribution, indicating the breadth of the honourable member's interest in a whole range of matters that was of concern not only to him but also for those of his constituents, it supports the information given to me by colleagues and former colleagues that the Hon. Bert Shard was a fine Labor man who worked hard for the interests of workers in South Australia. I join with the Attorney-General in expressing my condolences to his family.

The Hon. J.C. BURDETT: I support the motion and extend my condolences to the family of the late Bert Shard. I am the only member now serving in this Chamber who had the privilege of serving with Bert Shard, who was one of nature's gentlemen: a thoughtful, kindly and compassionate person. I always enjoyed talking to him and I remember that, when I first came into this Chamber in 1973, he was the first member to call 'Question' on me. That devastated me completely at the time because I did not know what it meant. It is a practice that we seem to have departed from these days and I am not suggesting that it be reintroduced.

The only other member who ever called 'Question' on me was the Hon. Norm Foster. On the occasion to which I referred, I was, in explaining my question, reading fairly extensively and when the Hon. Bert Shard called 'Question', I did not know what he meant. At that time I sat where the Hon. Julian Stefani now sits and the Hon. Murray Hill, who sat in front of me, turned and said, 'You have to ask your question, John.' I did not mind that at all: it was perfectly legitimate.

I had the best of relationships with the late Bert Shard, and I am pleased that for some time after he left Parliament I did keep up with him when he came in here from time to time. I was always pleased to talk to him and his wife when she came in with him. I wish sincerely to join in the condolences being extended to the family of the late Bert Shard and to pay tribute to his parliamentary service.

Motion carried by members standing in their places in silence.

[Sitting suspended from 2.30 to 2.43 p.m.]

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. 18, 20, 25, 28, 31, 32, 41 and 44.

TOURISM EXHIBITION

18. The **Hon. DIANA LAIDLAW** asked the Minister of Tourism: In relation to the Exhibition 'Dreams, Destinations and Directions—The Changing Face of Tourism in S.A. 1990-92':

1. What was the cost to TSA of the consultancy awarded to 'Tertius' for the design and production of the wall display; of the display pieces designed and produced by Cameron Lewcock; and the production of the booklet accompanying the exhibition?
2. Was the consultancy awarded to 'Tertius' after tenders were called, and, if not, why not?
3. At what country centres is the exhibition to be displayed and what is the cost of the touring program, including room hire costs?

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

1. Tertius was paid $8 652.80; Cameron Lewcock $6 951.40; Rob van den Hoorn, a freelance journalist, $2 000 for research for the exhibition booklet; and Hilditch Design Company $6 170. Of the last amount $4 295 was for the design, production and printing of 5 000 copies of the exhibition booklet.
2. Tenders were not called for this consultancy. The exhibition concept was originally developed by a team including Tertius and Cameron Lewcock. Following their approach, TSA prepared a consultancy brief in order to determine a budget for the proposal. Since the costs submitted to TSA were reasonable, and because of the extensive experience Tertius, Cameron Lewcock and Mr van den Hoorn have in mounting exhibitions of this kind, TSA elected to proceed with the consultancy without calling for tenders.
3. An 18 month tour program is presently being organised by TSA. Plans are for the exhibition to visit all major South Australian regional centres including the Adelaide Hills, Eyre Peninsula, Yorke Peninsula, Kangaroo Island, Barossa Valley, Riverland, Murraylands, Fleurieu, Flinders Ranges, Mid North and Outback. Actual locations will depend on the availability of suitable display venues, free of charge.

The only cost involved in this program, which will be coordinated with the school year and finalised this month when the present exhibition is scheduled to close, is for transport of the free-standing exhibits. The Arts Council of South Australia is being approached to include these costs in its own touring program.

4. The staging of this exhibition complies with Objective 8 of the SA Tourism Plan 1991-93—'to improve the community's understanding of (and support for) the tourism sector of the economy'. The exhibition and booklet will actively promote community awareness of tourism and enhance the education processes at school level.

REDEPLOYMENT

20. The **Hon. L.H. DAVIS** asked the Attorney-General: What are the numbers of persons on the redeployment list of each of the Minister's departments and Government agencies and how many of these persons have been on the redeployment list for—

1. longer than 12 months
2. longer than six months?

The Hon. C.J. SUMNER:

The Attorney-General's Departments and agencies currently have no persons on the redeployment list.

25. **The Hon. L.H. DAVIS** asked the Minister of Tourism, representing the Minister of Health: What are the numbers of persons on the redeployment list of each of the Minister's departments and Government agencies and how many of these persons have been on the redeployment list for—

1. longer than 12 months.
2. longer than six months?

The Hon. BARBARA WIESE:

The number of persons on the SA Health Commission redeployment list is thirty eight.

Of this overall total eleven persons have been on the list for greater than 12 months and six persons have been on the list for greater than six months.

In addition to the redeployees listed above, the Department of Labour has three, Health Commission employees referred to it for redeployment purposes.

There are three Department for Family and Community Services employees on the redeployment list in the Department of Labour.

These employees have been on the redeployment list for over 12 months.

The Commissioner for the Ageing's Office does not have any employees on the redeployment list.

28. **The Hon. L.H. DAVIS** asked the Minister for the Arts and Cultural Heritage: What are the numbers of persons on the redeployment list of each of the Minister's departments and Government agencies and how many of these persons have been on the redeployment list for—

1. longer than 12 months?
2. longer than six months?

Department for the Arts and Cultural Heritage

Number of Persons on Redeployment List 6
Longer than 12 months .... Nil
Longer than 6 months 5

State Services Department

Number of Persons on Redeployment List .... Nil
Longer than 12 months .... N/A
Longer than 6 months .... N/A

Statutory Authorities

1. *South Australian Film Corporation*

Number of Persons on Redeployment List 4
Longer than 12 months .... Nil
Longer than 6 months 2

2. *Parks Community Centre*

Number of Persons on Redeployment List 2
Longer than 12 months 1
Longer than 6 months .... Nil

3. *West Beach Trust*

Number of Persons on Redeployment List 1
Longer than 12 months .... Nil
Longer than 6 months .... Nil

31. **The Hon. L.H. DAVIS** asked Minister for the Arts and Cultural Heritage, representing the Minister for Environment and Planning: What are the numbers on the redeployment list of each of the Minister's departments and Government agencies and how many of these persons have been on the redeployment list for—

1. longer than 12 months?
2. longer than six months?

The Hon. ANNE LEVY:

Department of Environment and Planning

1. 1.
2. 2.

Engineering and Water Supply Department

1. 1.
2. 2.

Department of Lands

1. Nil.
2. 3.

32. **The Hon. L.H. DAVIS** asked the Minister for the Arts and Cultural Heritage, representing the Minister of Employment and Further Education: What are the numbers of persons on the redeployment list of each of the Minister's departments and Government agencies and how many of these persons have been on the redeployment list for—

1. longer than 12 months?
2. longer than six months?

The Hon. ANNE LEVY:

Department of Employment and TAFE—Nil.
Office of Tertiary Education—Nil.
State Aboriginal Affairs—Nil.

RESEARCH STUDIES

41. **The Hon. R.I. LUCAS** asked the Minister for the Arts and Cultural Heritage: For each of the years 1990-91 and 1991-92 (estimated)—

1. What market research studies and consultancies (of any type) were commissioned by departments and bodies which report to the Minister for Environment and Planning?
2. For each consultancy—
   (a) Who undertook the consultancy;
   (b) Was the consultancy commissioned after an open tender and if not, why not;
   (c) What was the cost;
   (d) What were the terms of reference;
   (e) Has a report been prepared and if yes, is a copy of that report publicly available?

The Hon. ANNE LEVY: It should be noted that the approximate cost involved in the preparation of this response was $400 and time spent 35 hours.

Answer—1990-91:

Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
The Needs of Women & Girls for Environmental Information	Harrison Market Research	Yes	8 700	• assess the usefulness and accessibility of current information. • identify the most effective forms and methods of communicating environmental information to women and girls, including less advantaged groups. • provide guidelines on how to best change and improve access to and presentation of environmental information to women and girls, including less advantaged groups.	Yes
'Don't Muck up the Murray' environmental education campaign	McGregor Marketing	No—arranged through the department's advertising agency	4 850	• to monitor awareness and understanding amongst target publics of the educational campaign	Yes
Environmental Trail—Royal Show 1990-91	John Mitchell Public Relations 1990	No—selective tender	15 000	• to develop and implement the Environment trail at the Royal Show	Yes
	Turnball Fox Phillips 1991	No—selective tender	20 000	• gain promotional corporate support • arrange exhibitors for Trail • be responsible for design and printing of relevant promotional material	

Answer—1990-91:

Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
Computing Consultancy	Timothy Pietsch Consultancy	No—commissioned by negotiation	930	• update and modify existing general ledger and reports	No
Consultancy	Accountancy Placements	No—commissioned by negotiation	5 725.25	• revise and recommend changes to Departmental Project Management System	Yes, not publicly available
Consultancy	Jaix Systems Pty Ltd	Yes	1 251.25	• update and modify existing revenue/sundy debtor system	No
Hackney Deport Redevelopment Plan	Cielens and Wark	Yes	33 695	• preparation of a detailed landscape design plan and costing for consideration	Study not complete
Botanic Park Traffic Management Phase I	Maunsell Pty Ltd	Yes	70 467	• enhance landscape character while providing more explicit parking directions to improve safety and efficient use	Report prepared and used as basis for public consultation process
Mount Lofty Botanic Garden Car Park Assessment	Maunsell Pty Ltd	Yes	6 580	• consistent with the landscape character of Mt Lofty Botanic Garden and a continued policy to maintain the garden as a pedestrian precinct, an assessment of the effectiveness of existing car parks is required together with proposals for the need, location and size of any additional car parking space	Study not complete
Corporate Graphics and Sign Consultancy	Dinah Edwards Design	Yes	21 340	• provision of conceptual designs to the stage finished artwork for a corporate identity of: directional signs and major information centres, brochure title pages, advertising logos, institutional logos and stationery design.	Study not complete.
Hazardous Waste Management Study	Maunsell and Partners P/L	No—tenders sought from five organisations with relevant experience.	21 500	• preparation of a hazardous waste strategy.	Yes, publicly available.
	AGC Woodward-Clyde	No—appointed due to specialised expertise.	21 500	• review development application	Presented to SA Planning Commission.
Contaminated Sites Discussion (Green) Paper	Cole Associates	No—tenders sought from three organisations after seeking expressions of interest.	13 300	• preparation of green paper on legislative approach to contaminated land.	Yes, report released.
Le Fevre Peninsula Regional Risk	Industrial Risk Management	No—invited tender from a small number of Australian consultants with specialised experience.	98 500	• identification and assessment of the hazards of fire, explosion and toxic gas release.	Currently being printed. Yes, publicly available.
Remedial Options for the Australian Surfacing Contractors Site	Hosking, Oborn Freeman, Fox P/L	No—tenders sought from three organisations with relevant expertise.	47 000	• identify all practical opptions for the rehabilitation/decontamination of the site and the time period required for the implementation of such measures. • provide estimated costs of implementing the option(s) • prioritise the options in terms of feasibility of implementation; effectiveness; financial, social and environmental benefits/disbenefits. • recommended rehabilitation option(s) which the consultant would be prepared to promote within the community (durig the imlementation phase) in order to gain acceptance and support.	Yes, publicly available.
Contaminated Land—A South Australian legislative Approach (Summary Paper and Discussion Paper)	Cole and Associates P/L	Yes	32 500	• prepare a discussion paper which evaluates legislative options for the control, management and remediation of contaminated land in South Australia.	Report and Summary Report are publicly available.
Lower Lakes Marina Strategy	Eco Management Service P/L	No—tender to three firms with relevant expertise	10 000	• to provide baseline data on existing marina facilities around the Lower Lakes and examine the demand for marina and associated waterfront residential development in the region.	Yes, publicly available.

Answer—1990-91: Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
Zoning of Native Vegetation Study	Ms S Srinivasan	No—tender to three persons with relevant expertise	6 000	• to determine if the development plan zones provide appropriate and sufficient protection for areas of native vegetation of conservation significance in the State.	Yes, when included in supporting documentation for Supplementary Development Plans.
Financial Advisory—Major Projects	Mr G Hayter	No—specialist expertise required.	2 000	• to provide comprehensive financial advice to the Director-General and the Minister on selected major projects.	Report not publicly available.
Glenelg Traffic Study	Mr S Foley	No—only independent expert available	2 000	• review of changes to Glenelg EIS for traffic impact.	Incorporated into the department's Assessment Report which is publicly available.
River Flow and location of Murray Mouth	J Botting & Associates	No—one firm with relevant expertise	6 000	• determine the relationship between river flow and the migration of the Murray Mouth.	Yes, published article.
Bird Island Study	S Carruthers	Nó—tender to two persons with relevant expertise	$ 000	• to map vegetation changes on Bird Island over 40 years and enter data on GIS.	Data available.
Local Centres Study	Hassell Planning & Jones Lang Wootton	No—specialist expertise	5 000	• to investigate role of local centres.	Yes, publicly available.
1990-91 Population and Household Projections for Planning Review	Martin Bell	No—specialist task	23 500	• to provide data for Planning Review.	Yes, not publicly available.
Evanston Structure Plan	Planning Advisory Services (Gawler)	No—urgent time frame	2 500	• to resolve requirements for 1. siting of state primary schools, 2. open space linkages, 3. pedestrian linkages, 4. Local Centre—adequacy and requirements and accessibility to existing centres, 5. Road access points from Main North Road and from roads to the north, 6. provision of human services.	Yes, not publicly available.
Population Projection Study	J. Cooper	No—specialist task	6 400	• input to demographic modelling for DEP.	Yes, not publicly available.
Southern Metro Development Strategy (89/90)	Hassell Planning	No—offers sought from a number of firms	55 552	• to provide overview and data for Planning Review.	Yes, not publicly available.
Gawler River Floodplain SDP (89/90)	Lange, Dames & Campbell P/L	No—only qualified consultant	14 000	• to generate hazard maps for the floodplain which will materially improve policies directing the type and form of development in the area affected, which is the whole of the floodplain from the Gawler bypass to the coast, in the council areas of Light, Mallala and Munno Para.	Yes, publicly available.
Streetscape Research Project	B. Oswald	No—undertaken in conjunction with Federal Government Housing	50 000	• to develop a model for urban streetscape as a section of Australian Model Code for residential development.	Yes, publicly available.
Economics of Medium Density Housing	CSIRO	Yes	25 000	• study of the major economic and financial impediments to medium density housing.	Yes, publicly available.
Southern Metro Development Strategy	I. Miller	No—specialist required	13 606	• to develop a management system for Long Term Metro planning in Willunga.	Yes, publicly available.
Archaeological Survey	Austral Archaelogy	Yes	20 000	• archaeological survey—Loveday Internment Group.	Draft report available.
Heritage Advisory	D. Alexander	Yes	14 662	• Heritage Adviser, Burra	Yes, available.
	S. Weidenhofer	Yes	3 475	• Heritage Adviser, Gawler	Yes, available.
	B. Harry	Yes	11 708	• Heritage Adviser, Hahndorf	Yes, available.
	B. Harry	—extension of consultancy	7 500	• Conservation Study, Hahndorf Heritage Area	Yes, available.
	E. Vines	Yes	1 995	• Heritage Adviser, Port Adelaide	Yes, available.
	R. Woods	Yes	3 964	• Heritage Adviser, Goolwa	Yes, available.
Archaeological Survey	Austral Archaelogy	N/A—joint funding with Adelaide City Council	6 430	• archaelogical survey—Queens/Victoria Theatre	Yes, available.
Conservation Plan	LeMessurier	No—previous expertise	8 590	• Conservation Plan, Princess Royal Bridge, Burra	Yes, available.

Answer—1990-91: Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
	Walter Brooke andAssoc.	N/A—joint funding with Adelaide City Council	9 300	• Conservation Plan, 238 Rundle Street	Yes, available.
Architectural advice	LeMessurier	Yes	14 805	• architectural advice—Martindale Hall	Yes, available.
Conservation Plan	LeMessurier	—extension of consultancy	35 000	• Conservation Plan, Martindale Hall	Yes, available.
Tenancy Review	Ernst & Young	Yes	28 950	• tenancy review, Martindale Hall	Yes, available.
Enginnering Services	Norman Disney Young	Yes	1 700	• fire protection, Martindale Hall	Yes, available.
Wilpena Legislation Task Force	Michael Williams & Assoc.	No—specialist expertise	21 043	• consultancy work for Wilpena legislation	No, internal use.
Statewide Wilderness Management and Training	A. Sutherland	No—specialist skills	4 525	• draft Green paper for the proposed Wilderness Protection Act	No, internal use.
Wilpena Legislation Task Force	A. Sutherland	No—no association with major consultants as consultancy	1 755	• Wilpena Project	No, internal use
Wilpena Station Project	Jennifer Richardson Public Relations	No—specialist skills	26 907	• Communication strategy preparation and subsequent consultancy, activity regarding Wilpena legislation	No, internal use
Fauna valuation Kangaroo Island	G. Turner	No—local specialised knowledge required	800	• Value of yakka bushes for Heritage Agreement	No, private landowner valuation
Pitjantjatjara Land Rights Act Anniversary	J. Dalwitz	No—special skills, knowledge and prior involvement	1 000	• Collect photos and prepare display	Public display only
Archaeological Dating—Koonalda	Australian Heritage Studies	No—required prior involvement	12 800 (funded by DASETT)	• Thermo Luminescence dating at Koonalda	Report will be available when completed
'A Study of Para Wirra Recreation Park—It's Usage by Park Visitors'	S.J. Suter	NPWS approached by South Australian Recreation Institute	5 000	• determine whether the Park satisifies the needs and expectations of park visitors in relation to the facilities, services and managerial setting. • analyse park usage in relation to residents of Adelaide's northern catchment areas and ascertain the reasons for residents either using or not using the park.	Yes, publicly available
Mount Lofty Ranges—Management and Development Incentives Study	PPK Consultants/Cole Association/Hall Consulting	No—select tender amongst five qualified consultants	30 000	• review existing legal expositions on the rights of landowners to use and develop land • review and evaluate elaternative mechanisms for encouraging the amalgamation of allotments in rural areas, encouraging the rearrangement of the distributon of allotments to achieve the objectives of the plan, and limiting user expectations of alternative development options on rural land allotments. • to examine alternative means, and their implications, for providing incentives or compensation to those affected. • to make recommendations in respect of providing complementary arrangements for achieving policy objectives	Yes, copy can be inspected
Trends in South Australian Maximum Temperature Records	Bureau of Meteorology	No—the Bureau interviewed three graduate stisticians	4 470	• whether or not evidence exists in South Australia for climate change through assessment of maximum temperature records for seleted stations throughout the State.	Yes, publicly available • a basis of understanding on which future monitoring of climate change could proceed; • the worth of proceeding to analyse other possible climatic parameters.
Impact of Climate Change in South Australia	R. French	No—tenders waived due to expertise and previous involvement	2 000	• develop an understanding of the possible impacts of global warming on the productivity of agriculture in South Australia	Yes, publicly available

Answer—1990-91: Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
Community consultation program for the Chowilla region of the River Murray	L. Delroy	No—tenders waived due to wide experience.	35 000	• liaise with local community groups in organisation of public meetings • prepare newsletters and factsheets for circulation to all those who responded to the 1988 EIS. • provide liaison between MDBC's Chowilla Work Group and community groups. • prepare a report for the Commission containing community and Chowilla Working Group recommendations for the management of Chowilla.	Draft report is the property of the Murray Darling Basin Commission.
Organisation of the process of the Chowilla community consultation program	Cogent Consultants	No—tenders waived due to expertise.	15 000	• advise on the form the consultation process should take, • act as facilitators or chairpersons at public meetings and at meetings with community groups as required.	No
Rangeland management teaching and research	Dr R.T. Lange	No—tenders waived due to only qualified consultant available.	29 292	• assist with the preparation of Newsletters. • conduct teaching courses on rangeland science at the University of Adelaide and other tertiary institutions from time to time; • initiate cooperative teaching and research programs between various tertiary institutions and relevant goernment agencies, • maintain the teaching and research program of the Middleback Field Station, • disseminate research findings through publications and extension work, including field days for pastoralists and pastoral land administrators. • in cooperation with pastoral land care interests, work towards the establishment of a formally constituted pastoral lands research and educatinal institute.	1990-91 quarterly reports, not publicly available. (See 1991/92)
Proposed Environmental Protection Authority	Ms J. Melville	No—special expertise and experience required. Also prior involvement.	8 000 (initial cost) 22 000 (Stage 2)	• assist in the development of the proposal for a South Australian Environmental Protection Authority and the prearation of drafting instructions for new environmental protection legislation. • identify and advise on inter-agency issues arising from the EPA proposals including reulatory and resource issues between affected agencies. • undertake public consultation on behalf of the Department including reporting back and making recommendations on matters arising from discussions and submissons. • make proposals for the detailed implementation of policies proposed to be undertaken by the Environmental Protection Authority.	Work proceeding towards draft legislation.
Consultancy	Timothy Pietsch	No—commissioned by negotiation.	5 000	• update and modify existing general ledger and reports in line with new Treasury guidelines.	No.
Constultancy	Accountancy manpower	No—commissioned by negotiation. Consultants performed identical tasks at the Dept. of Lands.	8 500	• install and monitor the conversion of manual leave records to the computerised Austpay Leave Module.	No.
Revenue/Sundry Debtor System	Jaix Systems Pty Ltd	Yes—commissioned previously	1 100	• update and modify existing Revenue/Sundry Debtor System.	No.
Accounting System	Accountancy Manpower	No—commissioned by negotiation.	5 000	• review viability of Cobba Fast Accounting System	Report to be completed. Not publicly available.
Botanic Park Traffic Management Phase II	Maunsell Pty Ltd	Yes	20 850	• see 1990/91	Study not begun.

Answer—1990-91: Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
Hazardous Waste Management Strategy	Sinclair Knight and Partners	No—tenders sought from six organisations after seeking expressions of interest.	30 700	• siting options study for secure waste repository.	To be publicly released.
Waste Management Studies	John Stanley and Assoc P/L	No—request by John Stanley to support National Kerbside Recycling Scheme Task Force	400.00	• investigate cost of collecting recyclables at the kerbside.	Report available to Task Force members.
Groundwater Monitoring Plan	AGC Woodward Clyde	No—three organisations invited invited to submit tenders.	15 600	• evaluate existing groundwater monitoring programs.	Report available.
Discussion Paper: Contaminated Sites	Cole and Associates	No—tenders sought from three organisations after seeking seeking expressions of interest.	6 500	• preparation of Green Paper on legislative approach to contaminated land.	Report released for public comment.
Local Government Waste Composition Studies	AMDEL	No—invited tender due to previous involvement.	12 800	• carry out a domestic waste composition study.	Report available.
Commercial and Retail Waste in CBD	Chung Shan Shan University of Adelaide	No—grant to university student for research.	1 100 550	• investigate recycling opportunities in CBD of Adelaide.	Report received.
Murray Mouth Littoral Drift Study	J. Chappell	No—tender to two persons with relevant expertise.	16 000	• determine the relationship between littoral drift and the migration of the Murray Mouth.	Yes, to be made publicly available.
Retailing Data Base	Hassell Planning and Jones Lang Wootton	No—a number of offers were sought.	23 000	• to develop a data base for the strategic planning of retailing in Adelaide metro.	Yes, currently being completed.
Burbridge Road Master Plan Project Study	Land Systems EBC	Yes	35 000	• creation of urban design concepts and guidelines for the redevelopment of Burbridge Road from Tapleys Hill Road to the Hilton Bridge.	Still to be completed.
SDP/DCP Procedures Study	Sandy Rix	No—qualified expertise required	11 750	• identify alternative SDP/DPC procedures, including amendments to the Planning Act which could be recommended to the Planning Review in order to significantly reduce the time to amend statutory development control policies	Yes, not completed.
River Murray Houseboat Study	G. Gaston	Yes	15 000	• collection of information of houseboats on the River Murray and formulation of policy	Yes, not completed
Office Development Study	Hassell Planning and Jones Lang Wootton	Yes	30 000	• develop a data base for the strategic planning of offices in Adelaide	Report in progress
Industrial Land and Employment Study	Planning Advisory Services	Yes	35 000	• develop a data base for the strategic planning of industry in Adelaide	Not completed
Anzac Highway Environ	Department of Road Transport	No, department provided services at labour cost only	30 000	• landscape guidelines for Anzac Highway redevelopment	Yes, not completed
Continuation existing consultancy	Austral Archaeology	Yes	13 500	• see 1990-91	Draft report completed
Continuation existing consultancy	D. Alexander	Yes	20 000	• see 1990-91	Yes
	S. Weidenhofer	Yes	7 836	• see 1990-91	Yes
	B. Harry	Yes	17 360	• see 1990-91	Yes
	E. Vines	Yes	15 000	• see 1990-91	Yes
	R. Woods	Yes	4 286	• see 1990-91	Yes
Heritage Advisory	J. K. Hawke	N/A—in conjunction with Clare D.C.	4 272	• Heritage advisor, Mintaro	Yes
Conservation Study	B. Rowney	No—limited expertise in SA	1 985	• Conservation study, Bridge, Hamley Bridge	Yes
Management Consultancy	B. Westhoff	No—urgency of work/already working in area	7 500	• Management—'Bangalore' Renmark	Yes

Answer—1990-91: Market Research Study/Consultancy	Consultant	Open tender (yes/no)	Cost $	Terms of Reference	Report prepared/available?
Architectural advice continuation existing consultancy	LeMessurier	Yes	5 000	• see 1990-91	Yes
'Waterfall Gully Kiosk/Restaurant—Economic Feasibility Study'	Pannell Kerr Forster	No—qualified consultant required	3 400	• review from information provided, the economic viability and operation of the Kiosk/Restaurant, given its requirement to service current and future visitor needs	Report provided to lessee of park. Not publicly available
'Morialta Conservation Park Visitor Survey'	Department of TAFE	No—TAFE approached NPWS	Nil	• interview a selected number of park visitors as part of a student marketing course	No report to date
Rangeland management teaching and research	Dr R.T. Lange	No—see 1990-91	29 292	• see 1990-91	Yes 1992, publicly available
Chowilla floodplain salinisation assessment	McGregor Marketing P/L	No—tenders waived due to expertise required	4 900	• undertake assessment of the environmental economic values of the Chowilla floodplain salinisation problem	Not completed

44. The **Hon. R.I. LUCAS** asked the Minister for the Arts and Cultural Heritage: For each of the years 1990-91 and 1992-92 (estimated)—

I. What market research studies and consultancies (of any type) were commissioned by departments and bodies which report to the Minister?

II. For each consultancy—

(a) Who undertook the consultancy;

(b) Was the consultancy commissioned after an open tender and if not, why not;

(c) What was the cost;

(d) What were the terms of reference;

(e) Has a report been prepared and if yes, is a copy of that report publicly available

The Hon. ANNE LEVY:

DEPARTMENT FOR THE ARTS AND CULTURAL HERITAGE—CONSULTANCIES—1990-91

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
State Library	Marketing of 'Waterfall' Paper Conservation Process	Holden Edgecombe Holt	No—Selected for known expertise in the area	5 345	Internal report	To investigate marketing potential for Paper Conservation process to develop marketing plan
State Library	Public Library Social Justice Policy	Miller and Mahon Sarkissian Assoc.	No—Selected for known expertise	1 000 2 125	Report to the Libraries Board available on demand	To survey children's book collections in public libraries and to assess the provision of materials which support Social Justice strategies. To devise a draft policy on Social Justice for the consideration of the Libraries Board
State Library	Investigation of State Conservation Centre fumigation process	AMDEL Environmental Services	No—Known expertise	250	Internal use	Preliminary examination of chemicals used by S.C.C. in fumigation process for possible harmful effects (Monitoring subsequently conducted by Health Commission at no cost
S.A. Film Corporation Department for the Arts	Review of S.A. Film Corporation	KPMG Peat Marwick	Yes	30 000	Report not publicly available	To undertake an examination of the Corporation's reorganisation requirements and management structure, with a view to reassessing the Corporation's resource requirements in both human and financial terms

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Department of Local Government	D.C. of Stirling investigations	Geoff Whitbread	No—Known expertise	732.75 (final payment 1989-90 investigation)	Yes—Report available to the public	To investigate and report on the matters as set out in the instrument of appointment concerning the D.C. of Stirling
Department of Local Government	Dry areas policy	Miller Mahon	No—Known expertise	14 000	Not applicable	To produce a booklet for distribution to local councils and the community to publicise the Government's Dry Areas Policy and Local Government's role
State Library	Review of State Library Services	FEM Enterprises	No—Known expertise	3 950	Not applicable	Contribution to and facilitation of consultative processes for review of State Library services and programs
Department for the Arts and Cultural Heritage	Computer Systems implementation for Arts Division	Integrated Systems Research	No—Selected for known expertise	2 850	Yes—Internal report available	To establish a path for the future computing requirements of the Department following the merging of the two Departments of Arts and Local Government To consider the maximum utilisation of existing equipment
Department for the Arts and Cultural Heritage	Executive training and development	Competitive Advantage Pty Ltd	No—Tested expertise	7 375	Not applicable	'The Leadership Challenge' training sessions for Departmental Senior Executive Officers
Department of Local Government	Swimming pool legislation	Kay Hannaford & Associates	No—Known expertise	500	Internal use only	Community awareness strategy—Swimming Pool Legislation
Regional Cultural Council	Review of exhibition spaces in country areas of S.A.	Julian Bowron	No—Due to urgency of work and restricted time frame	17 479	No—Report prepared to the Arts Finance Capital Grants Committee. Copies circulated to Regional Cultural Trusts and Central Regional Cultural Authorities	Identify existing building at a major centre within each of the 5 regions with the potential to be upgraded at reasonable cost to receive touring exhibitions and qualify as a Category B venue Identify up to 6 existing buildings at other appropriate population centres throughout each region which warrant upgrading to Category C venues Recommend on improvements to achieve upgrading required above • Rank improvements in order of priority and formulate a program for their implementation over 3-5 years

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
South East Cultural Trust	Building Review—Riddoch Art Gallery	P. Sanders Pty Ltd	Yes—But restricted to Architects with Art Museum expertise	7 800	Report available	Stage 1: Background investigation and compiling a brief Stage 2: Consultation in Mount Gambier—investigation of conditions of building, desirable Museum options, space requirements Stage 3: Preparation of Report (including preparation of drawings and costed programs for the development of the Gallery
S.A. Museum	'Return of Secret/ Sacred Objects'	Geoff Bagshaw	No—Selected for known expertise	7 500	Report prepared for Museum Board not publicly available	Investigate nature of secret/sacred objects in collection of S.A. Museum Undertake field work in Central Australia to locate and consult with appropriate traditional custodians about sacred objects relevant to them and to their groups Arrange for the return of particular objects in an appropriate manner
Local Government Services Bureau	Library Services Review	Miller and Mahon Consulting and Marketing	No—Selected from a list of candidates with similar expertise	21 490	Report has been circulated to public libraries and may be available on demand	Identify the need for and the benefits of centralised services for public libraries (including school/ community libraries) Review range and quality of existing centralised services, identify alternative centralised systems and estimate services under options put forward against present services provided by the Bureau
Art Gallery of South Australia	Publicity	Christopher Rann & Assoc. Pty Ltd	No—Known expertise	5 320	Not applicable	Promotion of the Art Gallery and its exhibition
Art Gallery of South Australia	Advertising	Bottomline Pty Ltd	Yes	12 870	Not applicable	Appointed for a 2 year period to assist in design production of exhibition catalogues/slogans etc.
Artlab Australia	Artlab's Business Development Program	Bowe Marketing and Communications	No—Consultancy commissioned after search by John Clements Consultants Pty Ltd acted as selection agency	47 000	Report presented to Cabinet, October 1991 (not publicly available)	Investigate Artlab's commercial opportunities and performance in the light of identified markets Commence to pursue key markets Performance report after 3 months and 12 months by Business Advisory Committee
Local Government Advisory Committee	Public participation in Local Government boundary changes	Wendy Bell	No—Known expertise	3 144	Guidelines submitted to Commission for consideration	To prepare guidelines for use by the Local Government Advisory Commission and Local Government with regard to community involvement in the preparation of proposals for boundary changes in Local Government

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Department of Local Government (in association with Australia Council and Commonwealth Office of Local Government)	Local Government's role in Arts and Cultural Development	Rachel Fensham	Yes	1 680 (DLG share of cost)	The report has been published and is publicly available	To prepare a presentation and Slide Kit on the findings of the report 'Local Government's role in the Arts and Cultural Development'
State Library	Reformation of State Library's Services	Miller Mahon	No—Known expertise	4 340	Summary report for internal use	Facilitating State Library group consultative meeting and public consultations as part of the process of developing the new strategic directions of the State Library
Adelaide Festival Centre Trust	Les Miserables	Harrison Market Research	No—Tenders requested from 3 Marketing Research Co. in previous year — to be reviewed 1991-92 —Research needed at short notice	1 250	Research undertaken is for management purposes and not available to the public	Determine public's awareness of the production and awareness of advertising campaign
Adelaide Festival Centre Trust	The King and I	Harrison Market Research	No—As above	4 200		To establish what elements of the production and its marketing campaign caused an excellent sales response prior to the opening of the production
Adelaide Festival Centre Trust	Space Cabaret	Harrison Market Research	No—As above	5 200		To establish why attendances in the 1990-91 season reduced dramatically compared with the previous year

STATE SERVICES DEPARTMENT—CONSULTANCIES—1990-1991

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
		Nil Return				

LOCAL GOVERNMENT GRANTS COMMISSION—CONSULTANCIES—1990-1991

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Local Government Grants Commission	Stormwater Drainage Disability Factors	B. C. Tonkin and Associates, Consulting Engineers	No—Consultant has known expertise	6 500	Yes—Report publicly available	To carry out a study of the Stormwater Drainage Disability Factors inherent in Local Government Areas

LOCAL GOVERNMENT SUPERANNUATION SCHEME—CONSULTANCIES—1990-1991

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Local Government Superannuation Scheme	Review of Local Government Superannuation Board's Investment Strategy	Towers, Perrin, Forster & Crosby	No—Consultant a leading national consultancy firm	25 000	Yes—Not avaiable publicly due to confidential nature of commercial financial information	Review of current investment arrangements and the performance of the various managers Specification of appropriate investment objectives for the Board in order to highlight various return/risk tradeoffs Formulation of an investment strategy which would satisfy the above objectives and determination of investment arrangements for implementation of the strategy Assistance in the selection of appropriate fund managers and the preparation of manager mandates for each manager

PARKS COMMUNITY CENTRE—CONSULTANCIES—1990-91

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Parks Community Centre	Corporate Planning for Parks Community Centre	Needham Consulting Group	No—4 quotations were sought. Consultant has known expertise	45 253	No—Summary available. Report not generally available	To design, advise on, and supervise the process for Corporate Planning at the Centre
Parks Community Centre	Parking Systems and Traffic Movement within Parks Community Centre	Murray F. Young and Associates	No—2 quotations were sought. Consultant has known expertise	5 500	Yes—Report publicly available	Advice on parking problems and systems, and traffic movement within the main car parks and confines of the Centre
Parks Community Centre	Corporate Planning and Staff Training and Development for Parks Community Centre	Margaret Hypatia and Associates	No—4 quotations were sought. Consultant has known expertise	22 000	Yes—Report not publicly available	To facilitate work within sections of the overall Corporate Planning Strategy and to review staff training and development needs

WEST BEACH TRUST—CONSULTANCIES—1990-91

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
West Beach Trust	West Beach Recreation Reserve Irrigation Systems	Hydro Plan	No—Consultant selected after discussion with TAFE College and golf clubs which had installed automatic watering systems	11 887	Yes—Publicly available subject to commercial considerations	To provide an overview of the current irrigation systems installed on the West Beach Recreation Reserve and to make recommendations on a compatible upgrading of all systems
West Beach Trust	Tourist Accommodation Units—Expansion Market Demand Analysis prepared by Tourism South Australia	KPMG Peat Marwick	No—Consultant commissioned after calling of selected tenders from particular organisations conversant with tourism projects	28 500	Yes—Publicly available subject to commercial considerations	To expand on the market demand analysis prepared by Tourism South Australia and to make a recommendation on the types of accommodation unit and associated facilities that should form part of a redevelopment of the former Marineland site

DEPARTMENT FOR THE ARTS AND CULTURAL HERITAGE—CONSULTANCIES—1991-92

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Art Gallery of South Australia	Promotion of major exhibition	Christopher Rann and Associates Pty Ltd	No—known expertise	5 000	Not applicable	Promotion of 'Zones of Love' Exhibition
	Advertising/publicity support to the Gallery	Bottomline Pty Ltd	Yes	6 000	Not applicable	To assist Gallery in design of Exhibition catalogues and related tasks
Artlab Australia	Artlab's Business Development Program	Bowe Marketing Services Pty Ltd	No—Selection by John Clements Consultants Pty Ltd	33 500	No report prepared at this stage	Continuation and extension of 90-91 Program
Arts and Cultural Heritage	Business Plan for Mercury Cinema	KPMG Peat Marwick	No—Information required urgently	15 000	Report will be prepared for internal use and for the benefit of the Media Resource Centre	To develop a 3-5 year business plan for the Cinema in association with the Media Resource Centre and the Department
State Library	Library Publicity	Kay Hannaford & Associates	No—Known expertise	3 237	Not applicable	Publicity for North Terrace Library Services
S.A. Museum	Review and assessment of Swanport Collection	Dr Steve Webb	No—No other person available in Australia met requirements of the job	9 000	Reports prepared for the Board are not for publication as they are the bases of discussions with Aboriginal communities	To review and assess the S.A. Museum's Swanport Collection of human remains To review and assess other relevant remains from the Lower Murray River region of S.A To advise on collection related matters including consultations with Aboriginal people over requests for return of remains
State Theatre Company	Survey of Theatre subscribers and single ticket buyers	Harrison Market Research	No—Known expertise and time limitation	11 000	Report on the qualitative research has been completed and is available for legitimate public inquiry. The quantitative phase is not completed	To survey both subscribers and single ticket buyers according to qualitative and quantitative market research techniques and produce comprehensive reports on each of these stages
Local Government Services Bureau	Advisory services on local government matters	M.K Davis	No—Known expertise	8 670	Not applicable	To provide research and advise on matters referred by the Director of the Bureau, including the exercise of statutory delegations under the Local Government Act, serious complaints against councils, allegations of conflict of interest and processing of By-Laws To prepare draft correspondence for the Minister or the Management Committee

DEPARTMENT FOR THE ARTS AND CULTURAL HERITAGE—CONSULTANCIES—1991-92

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Local Government Services Bureau	Analysis of PLAIN Enhancement Project	M.R. Brunker	No—Known expertise	7 000	Not applicable	To provide an analysis of the PLAIN Enhancement Project
S.A. Film Corporation		Mr Paul Davies	No—Specific expertise required	10 000	Internal report not available publicly	To estimate the financial impact on the SAFC of appointing an external distribution agent to distribute the back catalogue as compared to continuing to distribute in its own right, and advise on improving the efficiency of the accounting service Examine the running of the Studio and suggest future marketing possibilities; cost efficiency cut backs; upgrading and other relevant areas
Cultural Promotions Unit	Develop marketing plan for Cultural Promotions Unit	R. Dent	No—Selective tender requirement to marketing consultant with experience and credibility in Arts Sector	50 000	Report on completion of consultancy	To develop and implement a marketing plan for Cultural Promotions Unit
State Library of S.A.	Publicity and promotions	Not selected	Selective tender	Not yet decided but around 35 000		To promote the State Library's role, services and collections
Divisional Reviews Statutory Authority Review Regional Review	External people to bring unique perspectives to major Departmental Program Reviews	Various	No—Known expertise	27 000	Reports expected to be published	To review the effectiveness and efficiency of Departmental Divisions and Programs
Film Industry Working Party	External people to bring unique perspectives to major Departmental Program Reviews	Various	No—Known expertise	10 000	Report will be prepared for internal use	Develop strategy for the industry to consider options for its future structure and funding options. Consider options for the future of the Government Film Fund
Artform Funding	External people to bring unique perspectives to major Departmental Program Reviews	To be finalised	No—Known expertise	10 000	Report will be prepared for internal use	Prepare a discussion paper on the future directions and funding options for the art forms

STATE SERVICES DEPARTMENT—CONSULTANCIES—1991-92

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
State Supply	Market research	Anne Matthews Market Research	No—Known expertise of consultants and limited cost of study	2 200	Yes—Not available to the public due to the confidential nature of the results	Customer attitudinal exploratory study

LOCAL GOVERNMENT GRANTS COMMISSION—CONSULTANCIES—1991-92

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Local Govt Grants Commission	Provision of quantifiable indicators of non-resident activity in Local Government areas	The Centre for Economic Studies, N.J. Thomson and J. Molloy	No—Consultant has known expertise	5 000	Yes—Report publicly available	To provide quantifiable indicators of non-resident activity in Local Government areas and hence the basis for the calculation of disability factors reflecting any relative costs (or benefits) from that activity Identification of expenditure functions to which any disability factors should be applied

PARKS COMMUNITY CENTRE—CONSULTANCIES—1991-92

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
Parks Community Centre	Corporate planning workshops	Margaret Hypatia & Associates	No—Extension of 1990-91 consultancy	3 000	No	To facilitate corporate planning workshops
Parks Community Centre	Marketing Strategy	Clemenger	No—Consultant engaged directly as a result of their work on the Management Development Program of the Department of the Premier and Cabinet	1 000	No	Advice to centre on marketing strategy
Parks Community Centre	Corporate Planning	International Pacific Consulting	No—Consultant has known expertise	9 000	Yes—Will be publicly available	Review of Corporate Planning process and outcomes for 1990-91 and advice on the strategic directions to be undertaken for 1991-92 (extension of work carried out by Needham Consulting Group in 1990-91)
Parks Community Centre	Staff Training and Development Program	Department of the Premier and Cabinet—Training and Development Unit	No—Training and Development Unit of Department of the Premier and Cabinet engaged as an extension of their earlier work at the Centre with their Management Development Program	17 000	No	To prepare and deliver a Staff Training and Development Program for the Centre covering management and operator levels

Body	Consultancy	Name of Consultant	Open Tender Yes/No Reason	Cost $	Report	Terms of Reference
West Beach Trust	Tourist Accommodation Units—Financial Analysis of recommendations contained in KPMG Peat Marwick's 1990-91 Consultancy Report	KPMG Peat Marwick	No—Consultant provided previous report	10 400	Yes—Publicly available subject to commercial considerations	To expand on previous report by providing a Financial Analysis of their recommendations

PUBLIC WORKS COMMITTEE REPORTS

The PRESIDENT laid on the table the following interim reports by the Parliamentary Standing Committee on Public Works:

Rehabilitation of Moorook Irrigation Area,

RN 5409 Montague Road Extension, Port Wakefield to Main North Road,

Salisbury Highway—South Road Connector, Port Wakefield Road to Grand Junction Road.

The PRESIDENT laid on the table the following reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Elizabeth College of Technical and Further Education—Salisbury Campus Redevelopment,

Golden Grove Primary School—Third School,

Golden Grove Shared Facilities and Multi-Purpose Community Centre (Stages III, IV and V),

Port Adelaide College of Technical and Further Education—Redevelopment,

Smithfield East Primary School,

The Queen Elizabeth Hospital—Redevelopment of Alfreda Rehabilitation Centre.

The PRESIDENT laid on the table the following final reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Rehabilitation of Moorook Irrigation Area,

RN 5409 Montague Road Extension, Port Wakefield Road to Main North Road,

Salisbury Highway—South Road Connector, Port Wakefield Road to Grand Junction Road.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—

Reports, 1990-91—
- Children's Court Advisory Committee
- National Crime Authority
- Police Superannuation Board
- South Australian Occupational Health and Safety Commission
- WorkCover Corporation.

South Australian Finance Trust Limited—Accounts and Statutory Reports, 30 June 1991.

Rules of Court—
- Local and District Criminal Courts Act 1926—
  - Local Court Rules—Freedom of Information.
  - District Criminal Court Rules—Confiscation of Profits.
  - Supreme Court Rules—Services of Processes.

Regulations under the following Acts:
- Boating Act 1974—
  - Hire and Drive (Amendment).
  - Mannum Zoning.
  - Pyrotechnics and Fees.
  - Fees Regulation Act 1927—Appointment Fees.
  - Lottery and Gaming Act 1936—Expiration Extension.
- Occupational Health, Safety and Welfare Act 1986—Asbestos—Building Owner Duties.
- Parliamentary Superannuation Act 1974—Prescription of Offices.
- Shop Trading Hours Act 1977—Trading Hours.
- Stamp Duties Act 1923—General.
- Subordinate Legislation Act 1978—
  - Exemptions from Expiration.
  - Publication of Regulations.
- Summary Offences Act 1953—Tyre Dealer Exemption.
- Superannuation Act 1988—Commutation Option.
- Trustee Act 1936—
  - A.E.F.C. Ltd.
  - Sun Alliance Mortgage Insurance Ltd.
- Unauthorized Documents Act 1916—State Badge and Emblem.

By the Minister of Corporate Affairs (Hon. C.J. Sumner)—

Corporate Affairs Commission—Report, 1991.

By the Minister of Tourism (Hon. Barbara Wiese)—

Reports, 1990-91—
- Australian Agricultural and Veterinary Chemicals Council.
- Harness Racing Board.
- Port Pirie Development Board.
- Department of Recreation and Sport.
- South Australian Centre for Manufacturing.

Australian Agricultural Council—Record and Resolutions of the 136th Meeting, 2 August 1991.

Australian Fisheries Council—Resolutions of the 21st Meeting

Australian Industry and Technology Council—Summary of Proceedings, 1990-91.

Australian Soil Conservation Council—Record and Resolutions of the 7th Meeting, 2nd August 1991.

Citrus Board of South Australia—Report, year ended 30 April 1991.

Racing Act 1976—Rules—
- Bookmakers Licensing Board—General.
- Greyhound Racing—General.
- Harness Racing—General.

Adelaide Medical Centre for Women and Children—By-laws—General

Architects Act, 1939—By-laws—Fees and Registration.

Metropolitan Taxi-Cab Act 1956—Applications to lease.

Regulations under the following Acts:
- Dentists Act 1984—Dental Technician.
- Fisheries Act 1982—Marine Scalefish Fishery—Licence Transferability.
- Housing Co-operatives Act 1991—General.
- Opticians Act 1920—Certificate Fee.
- Petroleum Act 1940—Fees.
- Physiotherapists Act 1991—General.
- Radiation Protection and Control Act 1982—
  - Transport of Radioactive Substances.
  - Ionizing Radiation—Radiation Workers.
- Seeds Act 1979—Seed Analysis Fees.
- South Australian Health Commission Act 1976—
  - Compensable Patient Fees.
  - Entitlement Cards.
  - Hampstead Centre.
  - Non-concessional Patient Fees.
  - Regional Hospital Beds.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—

Regulations under the following Acts:
- Commercial Tribunal Act, 1982—
  - Applications and Orders.
  - Hearings or Default Orders.

Land Agents, Brokers and Valuers Act 1973—Education Program Fund.
Landlord and Tenant Act 1936—Commercial Tenancies.
Liquor Licensing Act 1985—Liquor Consumption—
Adelaide.
Glenelg.
Port Adelaide.
Port Lincoln.
Public Places.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—
Reports 1990-91:
Aboriginal Lands Trust
The Flinders University of South Australia.
Industrial and Commercial Training Commission.
Native Vegetation Authority.
Northern Cultural Trust.
Regulations under the following Acts:
Building Act 1971—Building Code.
Clean Air Act 1984—Refuse Burning.
Industrial and Commercial Training Act 1981—Engine Reconditioning Contracts.
Metropolitan Taxi-Cab Act 1956—
Issue of Renewal Fees.
Private Hire Fees.
Motor Vehicles Act 1959—Historic Vehicles.
Pastoral Land Management and Conservation Act 1989—Noxious Insects.
Planning Act 1982—Development Central—Tourist Accommodation.
Technical and Further Education Act 1975—Subjects and Examinations.
Metropolitan Taxi-Cab Act 1956—Applications to Lease (2).

By the Minister for Local Government Relations (Hon. Anne Levy)—
Beverage Container Act 1975—Regulations—Point of Sale Return
Local Government Act 1934—Regulations—
Freedom of Information Fees.
Member Expenses.
Parking.
Corporation By-laws:
Adelaide:
Amendment No. 1—Street Traders.
No. 5—Trishaws.
No. 11—Newsboys.
No. 14—Encroachments.
Elizabeth:
No. 1—Permits and Penalties.
No. 2—Streets and Public Places.
No. 3—Park Lands.
No. 4—Flammable Undergrowth.
No. 5—Aquadome.
No. 6—Animals and Birds.
No. 7—Dogs.
No. 8—Bees.
No. 9—Repeal of By-laws.
West Torrens:
No. 11—Dogs.
Thebarton:
No. 1—Permits and Penalties.
Wallaroo:
No. 1—Permits and Penalties.
No. 2—Vehicle Movement.
Lower Eyre Peninsula:
No. 9—Repeal of By-laws.
Onkaparinga:
No. 3—Garbage Containers.
Tumby Bay:
No. 25—Animals on Foreshore.
No. 27—Camping Reserve.
No. 28—Bread.
No. 30—Non-resident Traders.
No. 31—Port Neill Camping Reserve.
No. 32—Traffic.
No. 33—Lighting of Fires.
No. 34—Tumby Bay Boats.
No. 35—Port Neill Boats.
No. 26—Re-zoning.
No. 39—Animals and Birds.
Yankalilla:
No. 32—Vehicles.
Yorketown:
No. 2—Streets and Public Places.
No. 5—Camping Reserves.
No. 7—Animals and Birds.

By the Minister of State Services (Hon. Anne Levy)—
Freedom of Information Act 1991—Regulations.

OPERATION HYGIENE

The Hon. C.J. SUMNER (Attorney-General): I seek leave to table a report dated February 1992 from the Commissioner of Police and the Minister of Emergency Services into alleged criminal activity by certain members of the South Australian Police Force. This is the final report into Operation Hygiene, and has been tabled in another place by the Minister of Emergency Services.

Leave granted.

QUESTIONS

COMPUTER SYSTEMS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about computer systems for schools.

Leave granted.

The Hon. R.I. LUCAS: My office has been contacted by several constituents who are concerned about decisions to install an overseas-made computer system in primary schools. They say that the system could cost up to three times that of a locally developed system, which has been specifically developed for primary school use in South Australia.

Material supplied to the Opposition shows that an Adelaide Hills primary school has been provided with a $29 000 quote for an American-made Dynix System 23 computer library management system. The quote covers Dynix hardware, peripherals for the school's primary and junior primary sections, communications and service and supplies.

I also have a quote for the Education Department-developed library management system, called Book Mark, that shows a similar system could be installed in a school for between $7 000 and $12 475, depending on the number of workstations needed by the school.

Among the many endorsements from South Australian schools of the Book Mark system is the following comment from Angle Vale Primary School, 'Students use our public access workstation heavily. Previously they had never been keen to use the card catalogue.' What such endorsements do not say, however, is that Book Mark, which has been developed by a group within the Education Department, called Satchel Software, has been sold to schools in virtually every State in Australia. Crown Law is also now working on a contract for a distributor agreement to enable Book Mark to be marketed and sold in the United States. We are now curiously in the position where some South Australian schools have bought, and are considering buying, an expensive US-made computer system to the exclusion of a home-grown product which is being sold around Australia and soon, maybe, in the United States. The potential savings would be considerable if each school were able to save between $17 000 and $22 000 on the introduction of such a system, given that we have between 600 and 700 schools in South Australia. Members of school councils are concerned about the possible waste of large sums of money, especially when there are already cutbacks in many vital

programs in schools. My questions to the Minister representing the Minister of Education are:

1. Will the Minister indicate how many South Australian schools have purchased Dynix library management systems, and what has been the total cost?

2. How many South Australian schools use the Book Mark library management system, and what has been the total cost of purchasing this system?

3. How many systems have been sold interstate, and what has been the financial gain to the Education Department?

The Hon. ANNE LEVY: I am sure that the honourable member will not be surprised that I shall need to refer those questions to my colleague in another place. I shall be delighted to do so and bring back a reply as soon as possible.

VIDEO GAMING MACHINES

The Hon. K.T. GRIFFIN: My question is to the Minister of Consumer Affairs. In the light of the expectation that the Government will introduce legislation to extend the access to video gaming machines in South Australia into hotels and clubs and in view of the public statements made today by the National Crime Authority and yesterday by the Queensland Gaming Authorities about the potential for corruption in widening the availability of those machines (particularly if not properly policed, and even if properly policed), is the Government satisfied that there is no potential for corruption in the extension of access to gaming machines, and by what means does the Government propose to ensure that corruption does not occur, or, if it does occur, that it will be detected and offenders caught?

The Hon. BARBARA WIESE: I am not sure that I am the most appropriate Minister to whom this question should be addressed, as I understand that the Minister of Finance has been responsible for the preparation of a Bill that will be introduced into the Parliament, and it is not for me to pre-empt the contents of that Bill. I can only suggest that the honourable member should wait until the Bill is introduced and assess for himself whether or not the provisions contained therein will be sufficient to meet the concerns that he has expressed.

I can certainly say that the State Government is as concerned as any member of the South Australian community about any potential for corruption or criminal activity of any kind. It is not the intention of this Government, in introducing legislation that will enable poker machines or video gaming machines to be introduced into licensed premises, to open the door for such activity to occur in South Australia. As I understand it, the measures that will be included in a Bill to be introduced by the Minister of Finance in another place are designed to ensure that no such activity will occur in South Australia. It would therefore be the intention of the Government that, should any such activity be detected, it would be subject to the full force of the law.

Much concern is being expressed by various members of the community about these matters, and some of the claims that are being made by various interest groups in the media at the moment must be taken in the context in which they are being made. They are pure speculation because the Bill has not been introduced into Parliament and we do not know what is in it. Anybody who is making claims about what may or may not happen once gaming machines are introduced is speculating. I am sure that all these concerns will be satisfied when the Bill is introduced into Parliament and there can be a full debate and proper scrutiny of the provisions of that Bill by members of Parliament. I am sure that all of us in this place and those in another place will be keen to ensure that the provisions are as tight as they can be to prevent any form of corruption or criminal activity in South Australia.

The Hon. K.T. GRIFFIN: As a supplementary question, can the Minister indicate, first, when the Bill will be introduced and, secondly, whether her own departmental officers, including the Liquor Licensing Commissioner and the Casino Supervisory Authority, had any input into the provisions of that legislation?

The Hon. BARBARA WIESE: It is not for me to say when the Bill will be introduced; that is a matter for the Minister of Finance. It is for him to negotiate with Parliamentary Counsel and to achieve appropriate agreement on the terms of the legislation. No doubt in the fullness of time members will be informed as to when that Bill will be introduced. Appropriately experienced people within the Government have been consulted on the drafting of the legislation, and certainly the Liquor Licensing Commissioner has been one of those officers. I am not certain, but I believe that the Casino Supervisory Authority has had some input into the content of the Bill, as have a range of other appropriate officers of Government and various other people who were able to provide information to the Government following the release of a discussion paper last year. Therefore, there have been a number of community and industry submissions, and many of the issues that were raised by way of submission have been taken into account by the Minister in having the Bill drafted.

EDUCATION RESOURCE CENTRES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Education a question about the closure of education resource centres.

Leave granted.

The Hon. M.J. ELLIOTT: I had occasion last year to ask a question about the proposed closure of the resource centre at Port Lincoln. I am not sure whether or not that closure has proceeded. However, last week while visiting Clare I spoke with representatives of parents and staff of a number of high schools, primary schools and also private schools in the district. They raised with me a concern about the closure, which occurred some two years ago, of a regional resource centre that had been based in Clare. I was told that that has led to greatly increased costs to them, that resources they once would have borrowed they are now purchasing. Sets of books they use once a year, which obviously could have then been used by a number of schools, must now be owned separately by each school. The arrangement was to be that the schools would borrow materials from a resource centre based at Murray Bridge, which members would know is quite some distance away and is not easily accessible.

They were also promised two years ago that a modem would be hooked into their schools within two weeks to allow the ordering of resources to take place. Two years later that has not occurred. Because of the great difficulties they had in getting resources from Murray Bridge some schools had resorted to getting materials from the Orphanage. I am now told that the Orphanage is refusing to supply materials to the country schools because it cannot cope with the demand from the city schools. So, these people have been left in the lurch; they have been told to go back to Murray Bridge, in spite of all the problems involved.

My question to the Minister is a simple one: does the Minister acknowledge that the closure of regional resource

centres is causing great strain to schools and increased costs and that efficiencies may be gained by setting up resource centres on a more regional basis, making them more accessible to all schools?

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

TOURISM SOUTH AUSTRALIA

The Hon. DIANA LAIDLAW: I ask the Minister of Tourism the following questions in relation to the exodus last December by TSA from its premises at 18 King William Street:

1. What cost has been incurred so far in vacating the building, relocating the information services initially at the Exhibition Hall, re-establishing the Travel Centre functions at 1 King William Street and moving all other officers and services to the Norwich Centre at North Adelaide, and what is TSA's share of these costs?
2. Has a decision been made on the eventual location for TSA, for example, the Australis Centre has been mentioned as has one of the buildings on North Terrace associated with the Remm development, and also the former CAB Building in King William Street?
3. When is TSA to make its next move to a new permanent location and has a maximum cost for undertaking this move been determined?

The Hon. BARBARA WIESE: As to the costs incurred so far in temporarily relocating the majority of the Tourism South Australia staff to the Norwich Centre and the relocation of the Travel Centre staff to the Exhibition Hall and then to the AMP Building, I am afraid I will have to take the question on notice. I do not have that information with me. Indeed, I would be surprised if the final figures are yet available as work has been undertaken until quite recently in fully relocating officers, equipment, furniture and other things.

The major part of the relocation to the Norwich Centre took place on the weekend prior to Christmas, but the Christmas/New Year break and the unavailability of some officers from SACON to assist with some of the tasks that had to be undertaken led to some delays in the full relocation. So, I do not have the figures for the total cost of that relocation at this time, but I will provide that information when it becomes available.

The Hon. Diana Laidlaw: Is TSA paying most of it, or is SACON?

The Hon. BARBARA WIESE: In response to the honourable member's second question, the arrangement is that the relocation will be at SACON's expense. There is no intention at this stage that the relocation costs should come from Tourism South Australia's budget. These matters are in accordance with the usual practice in these circumstances. A decision has not yet been made about the long-term location for Tourism South Australia. The matter is still the subject of negotiation as to cost and suitability of available office premises in Adelaide. Hopefully, that decision will be made in the near future so that planning can begin to allow for the permanent relocation of the organisation in the quickest possible time.

CHILD DEVELOPMENT UNIT

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about the future of the Child Development Unit at the Adelaide Children's Hospital—now known as the Adelaide Medical Centre for Women and Children.

Leave granted.

The Hon. BERNICE PFITZNER: The Child Development Unit was established 10 years ago as a need for disabled children, particularly with multiple handicaps of a physical and intellectual nature, to be assessed. The assessment needed a group of multi-disciplinary people, skilled in paediatrics and developmental assessment and intervention. The Child Development Unit of the Adelaide Children's Hospital is such a group. The assessment cannot be done by an individual specialist paediatrician nor an individual child psychologist, nor even an individual physiotherapist, nor an individual speech therapist. The assessment needs the combined skills of these specialists. This unit is about to be axed as there is no funding for it.

I, myself, have used this unit professionally over many years and can vouch for its excellence. It is at present treating 300 children with 48 children on the waiting list. A similar unit, known as the Child Assessment Team at the Flinders Medical Centre, which serves the south of Adelaide, has been axed. Further, the Developmental Paediatric Unit at Lyell McEwin, which serves the north of Adelaide, is also having funding difficulties. My questions to the Minister are:

1. Where will these disabled children and the 48 on the waiting list who need the initial thorough assessment be checked?
2. Where will the present 300 children be located?
3. Where will the funding of the Child Development Unit be relocated?

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

PUBLIC TRANSPORT

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about the recent cuts to late night public transport services in Adelaide.

Leave granted.

The Hon. I. GILFILLAN: Last month Transport Minister Blevins announced that all late night public transport services would be withdrawn after 10 p.m. from Sundays to Thursdays as a cost cutting measure. At the time Mr Blevins stated that an insignificant number of people used late night public transport during that period and the cost of maintaining services could no longer be justified. This left Adelaide as the only State capital without late night services across the week and was roundly condemned by a cross-section of the community, in particular, shift workers, students, pensioners and economically disadvantaged groups, all of whom rely on late night services for their work, study or social interaction.

However, the Minister of Transport justified his actions by doing the media rounds quoting so-called 'official' figures for computer numbers which he claimed averaged barely 400 people a night for after 10 p.m. public transport use. In one particular incident the Minister assured the ABC's Keith Conlon on his 5AN program that the number of 400 was correct, and this number was again quoted in the *Advertiser* by the Minister.

However, according to the STA's own patronage report the number of late night commuters is quoted as in excess of 2 100, more than five times higher than the number used

by the Minister. Clearly, the Minister's figures are misleading and his actions have caused widespread anger and resentment in the community. I ask the Attorney, as Leader of the Government in this place:

1. Does he agree that the South Australian public has been misled by the Transport Minister on the numbers relevant in this area?

2. If not, can he provide an explanation as to the Minister's action in consistently using incorrect data to support cuts to a vital public service?

3. If the Attorney agrees that the Minister has deliberately misled the community over this issue, does he not agree that the Minister should stand down or be sacked from the position and, if not, why not?

The Hon. C.J. SUMNER: I am not sure why this question has been directed to me.

The Hon. I. Gilfillan: You're the Leader of the Government; you're the boss.

The Hon. C.J. SUMNER: I am not actually the boss of the Minister of Transport. I would have thought that the Hon. Mr Gilfillan would know that, given his time in Parliament. I do not allocate portfolios and I have one vote in Caucas to determine who should be in the Ministry. While I am the Leader of the Government in this place, I certainly do not have any control over the Minister or Ministers in another place.

The Hon. K.T. Griffin: Does that mean that you have to follow the Minister's initiative?

The Hon. C.J. SUMNER: I did not say that: I said I do not have any control over Ministers in another place. It appears that the Hon. Mr Gilfillan believes that I have some capacity to direct the Minister of Transport, but his view is misconceived. First, as to whether I think the Minister should resign, I thought he would know that I do not think that the Minister should resign. It is a fairly fatuous question to ask, particularly as he has asked me to comment on certain figures with which I am not familiar in any event, although I understand that some figures were used during this debate. As I do not agree with the honourable member's premise or necessarily with the facts that he has outlined, I am not in a position to answer the first part of his question. However, he has sought an explanation, and that part of the question could have stood on its own and I would have been quite happy to do what I will now undertake to do, that is, to refer that part of the question to the appropriate Minister for a response.

MEMBER FOR GILLES

The Hon. L.H. DAVIS: I direct my question to the Hon. Trevor Crothers. The member for Gilles (Mr Colin McKee) in another place was quoted in the *Advertiser* on 3 February as saying that there is a perception in the community—

The Hon. C.J. SUMNER: Mr President, I rise on a point of order. What has this to do with anything in the Council?

The PRESIDENT: Yes, I uphold the point of order. Standing Order 107 provides:

> At the time of giving notices questions may be put to a Minister of the Crown relating to public affairs; and to other members, relating to any Bill, motion, or other public matter connected with the business of the Council, in which such members may be specially concerned.

I do not consider that the question relates to Council business.

The Hon. L.H. DAVIS: With respect, Mr President, you do not know what the question is about. I think it is a matter of public importance and I ask you to rule on it after you have heard it.

The Hon. C.J. SUMNER: Mr President, the honourable member is obviously trying to abuse the Standing Orders of the Parliament by asking his question in the Parliament and therefore achieving his own petty objectives.

The PRESIDENT: I have upheld the point of order and I refer to the bottom line of Standing Order 107, which says 'connected with the business of the Council'. I do not believe that the question relates to the business of the Council or to any business before the Council at this stage. I rule the honourable member's question out of order.

The Hon. L.H. DAVIS: With respect, Mr President, you are not aware whether the question is a matter of public importance.

The PRESIDENT: Can you assure me that it is connected with Council business?

The Hon. L.H. DAVIS: I believe it is a matter of public importance.

The Hon. C.J. SUMNER: Mr President, that is totally unacceptable. If the honourable member wants to ask a question which is against Standing Orders or about which there is—

Members interjecting:

The Hon. C.J. SUMNER: Well, I couldn't care less really.

The Hon. R.I. Lucas: If you don't care less, why don't you sit down?

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The Hon. Mr Davis can be stupid if he wants to be. We are used to the Hon. Mr Davis being stupid in this Council. The fact is that if he wants deliberately to abuse Standing Orders we turn the Council into a shambles. If he wants to do that, fine, and it is no skin off my nose. The fact of the matter is that the correct approach should be that if he has a question like this, which is dubious to say the least in respect of Standing Orders, he should provide it to you privately to get a ruling on it.

The Hon. L.H. Davis: Come on!

The Hon. C.J. SUMNER: Otherwise you abuse the Standing Orders. The honourable member gets his question in and the Standing Orders are abused. I do not care: he turns the place into a shambles. It is fine by me, Mr President, but I should have thought that you would have had an interest in upholding the Standing Orders.

The PRESIDENT: Order! I do have an interest in upholding Standing Orders and I do care. I have ruled the question out of order and I go back to the words in Standing Order 107, namely, 'matter connected with the business of the Council, in which such members may be specially concerned'. The honourable member could be concerned, as Chairman of a committee or something like that, but the question has not been addressed to him in that capacity: it has been addressed to him as an ordinary member of the Council. Therefore, I have ruled the question out of order.

The Hon. L.H. DAVIS: With respect, Mr President—

The PRESIDENT: I am not prepared to enter into any discussion. You may disagree with my ruling, but I am not prepared to discuss the matter. I am ruling it out of order.

The Hon. L.H. DAVIS: Mr President, I just want to say that I find it remarkable that you ruled out of order a question that you have not yet heard.

The PRESIDENT: Well, it could have been phrased in another way to give an indication what the question was about; but it was not. I call on the Hon. Mr Burdett.

LEGAL AID

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question about legal aid.

Leave granted.

The Hon. J.C. BURDETT: My question is prompted at this time by a particular case involving a constituent, but I have had many other such cases. In this case I do not intend to name the constituent as I do not think that would help the matter, but afterwards I intend to give the Attorney correspondence on the matter. The constituent in question is a lady who alleges that she was very seriously assaulted, involving quite horrendous injuries as an aspect of sexual harassment. This constituent has been seeking damages through the courts in relation to this assault.

In the first place legal aid was granted. It was extensive and a large sum was spent on legal representation. The legal assistance was then withdrawn within days of her having been required to lodge a detailed statement of claim and within days of her pre-trial conference. She says that she is prepared to conduct her own case before the court but feels quite unable to prepare a detailed statement of claim as a basis for her case.

I suggested that she make a fresh application for legal assistance for this purpose: simply preparing a statement of claim. She did so, and I wrote in support of that application, but it was denied. She feels that she has been effectively deprived of access to the courts. I know that some of my colleagues have had similar cases recently and, doubtless, members on the other side have also. It seems to be harder and harder for financially disadvantaged persons to have access to the courts by way of legal representation through the Legal Services Commission.

All members will have received a letter from Mr Dennis Brown of 7 February 1992 concerning representation in the High Court. That is put on a different basis altogether, but there are many such cases. Constituents are asking whether it is a myth that financially disadvantaged persons can have access to legal representation before the courts. I appreciate that this Government is short of money, as are all Governments throughout the country, and that more people are seeking access to the courts. That situation was made clear on page 294 of the Auditor-General's Report where he referred to the fact, to which I have referred, that there has been a considerable increase in legal aid activity. He suggested measures for trying to contain that increase, such as increasing the level of contributions from clients, including the introduction of a minimum contribution from all clients, and the deferral for six months of fee increases to private practitioners. In addition, working parties for each jurisdiction (civil, criminal and family) have been established to identify areas and methods where there is potential to contain costs. Obviously, the Government's dilemma is still there, but it would be a shame if disadvantaged people were denied access to the courts.

I appreciate the measure of independence from the Government which the Legal Services Commission has under the Legal Services Commission Act but, of course, the Government is responsible ultimately for funding and, I believe, for seeing that the system works. It appears to me from what my constituents have said recently that the commission is getting more and more stringent in refusing assistance. Has it expended in a little over half of the financial year almost all of its allocation of $10.970 million for contributions to legal aid and $478 000 for the remission of Government fees and charges? My questions are:

1. What proportion of funding in the budget has the Government already spent?

2. Is access by applicants for assistance at this time realistic?

3. What does the Government propose to do about the funding of the Legal Services Commission in respect of legal aid?

The Hon. C.J. SUMNER: The honourable member has raised an important issue. In his second question he asked whether citizens have realistic access to legal assistance. The answer quite clearly is 'No' and, regrettably, they never have, but I think the problem of access to legal representation has been exacerbated in recent years by increased costs for lawyers. However, that is not a new problem; it is a problem that has always existed, particularly for middle income earners.

Legal Aid still provides assistance for people at the lower end of the income scale. Of course, big corporations and Governments can usually afford to pay the fees which are demanded by the legal profession and which the honourable member knows are very substantial. So, while those two categories of people get legal representation, the great bulk of middle Australia really cannot afford access to the courts.

The Government has been examining and putting forward proposals in relation to this issue for some time. In fact, the courts package that was passed in this Parliament last year had as at least one of its aspects access to the law. We are promoting alternative dispute resolution. In conjunction with the Law Society, the Public Service Association and Jardine Insurance Brokers we have established a trial legal insurance scheme. The Law Society has established a legal contingency fund, to which I agreed to allocate $1 million, in order to provide greater access to the law by citizens.

In late 1990, I issued a discussion paper on access to the law that covered a large number of issues involving the structure of the profession: whether we should legislatively assert that in this State the profession is a fused profession that cannot be split on a legal basis without, of course, interfering with the establishment of the *de facto* independent bar. The honourable member may have seen that discussion paper; if not, I can provide him with a copy, and I would be pleased to hear any comments that he has on it. It dealt with the structure of the profession, the role of the bar and the role of certain practices which could develop in the bar, which certainly have developed in other States and which may increase the cost of citizens wanting to get access to the courts. I firmly believe that a fused profession is a cheaper method of delivering legal services than a completely divided profession.

The paper discussed contingency fees and a number of other issues. So, a number of things have been proposed and put in train to try to deal with this important area. The honourable member knows that the Senate Standing Committee on Legal and Constitutional Affairs has a reference on access to justice. That committee has been at it for long enough, and we hope that it will produce its report this year.

The fact of the matter is that funding for legal aid will never be adequate enough to provide access to the law by all citizens. It does not matter which Government is in power; there will always be a limit on the amount of funds available for legal aid. That is why the community and legislators have to look at alternative ways of providing citizens with greater access to the law. There is no doubt—and the honourable member is probably aware of this—that the Legal Services Commission has tightened up its guidelines. If the honourable member wants access to the guidelines that operate now, I am sure he could contact the commission and obtain them.

It is also true—and I think this has to be the position—that the Legal Services Commission applies a merit test. It

does not automatically give aid to any person who qualifies for it under the means test. Access to legal aid is means tested, as the honourable member knows, but not only is a means test applied—and, as I said, that has been tightened up—but also a merit test is applied. I do not know what happened in this particular case. I can only suggest to the honourable member that, with the consent of his constituent, he go to the Legal Services Commission and find out. I assume that, as legal aid was originally granted, at some point in time the commission merit tested the case and felt that it was no longer justified to continue to grant aid.

We can debate and criticise merit testing, but the reality is that now—and I suggest for ever in the future—legal aid commissions will always have to merit test cases, whether they be in the criminal or civil jurisdictions. That is the only explanation I can give. Obviously, the funding for the Legal Services Commission next year will be considered in the budget, but I cannot hold out any hope that there will be an increase in funding. That being the case, strict means and merit tests will have to continue, and we will have to look at other means of increasing access to the law for ordinary citizens, the great bulk of whom do not qualify for legal aid in any event and do not have the means to pay for private legal representation.

TAFE FUNDING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Employment and Further Education a question about the recurrent funding of TAFE colleges.

Leave granted.

The Hon. PETER DUNN: There has been a gentlepersons' agreement between the States and the Commonwealth that the Federal Government will provide capital works money for the structure of TAFE buildings, and the States will provide the recurrent costs and manpower. In recent years, we have built many TAFE colleges in South Australia, and I will mention but a few since I have been on the Public Works Standing Committee, namely, Port Pirie, Port Lincoln, Coober Pedy, Millicent, Tea Tree Gully (which cost $25 million), Mount Barker and, more recently, Salisbury and Port Adelaide, with the Port Adelaide college costing about $20 million to complete.

Until the last two submissions to the Public Works Standing Committee, all structures were approved on the basis that South Australia would agree to the previously stated gentleperson's agreement that we should provide recurrent expenditure. However, the last two projects have lacked this proviso, that is, that recurrent expenditure be met by the States. The report which was just tabled by the Public Works Standing Committee relating to the Salisbury campus of the Elizabeth TAFE, states, under recommendation 10:

> The committee noted that recurrent costs for annual salaries, wages and overheads will increase significantly when the new facilities are occupied. The increase in recurrent costs is estimated at $500 000 per annum in 1993-94. The committee was advised that Treasury has not agreed to provide additional funds to meet the anticipated recurrent costs . . .

Further to that, the report, under the heading 'Capital and Recurrent Costs', states that the capital cost of the Port Adelaide college will be met from funds legislated in the Commonwealth budget in August 1991, that is, for $3.3 million spread over three years. The report states:

> The recurrent costs are to be met by the State. These may be achieved by:
>
> 1. Restructuring infrastructure (including the sale of properties such as the site at Kensington Park or Ethelton and Grange campuses of the Port Adelaide college of TAFE).
> 2. Rationalising and relocating programs and associated funding.
> 3. Leasing any surplus space.
> 4. 'Fee for service' charges for consultation and training programs provided to industry.
> 5. Additional Commonwealth allocations for training.

It is interesting to note that, when Minister Arnold increased fee for service charges to 25 per cent of cost, there was a huge outcry by the users. There is evidence that further increases in charges will cause a large drop-off in students in these areas catering for the lower socioeconomic groups such as Elizabeth and Port Adelaide. My questions are:

1. Is the sale of old colleges to be used for recurrent costs?

2. Will the Minister again increase fee for service charges and, if so, will it be to all TAFE colleges or just Salisbury and Port Adelaide?

3. What response does the Minister expect from TAFE colleges which have had their programs relocated to Salisbury and Port Adelaide as indicated in the report?

4. Bearing in mind the surplus office space available at Port Adelaide, that is, given that 50 per cent of the shop fronts are displaying 'For lease' signs, what is the expected occupancy rate of the TAFE college space and the expected income from this exercise?

5. Are we witnessing another financial disaster or con trick on the people of Port Adelaide and Salisbury, who will have a monument with no staff and no courses?

The Hon. ANNE LEVY: I congratulate the honourable member on the increase in his vocabulary since we last met. I will refer his five questions to the Minister in another place and bring back a reply.

LABOR PARTY

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about public affairs, namely, the South Australian community's perception of the Labor Government.

Leave granted.

The Hon. L.H. DAVIS: The member for Gilles in another place, Mr Colin McKee, was quoted in the *Advertiser* of 3 February as saying:

> There is a perception within the community that the Labor Government is now run by a handful of bovver boys and factional hacks.

My questions are:

1. As the Attorney-General is arguably the strongest supporter of Premier John Bannon and as he is a member of the Centre Left faction, does he accept the description used by Mr McKee relating to bovver boys and factional hacks and, if not, why not?

2. Does he accept that the South Australian community is understandably alarmed that the Labor Party is more concerned about squabbling than governing?

The Hon. C.J. SUMNER: The member for Gilles, Mr McKee, used somewhat colourful language to describe the fact that he was defeated at the preselection ballots held within the Labor Party. That colourful language was no doubt to draw attention to the factional system which operates within the Labor Party on a reasonably formal basis. However, although it operates on a formal basis within the Labor Party, anyone who has anything to do with politics would know that it is also true that certain factions operate within the Liberal Party as well. For instance, I know that the Hon. Mr Davis is not in the same faction as the Hon. Mr Griffin. We all know the story of—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The fact that the Hon. Mr Davis went to have a drink with the Hon. Mr Griffin at his house does not mean that he is necessarily in the same faction as the Hon. Mr Griffin. I have known people in different factions—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —to have a drink with each other.

Members interjecting:

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

The Hon. C.J. SUMNER: My views on factions have been expressed before within the forums of the Labor Party and are well known. There is little point in repeating them here today, but they are, as I said, well known. No Party could be particularly happy with the situation that has emerged following the preselections within the Labor Party, obviously with—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —a member becoming an Independent, but I am confident that the matter will be resolved in due course.

The PRESIDENT: Order! The time for questions having expired, I call on the business of the day.

WORKER'S LIENS (REPEAL) BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 739.)

The Hon. I. GILFILLAN: I oppose this Bill. I have done so previously on behalf of the Democrats when it has been debated, and I do not intend to canvass all those arguments. The measure has been regarded as the only protection for subcontractors and their employees in a situation where the principal has been declared bankrupt or has defaulted in the payment of moneys owing. The select committee of the other place handed down a report on 15 August 1990 which recommended the repeal of this Act. Those who are resisting its repeal—and that includes me—recognise that the present situation is far from perfect. What is exacerbating it is the inability or the inertia of those involved to come up with a better workable alternative.

Therefore, I believe it is irresponsible to jettison the only mechanism that is in place before we have a better supported, well-analysed and discussed alternative mechanism. The Building Industry Specialist Contractors Association has written to me on several occasions and asked that we should not support the repeal of the Act. It said, somewhat pathetically, believing that Parliament could repeal it even against its wishes, that, if it were repealed, it should be delayed for at least 12 months to allow the industry to implement other more effective mechanisms. It is desperate that something should be in place. The Attorney-General has an amendment to the Bill so that proclamation is left indeterminate.

I am not prepared to pass legislation in the circumstances that prevail. I have had a host of letters—probably in excess of 50—from plumbers, electricians, fire protectors, air-conditioning installers, the construction industry itself, earthmovers, pavers, concrete pourers and painters who all plead with me to continue my oppositon to the repeal of the Act. That is added to previous representations that I have had from building industry unions which also argued that the Act should be kept in place unless or until some better proposal comes forward. I have made efforts on a previous occasion to provide that by means of private member's legislation, and I still believe that there is merit in the proposal that I put forward for a protected and dedicated fund. However, I will not go into that. That is obviously still available for the Parliament to consider in due course. It may be one of the matters that is incorporated into a proposal which will allow us to repeal the Worker's Liens Act eventually in good conscience.

I oppose the Bill. However, before concluding my remarks, I should like to quote from the second reading explanation:

> In keeping with the second recommendation of the select committee that industry consultation take place in respect of trust funds, voluntary or compulsory insurance schemes, direct payments and bank guarantees, the Minister of Housing and Construction established a working party on insolvency in the building industry. The committee reported in December 1990, and the Construction Industry Advisory Council is still considering the working party report and public responses to it. It is expected that this process will take some time as the parties still have not reached a consensus on the appropriate future direction which would be followed to curb the incidence and impact of insolvency in the building industry.

Obviously, the Government, in moving this legislation, acknowledges that there is nothing in place, that the discussions have not been concluded and do not seem to be getting very far at all. I think it would be irresponsible to scuttle this Worker's Liens Act at this stage, but I indicate that the defeat of this Bill should act as a spur to others who believe there are faults in the current system (and I acknowledge that there are) to work out a system which will be effective in protecting people in business who in good faith do the work and employ people. It is not fair that they should be left, as they often are, carrying the economic can, much to their own perilous financial consequence. Therefore, I urge those who are in a position to formulate an alternative to protect these people to get on with it. When they do and when the industry comes back to me and says, 'We are content now because there is a proposal which will protect our situation', I will have no problem in supporting the repeal of the Worker's Liens Act. However, that situation has not arrived, and I oppose the Bill.

The Hon. C.J. SUMNER (Attorney-General): I can confidently predict that this Act will never be repealed while the Hon. Mr Gilfillan remains in the Parliament. I assume that he will contest the next election and stay on for another few years, if he wins, and may contest the next and stay on possibly as an octagenarian, still contributing into his 80s to debates in this place, and that the Worker's Liens Act will remain in place—a permanent monument to his inability to face a necessary reform.

The Government still believes that the Bill should proceed. The Act does not work, and operates as a disincentive to investment and to development in this State. The House of Assembly select committee has examined this issue and, on a bipartisan basis again, suggested that the Act should be repealed. It is clearly in the broad South Australian public interest to repeal this legislation and to do it now. The Opposition and the Democrats have been cornered by particular interest groups and they are singing the tune of those interest groups without considering the broad interests of South Australians generally and the building industry of this State. We will let their sectional interests win out, as they will today, but they should know that, in doing it, they are merely currying favour with those sectional interests

and voting in a manner which is to the detriment of South Australians generally.

The fact is that this Act does not work and has not worked. Serious criticisms of it have been made in the House of Assembly and in the community, and those criticisms also go to the question of investment in the industry, equity and who is entitled to payments in the case of the failure of a company. The fact is that the Worker's Liens Act prohibits those issues being resolved quickly and prohibits people from getting on with the job of construction.

There have been no reasons advanced in the second reading debate such as to warrant the retention of the Worker's Liens Act, other than that there are a number of small contractors who have requested its retention. The Opposition and the Democrats are hostage to this small group who, by the way, agreed—and I read the correspondence previously—with the passage of this Bill to repeal the Act, provided that there was some delay in its proclamation. That was put to the Council on the last occasion that the Bill was debated here. So, the Opposition and the Democrats are not even prepared to go along with what the subcontractors' group eventually put to this Council when it was debated on the last occasion.

Members neglected to mention that small contractors are given protection at the expense of other sectors in the industry. Liens—and this is a point I have made—placed on property can hold up recovery work on a building site and may make it difficult for the project to survive. In other words, it does have an investment impact. If construction costs increase so that the project cannot be rescued, no-one gets paid. Financial institutions are unequivocal: the moment a lien goes on, further advances are frozen. This is what members opposite are condoning. No justifiable reason has been put forward as to why subcontractors should be protected from commercial risks or be given preferential treatment. The privilege given to subcontractors is to the detriment of other creditors.

The Hon. J.F. Stefani: They employ people.

The Hon. C.J. SUMNER: They do not employ people if no money is being put into the project, as the honourable member would know. As I have just said, once a lien is placed on the project, finance dries up—full stop. It takes time to unravel the situation. It is a much longer time because of the existence of the Worker's Liens Act than it would otherwise be.

There are various initiatives relating to insolvency in the building industry that are still being examined by the Minister of Housing and Construction. These include the following: the Minister of Housing and Construction has continued to liaise with the building industry, principally through the agency of the Construction Industry Advisory Council. These consultations are moving slowly due to the divergent views of sectors of the industry and the general lack of agreement on the most appropriate future course of action. Sacon is investigating means by which it can ensure that payments made to head contractors at its sites are passed on to workers and subcontractors.

The Government believes that the Act is best repealed with a proclamation clause allowing the industry time to adjust its practices. The repeal of the Act does not depend on other mechanisms being in place. Such repeal may even provide the impetus needed for the building industry to come to agreement on an appropriate means of securing payment that is both flexible and sound. I do not think that there is any doubt about this—unless the Parliament acts to remove this unsatisfactory Act there will be absolutely no incentive for the industry to do something about it and the very unsatisfactory situation we have at the moment will continue. Appropriate legislative backing could be given to ensure the workability of any scheme ultimately developed by the industry.

It is worth noting again that South Australia and Queensland are the only States with such legislation. Members would do well to take heed of the sentiments expressed in the discussion paper recently released by the Queensland Government entitled 'Security of payment for subcontractors in the building and construction industry'. The paper is the most current and comprehensive review of the problem in the building industry of default of the obligation to pay subcontractors. It suggests that it is up to the industry to consider and agree upon a solution or solutions to the complex problem of payment default. The paper does not suggest any definite answer but it does canvass a variety of alternatives.

In general, the paper suggests that liens are ineffective mechanisms for securing payments and does not consider liens as an option. Citing the Law Reform Commission of Western Australia, the paper says that such legislation does not remove financially insecure builders from the industry, does not provide any substantial financial protection to subcontractors in the case of builder insolvency and does not appear to serve any useful purpose. This is the most recent comment on the topic.

An honourable member interjecting:

The Hon. C.J. SUMNER: It is probably not better than nothing, because of the adverse effects that the lien system has generally on getting a project going again. Further, the paper goes on to cite one commentator on similar legislation—now repealed—in New Zealand to the effect that such legislation 'remains difficult, obscure, and technical . . . and . . . presents serious problems in its application'. The paper also cites judicial criticism of the South Australian legislation and its counterpart in Queensland.

In all, the Government is committed to the repeal of this Act. It believes that it is ultimately in the best interests of the building industry and the community as a whole that the Worker's Liens Act be repealed. Unless the Parliament bites the bullet and repeals it then I suggest that the problems of insolvency in the building industry will fall in a hole again—they will not be addressed. If this Act is repealed impetus will be given to industry to get on with looking at the problems in conjunction with Government and coming up with a better system. If we do not repeal this Act then I confidently predict nothing will be done; the Act will remain in place as an unsatisfactory mechanism. The Hon. Mr Gilfillan can—as he stays on in the Parliament and assuming that he does—rest assured that the Worker's Liens Act will not be repealed.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: That issue has been debated in this place before, and the honourable member knows as well as I do the reasons for not having that system. So, I repeat my suggestion that the Bill pass at the second reading. If it is not in there already, the Government undertakes either to put in a specific date for proclamation some time in the future to be agreed upon or not to proclaim it for a certain agreed period. However, the Act does not work; its repeal has been recommended by a House of Assembly select committee; similar legislation was repealed in New Zealand; similar legislation in Queensland has been identified as totally unsatisfactory; and such legislation does not exist in any State except Queensland and South Australia. Therefore, in my view this Act should be repealed.

The Council divided on the second reading:

Ayes (9)—The Hons. T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill and Barbara Wiese.

Noes (12)—The Hons. J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Majority of 3 for the Noes.

Second reading thus negatived.

UNCLAIMED GOODS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 August. Page 59.)

The Hon. K.T. GRIFFIN: This Bill was running in tandem with the Worker's Liens (Repeal) Bill and it would seem to me that in consequence of the defeat of that Bill, there is no point in pursuing this Bill because it was consequential. For that reason we indicate that we will be opposing this Bill. I should say that, while the Attorney-General has repeatedly given the view that the Worker's Liens Act was of no real use and in fact caused detriment to those involved in the building industry, including financiers, the fact is that it was of some use in a number of cases.

The Act does have some deficiencies, but I had understood that the Government, through the Minister of Housing and Construction, was actively pursuing some alternative scheme which would provide more equity and certainty and not have the disadvantages that the Worker's Liens Act has. The disappointing aspect is that the Minister of Housing and Construction does not seem to have been able to progress the issue—

The Hon. C.J. Sumner: No-one will agree.

The Hon. K.T. GRIFFIN: I would have thought that it is not beyond the wit of an intelligent Minister and the building industry to reach some compromise.

The Hon. C.J. Sumner: They will not agree.

The Hon. K.T. GRIFFIN: It would not altogether have been put in place if the original Worker's Liens Act had been repealed, anyway.

The Hon. C.J. Sumner: The select committee did not rely on having something else in place.

The Hon. K.T. GRIFFIN: When the decision of the select committee was announced it was indicated that the Minister would be undertaking a program of development to put an alternative in place. A number of the representations that have been made to the Liberal Party were from small contractors who, after all, provide the bulk of employment in the building industry in South Australia and they were concerned that they would be left totally unprotected. From the Liberal Party's point of view we believe that it is appropriate to put some alternative in place which is more equitable and which does not have the deficiencies of the Worker's Liens Act, but we should not repeal that Act until an alternative scheme is agreed unanimously with the industry, or at least agreed by a substantial group within the industry.

So, we acknowledge that there are deficiencies but we do not believe that it is appropriate, in all the circumstances, to leave suppliers of goods, subcontractors and workers totally unprotected. In relation to the Unclaimed Goods (Miscellaneous) Amendment Bill, because it does run in tandem it seems inappropriate to pass it and therefore I indicate that we will not support the second reading.

The Hon. C.J. SUMNER (Attorney-General): First, the House of Assembly select committee's recommendation for repeal was not conditional on there being any alternative in place. While it did suggest that there should be further discussions on alternatives to deal with insolvency in the building industry, the committee's recommendation was quite clear that the Act should be repealed—come what may—and that, while it was desirable to put in place some other mechanisms, this Act itself standing on its own was to the detriment of the building industry in South Australia and, therefore, should be repealed.

So, the Council should not be under any misapprehension that somehow or other the House of Assembly select committee's recommendation to repeal the Act was conditional on something else being in place. It was not and I suggest that it was not for good reason: because the Worker's Liens Act is deficient and should be repealed in any event. It is all very well for the honourable member to say that Liberal Party members recognise the deficiencies in the Act but that they want another scheme in place before it is repealed. All I can say is that in my view they will be waiting a long time and that this reform, which I think is desirable, will probably not occur.

The Hon. I. Gilfillan: In the earlier debate, you assured me that if I waited we would have another scheme in place.

The Hon. C.J. SUMNER: That's right—several decades, I suggested.

The Hon. I. GILFILLAN: In an earlier debate, when the Bill was introduced before, you said, 'Pass it and we will fix it by the middle of the year'.

The Hon. C.J. SUMNER: That is not exactly what I said. I said that we would give time to enable the discussions to proceed to see whether agreement could be reached. I would be surprised if I gave the Council a cast-iron guarantee that agreement would be reached. I said that the Worker's Liens Act should be repealed, that the debate on its repeal should occur on the merits of whether or not the legislation was deficient and should be repealed, and that was the select committee's view of the matter, that it should be repealed.

Certainly, alternatives should be looked at to deal with insolvency in the building industry, but the repeal of the Worker's Liens Act was not conditional on that occurring. I repeat: I do not believe that this Act will now be repealed and there will be no incentive for the industry to do anything about the problem of insolvency. There would be some incentive at least once this Act was repealed. It is certainly not a matter that I am going to bother myself with now or in the immediate future.

I have had two attempts at repealing this legislation. The Parliament has decided that it does not want it repealed. The Opposition and the Democrats in the Parliament can answer to the community for their actions and, if people come to me as they have done over the years and complain about the Worker's Liens Act, I will be sending them straight down to the Hon. Mr Griffin and the Hon. Mr Gilfillan.

To a large extent the Unclaimed Goods (Miscellaneous) Bill is consequential on the passage of the Worker's Liens (Repeal) Bill, although not entirely. I do not believe that the part not consequential is on its own worth saving and that matter can be addressed at some other time. Accordingly, I assume that the Council will vote the Bill out.

Second reading negatived.

ACTS INTERPRETATION (CROWN PREROGATIVE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 2256.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill. It is to be considered together with the Crown Proceedings Bill, which is the next Bill on the Notice Paper. The Crown Proceedings Bill deals only with those situations where the Crown is not bound by statute. The Acts Interpretation Act is proposed to be amended to deal with situations where the Crown is actually bound by statute.

The Bill arises out of a judgment of the High Court on 20 June 1990 in the matter of *Bropho v the State of Western Australia*. As I recollect, this case dealt with the proposed redevelopment of the Swan Brewery site on the banks of the River Swan. Bropho was a person of Aboriginal descent who claimed some title to that land. As a result of the case, the status of the Crown was thrown into some uncertainty in relation to a particular statute. The High Court held that the presumption that the general words of a statute do not bind the Crown, which was generally the position before Bropho's case, could be displaced by the legislative intent appearing in the statute, and the court could have regard to the subject matter of the statute, including its purpose and policy, in ascertaining that intent.

As I said, the situation prior to Bropho's case was that, as a general rule, the Crown was not bound by statute unless by express statement or by necessary implication. This meant that there was no necessary implication that the Crown was bound unless the statute would otherwise be meaningless or its purpose wholly frustrated. In Bropho's case, the High Court indicated that a stronger presumption that the Crown was not bound should in fact be applied to statutes enacted prior to 20 June 1990, the date of the High Court judgment, because those statutes had been drafted in reliance upon the previous presumption.

I suppose that is technically a correct assessment, but I must say that I would doubt whether persons drafting statutes prior to that date specifically applied their minds to this issue on each and every occasion. When a statute creates a criminal offence, there is a strong presumption that the Crown is not subject to criminal liability. That is understandable because the Crown represents the people, the State, and is the protector of the citizen rather than the perpetrator of criminal acts. So the Crown must be in a position where, generally speaking, it initiates criminal proceedings rather than being the subject of those criminal proceedings, and there is some difficulty in the Crown prosecuting itself.

According to the Attorney-General's second reading report, that presumption has survived Bropho's case. But the point is made by the Attorney-General in his second reading speech that the situation following the Bropho case is unsatisfactory and ought to be resolved. It is very difficult to determine in what circumstances the court may eventually decide that there are circumstances that would be sufficient or insufficient to displace what remains of the presumption that the Crown is not bound by statute except by express words or necessary implication.

So, as a result of some consultation, the Attorney-General brings this Bill, which seeks to deal with three issues. First, it seeks to provide that no general provision is made for statutes enacted prior to 20 June 1990. That will mean that all of those statutes will have to be considered on a case by case basis to determine whether or not the statutes bind the Crown. If, after 20 June 1990, an amendment is made to a statute enacted before that date, the amendment will not affect that position.

The second proposition is that the Crown is to be bound by all statutes enacted after 20 June 1990, apart from those related to criminal offences, unless the contrary intention appears either expressly or by implication. That reverses the pre-Bropho position. The third aspect of the Bill is that provision is made for instrumentalities, officers and employees and contractors who carry out functions on behalf of the Crown, where they are carrying out obligations or functions required by the Crown, to share the Crown's immunity. Again, that is a reasonable proposition.

There is only one area of questioning upon which the Attorney-General may be able to give a response, and that relates to statutes enacted after 20 June 1990. A number of those statutes would have provided specifically for the Crown to be bound. For example, the Freedom of Information Act and, as I recollect, the marine pollution legislation, provided specifically that the Crown was bound by those statutes, respectively. Can the Attorney-General indicate whether in respect of any of the statutes passed since 20 June 1990 this Bill will change the liability of the Crown; the extent to which that liability will be changed, and what costs potentially might be attracted as a result of that changed status? It may be that no legislation has that effect, but it would be helpful if the Attorney-General could indicate what legislation will be changed as a result and what the cost ramifications for Government might be. Subject to that matter, the Opposition indicates its support for the second reading of this Bill.

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

CROWN PROCEEDINGS BILL

Adjourned debate on second reading.
(Continued from 26 November. Page 2258.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill. To some extent, the Bill covers an area similar to that of the Bill we have just debated, although it covers other matters as well. In this State, we have had a reasonably modern Crown Proceedings Act, which deals with the way in which proceedings may be instituted by and against the Crown. However, notwithstanding that reasonably up-to-date piece of legislation, the Government has agreed with the Commonwealth and other States that there ought to be a relatively uniform piece of legislation designed to bring into line across Australia the way in which the Crown is to be sued and to address the issue which is not covered by our Crown Proceedings Act, where the Crown, in the right of another State or a Territory, is sued in South Australia or sues in this State.

As I understand it, the Bill arose out of proposals by the Commonwealth to amend section 64 of the Judiciary Act 1903 in the light of High Court decisions. Section 64 of the Judiciary Act deals with the situation where the Commonwealth or a State is a party to legal proceedings, and it says that the rights of the party shall, as nearly as possible, be the same and judgment may be given and costs awarded on either side as in a suit between subject and subject.

In 1986, in a case of the *Commonwealth v. Evans Deakin Industries Ltd*, the High Court decided that in some circumstances the Commonwealth and the States could be exposed to liabilities even under legislation that is expressed not to bind the Crown in any right. The Commonwealth decided that that was unacceptable and proposed to legislate to make clear the extent to which the Commonwealth is to be subject to State and Territory law. That in itself can have a significant impact upon the States as well as on the Commonwealth.

The original Commonwealth proposals would have provided for the States to be told what their status was by Commonwealth legislation. That is entirely unsatisfactory. As I understand it from the second reading speech, proposed amendments to section 64 of the Judiciary Act were expected to go before Federal Parliament late in 1991, and that amendment was consistent with the agreement reached between the Commonwealth and the States. I am not sure what has happened to that legislation, and perhaps in his reply the Attorney-General could indicate what has happened in the Federal Parliament with the Bill to amend section 64 of the Judiciary Act and also what has happened with legislation in the other States, because the Attorney-General's second reading explanation indicates that neither the Bill before us when enacted nor the Commonwealth section 64 will come into operation until each State has provided in its equivalent to our Crown Proceedings Act for two basic measures. So, it would be helpful to know the current position in the Commonwealth and in the other States.

The two basic measures related first to a proposition that proceedings by or against the Crown should be brought in the same way as proceedings between subjects and, in that context, the same procedural rules are to apply to the Crown as to subjects. The second area was that the immunity of the Crown in actions in contract and tort should be terminated. Each State should be able to decide to what extent it was to be made liable under statute or the common law but, according to the Attorney's second reading explanation, that is not to be a complete immunity.

At this point I should say that the first area is welcome because certainly prior to the 1972 Crown Proceedings Act—and I think even under the Crown Proceedings Act itself—special rules had to be followed in relation to suing the Crown. I can remember from my early days in practice that, in suing the Education Department, for example, a procedure had to be followed which was different from other procedures required when suing other instrumentalities of the Crown and other subjects. So, it is appropriate to bring the actions by or against the Crown into line with the normal procedural rules that apply to citizens.

In relation to the second matter of immunity of the Crown, there is another area which has caused concern and which has not been addressed by this legislation, that is, the question of Crown priorities in bankruptcies or liquidations. Whilst it is not appropriate to address that issue in this legislation, it is an issue which needs to be addressed by Governments.

I know that when I was Attorney-General the Standing Committee of Attorneys was considering the issue of Crown priorities. The view of the States was that the Commonwealth should give up its priorities in a liquidation or in bankruptcy for taxation liabilties, in particular; the States should give up theirs in relation to things such as water rates; and local government should also forgo its priority in relation to rates, both water and council rates being charges on property. However, the proposition foundered because the Commonwealth was not prepared to forgo its protection for taxation liability.

This is an area that needs to be addressed, because the Crown has resources that are not available to ordinary citizens. The Crown ought to be in a position where it monitors diligently the progress of payments to it of liabilities incurred by companies or individuals, and it ought not to be able to sit back and wait for a liquidation in the knowledge that it will get its liability paid but others can effectively whistle in the wind.

Frequently, liquidators and trustees in bankruptcy have said that, if a body like the Commonwealth Government, through its taxation office, was more diligent in monitoring the progress of outstanding liabilities and was prepared to take action at a much earlier time, many of the problems for small business, individuals and companies would not occur or, if they did, would not be so serious as they ultimately became. In my view, there are very strong grounds for the Crown priorities to be removed. Whilst this Bill does not address that issue, it is in the same category of issues which have to be addressed by State and Federal Governments. I hope that other States, as well as South Australia, can be persuaded to revive consideration of that issue.

In addition to the matters to which I have referred, the Bill makes provision for the Crown in the right of another State, the Commonwealth and Territory to act in this State or to be sued in this State and for the South Australian Crown to initiate proceedings or be the subject of proceedings outside the boundaries of this State.

There is one major area of concern that I want to address, and that is in clause 17. I suppose that in consideration of the issue it was something of a dilemma for the Attorney-General. This clause provides:

> Where an Act removes or restricts the right of a party to be represented in proceedings by a legal practitioner, the State Crown or the Attorney-General, if a party to the proceedings, may be represented by an officer or servant of the Crown (not being a legal practitioner, an articled law clerk or a person who holds legal qualifications under the law of this State or of any other place) authorised to conduct the proceedings on behalf of the Crown or the Attorney-General.

I can recognise the desire to be seen to be in no better a position than an ordinary litigant who does not have the right to be legally represented. On the other hand, I think that it can become very messy for Government if a range of public servants is appearing in tribunals on behalf of the State Crown or the Attorney-General in these sorts of matters. I think that it can become difficult for Government to manage. It can develop into a situation where there is inadequate supervision. There may well be significant problems for the citizen and the other litigant as much as for the Crown, particularly in relation to negotiations for settlement. I raise the issue because I think it is important. I suggest that rather than limiting the right of the State Crown or the Attorney-General to be represented in the sorts of proceedings envisaged by clause 17, other parties should instead be offered the right to be properly represented, if they so wish, so that they are brought up to the same level as the Crown.

In raising this issue, it would be helpful for the Attorney-General to indicate the jurisdictions in which this might occur. The small claims jurisdiction is one; perhaps another might be in the area of wrongful dismissal in the Industrial Commission; but there may well be others. It would be helpful to have a list of those jurisdictions in which clause 17 might have some application.

I now draw attention to several other matters. The first relates to clause 9 (5). Clause 9 deals with the right of the Attorney-General to appear in proceedings and to represent the Crown, whether those proceedings are civil or criminal, and to intervene. Clause 9 (5) provides:

> In this section references to the Attorney-General extend not only to the Attorney-General for this State but also to the Attorney-General for any other State or the Commonwealth and references to the Crown have a correspondingly extended meaning.

I raise the question whether this provision should be limited. For example, where the Attorney-General for another State intervenes for the Crown of that State, should the right to intervene be only on behalf of the Crown in the

right of that other State, or should it be a wider right of intervention? I suppose this could mean that the Attorney-General for another State could intervene without necessarily limiting the intervention to the interests of the Crown of the State for which he or she is Attorney-General.

Clause 10 (5) is, I should think, a money clause. I merely draw that to the attention of the Council for consideration. Clause 13 deals with the service of proceedings. Subclause (1) provides:

Where any proceedings are brought against the State Crown, a statement must be endorsed on, or annexed to, the process by which the proceedings are commenced, containing the prescribed information.

There is no indication of what the prescribed information may be. I wonder whether the Attorney-General might indicate what is envisaged to be the prescribed information required to be endorsed and the circumstances in which that should be endorsed. Subject to those matters, the Opposition supports the second reading of this Bill.

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

CRIMINAL LAW CONSOLIDATION (RAPE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 21 November. Page 2186.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill which, had it been raised in the mid-1970s, or I suppose even in the mid-1980s, would have evoked a great deal of public debate and controversy. When the first steps were taken by South Australia in 1976 to provide for what is generally described as rape in marriage provisions, there was considerable public debate. In other jurisdictions where, somewhat later than in South Australia, this issue was raised, there has also been debate about such a move. Some feared that such a provision would threaten the institution of marriage. Others believed that there would be convictions on the evidence of a wife only, that such convictions would be dangerous and that there would be a spate of improper convictions. None of those consequences has arisen from the provisions enacted in South Australia in 1976.

Those provisions took their origin from the Mitchell committee's consideration of an issue relating to rape by husbands. That report recommended that a husband be indictable for rape upon his wife whenever the act alleged to constitute the rape was committed while the husband and wife were living apart and not under the same roof, notwithstanding that it was committed during the marriage. That was a more limited debate relating to those circumstances where a husband and wife had separated, even to the point of filing for divorce proceedings, but where the *decree nisi* had not been granted, and the husband might be guilty of rape or sexual intercourse without the consent of the wife.

The amendment that was passed in South Australia went much further than the recommendation of the Mitchell committee. However, in its special report the committee indicated a more general view than the limited recommendations that came from that committee. It stated:

The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In this community today [that is, the mid 1970s] it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes. Nevertheless, it is only in exceptional circumstances that the criminal law should invade the bedroom. To allow prosecution for rape by a husband upon his wife with whom he is cohabiting might put a dangerous weapon into the hands of a vindictive wife and an additional strain upon the matrimonial relationship.

There are some who still argue that that 1976 amendment and now this Bill before us will put a dangerous weapon in the hands of a vindictive wife and an additional strain on the matrimonial relationship. I suggest that if there are already strains in the matrimonial relationship and there is a vindictive wife the law we are now considering will not put any additional strain on that matrimonial relationship. Generally speaking, all people who think about these sorts of issues recognise that it is quite inappropriate for the law to recognise that force may be exerted against the consent of a wife to sexual intercourse; that is no longer justifiable in terms of human relations, let alone the criminal law.

Section 73 of the Criminal Law Consolidation Act, which is sought to be amended by this Bill, provides:

(3) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to sexual intercourse with that other person.

(4) No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.

Those two provisions are subsequently qualified by subsection 5, which provides:

Notwithstanding the foregoing provisions of this section, a person shall not be convicted of rape or indecent assault upon his spouse, or an attempt to commit, or assault with intent to commit, rape or indecent assault upon his spouse (except as an accessory) unless the alleged offence consisted of, was preceded or accompanied by, or was associated with—

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

Subsection (5) is to be repealed by this Bill and the Opposition supports that.

In his comprehensive second reading explanation of this Bill, the Attorney-General indicated that in common law jurisdictions the common law is now ahead of the statute law in South Australia. He made the point that the marital rape immunity has been abolished by every other jurisdiction in Australia, either expressly or by implication, and that in England a working paper by the Law Commission recommended abolition, but the courts have anticipated what might be enacted and, in fact, by court-made law have decided that no longer does the common law stand that a husband cannot rape his wife when they are cohabiting.

The other interesting aspect of that is that recently there was a High Court case where, as I recollect it, a person charged with rape of his wife took a constitutional point that the Family Law Act, having provided for relief in the form of restitution of conjugal rights, overrode State law, which provided for rape in marriage. The High Court decided that that was not so and that there was no incompatability between State and Federal laws. So, in the area of removal of the qualification to the rape in marriage criminal law, that is supported.

The other area the Bill deals with relates to consent procured by fraud. That deals particularly with a situation that arose in the Victorian Court of Criminal Appeal case in 1990 in the decision in Mobilio. As a result of that case there is a somewhat limited amendment that deals with the question of consent procured by fraud. It relates particularly to those circumstances where a woman might have consented to a procedure for the purpose of medical diagnosis,

investigation or treatment, or for the purpose of hygiene, but not for the purposes of sexual gratification. The Bill seeks to clarify that position to ensure that the situation which arose in the Victorian Court of Criminal Appeal and which involved the use of an ultrasound procedure for the purpose of sexual gratification is not the law in South Australia. There is some debate whether that ought to relate to the issue of rape and not to unlawful sexual intercourse, but the Opposition is satisfied with the provisions of the Bill.

The only issue that could be raised in relation to that question of consent is what additional risks might be incurred by medical practitioners, in particular in the use of invasive procedures which might result from what a woman believes is to be for a medical or hygienic purpose but which might be for the sexual gratification of the medical practitioner.

I suppose the charges will be laid only where there is likely to be a reasonable basis for a conviction so that there is unlikely to be increased threat to honest and reasonable medical practitioners as a result of the enactment of this provision. However, it is something that can be raised with justification as a concern. Notwithstanding that, the Opposition indicates its support for the Bill.

The Hon. J.C. BURDETT: I support the second reading of the Bill. Sexual intercourse without consent of the other party is abhorrent and ought to be subject to the sanctions of the criminal law whether the victim is the spouse of her attacker or not.

The Hon. C.J. Sumner: Which way did you vote last time?

The Hon. J.C. BURDETT: I am not sure how I voted last time; I have not looked it up. As the Attorney has indicated by interjection, I was a member of this Parliament in 1976 when we then led Australia in having the first rape in marriage legislation. I certainly supported the concept. I do not recall how I voted on the amendments but the Parliament at that time was somewhat cautious, it being the first rape in marriage legislation.

We came up with marital immunity being removed in only four specified cases, which were identified by the Hon. Mr Griffin and I will not repeat them. It was a limited rape in marriage and it was regarded as being fairly dramatic at that time. As was pointed out in the second reading explanation, it is rather ironical that, whereas South Australia led Australia in having the first rape in marriage legislation, events have overtaken us, and now all the other Australian jurisdictions have removed the marital immunity, yet in South Australia the four respective areas still apply.

Therefore, I support putting us back in our rightful position being up with the other jurisdictions. We were once the leader in this matter of rape in marriage and now we are making it absolute so that if any person, be it the husband of the victim or not, has intercourse with the victim without her consent, that person will face the full force of the law. I put it in terms of husband and wife, man and woman, because although it does apply in regard to two males and technically applies the other way around in respect of a female raping a man, I refer to the usual example.

The only possible objection to the Bill, and it has been raised in the course of our inquiries and it was raised before, as the Hon. Mr Griffin said, is that these changes could be seen as a further attack on the institution of marriage and could place a dangerous weapon in the hands of a vindictive wife. If I thought that this Bill was any attack on the institution of marriage, I would be opposed to it, but I do not believe that it is. I cannot see that that is the case at all. Rape by a husband of his wife—violent sexual intercourse without consent—ought to be the subject of the sanctions of the criminal law. The Hon. Mr Griffin has dealt with it being a dangerous weapon in the hands of a vindictive wife.

In regard to abuse, the main protection is obvious and is the onus of proof. In order to be convicted the husband would have had to be proven guilty of every aspect of the offence, including lack of consent beyond reasonable doubt, and that is the safeguard against any abuse. Probably in the marital bedrooms of the nation it is going to be pretty unlikely that it will be able to be found against the husband—beyond all reasonable doubt—that he has raped his wife, if he has not. If he has, I have no sympathy for him.

There is also the question of corroboration which, while not legally required, is the sort of thing that you look for in this kind of offence, and that will not be forthcoming if it has not happened. If it has happened, then the husband ought to be tried and, if found guilty, ought to be convicted. I refer to the traditional attitude of the police in domestic matters. The traditional attitude has certainly been not to intervene lightly in domestic matters and, if that attitude continues, it is a further safeguard. I believe there could be some possibility of abuse if the police should be directed to take any particular attitude to rape in marriage cases. If it was thought philosophically desirable to establish that these sorts of prosecutions happen, and if they were directed to take a particular attitude—a hard attitude, or an attitude of seeking prosecutions or convictions or whatever—I believe there could be abuse. I do not believe that that is likely to happen, but I think it is reasonable to ask at this stage about the way in which the Act is going to be administered because, in all criminal cases, that can be important. It is not a question of just what the law is: it is a question of the way in which it is administered and therefore I ask the Attorney whether it is intended to give any particular directions to the police concerning rape in marriage cases. I support the second reading.

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

ASSOCIATIONS INCORPORATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 12 November. Page 1713.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of the Bill. We wish to raise a number of issues and some of them would probably be more appropriately raised in Committee but, as I normally do for such Bills, I propose to deal with those issues at the second reading stage to give the Attorney-General an opportunity to obtain information and prepare responses in order to facilitate consideration of the Bill in Committee. All members will remember that the Associations Incorporation Act was enacted in 1985 following a substantial review of the law relating to the incorporation of associations.

At that time, there had been quite considerable controversy. I think it was prior to the 1985 State election when the Government had introduced the Incorporated Associations Bill. That was highly controversial because of the burden it placed upon all associations from small local sporting and social clubs and charitable organisations through to big operations. I think the 1985 legislation was generally regarded as reasonable. It made a distinction between what

I would describe as small associations and large associations by placing strict audit requirements upon those associations whose gross receipts exceeded $100 000. 'Gross receipts' was defined as the total amount of the receipts of an association excluding subscriptions, gifts, donations, devices or bequests or the proceeds from the realisation of capital.

I would suggest that that seems to have worked reasonably well except that the Government now asserts that some associations receiving Government grants have argued that these grants are excluded from the calculation of gross receipts. As a result, by this Bill the Government seeks to include all gifts including Government grants in a revised definition of 'gross receipts', which will have the effect of lowering the threshold compared with what it is in the existing legislation. It is appropriate to say that in respect of Government grants one would expect that the Government in making those grants has placed some strict auditing and accountability responsibilities upon the recipients of those grants so that the provisions of the Associations Incorporation Act would not be so significant. However, because an emphasis is placed upon Government grants in looking at the threshold in this Bill, it rather suggests that the accountability and audit requirements, as conditions of receiving Government grants, have not been either as stringent or as adequately monitored as they ought to have been.

During his reply, the Attorney-General might care to give some indication as to why the element of Government grants assumes the significance it appears to assume under the provisions of this Bill, what conditions of accountability and auditing are generally required by Government in the making of grants and how they might be deficient such that the threshold in this Bill needs to be clarified. I am surprised that there is any argument about the issue of Government grants because one must classify a Government grant as a gift or a donation. It cannot really be categorised as anything else. So, I would not have thought there was a need for clarification, but as it is in the Bill we have to address it.

In addition to this particular issue on which I want to spend a little time later, particularly in relation to penalties and audit requirements, the Bill makes a number of technical changes as well as some statute revision amendments. It deals with a number of issues of substance. The first issue of substance is that the Bill provides that, notwithstanding any other provision in the constitutional rules of an association, the rules may only be altered by a special resolution of a general meeting of members or, if there are no members, of the committee of management. A special resolution is a resolution passed at a duly convened meeting of members where 21 days written notice has been given and where not less than three-quarters of the total number of members who vote approve the resolution or, if there are no members, it is then passed by not less than three quarters of the members of the committee voting at a meeting of which 21 days written notice has been given.

The second issue of substance in the Bill is that incorporated associations claiming to be emanations of the Crown will now be bound by the Bill. The third area relates to incorporated associations that get into financial difficulties. At present, there is no provision in the principal Act to allow schemes of arrangement or compromises with creditors, and that is to be remedied by a substantial amendment to the principal Act.

The fourth area relates to accounting and auditing provisions, which have been strengthened considerably and, as I understand it, this was done after some consultation with various accounting bodies. The fifth matter relates to the status of an auditor of the association and makes it clear that a person who is an auditor of an association will not be able to be a member of the committee of management of that association.

The sixth matter relates to invitations to non-members to deposit money with an association, and the provisions relating to those have been tightened. The seventh matter relates to provisions dealing with the securing of pecuniary profits to members of an association. Those provisions have been clarified, and the provisions dealing with the oppression of members have been widened to include oppression of former members of an association. The eighth area of significance relates to penalties, which have been increased substantially.

I want to deal first with the audit provisions of the Bill. The first is the threshold after which audit provisions apply. I have already indicated that if an association has gross receipts in excess of $100 000 an audit is required and the accounts must be lodged annually with the Corporate Affairs Commission. The $100 000 is provided in the 1985 Act as a base figure but may be increased by regulation. That figure has not been increased.

The $100 000 figure is to be changed by ensuring that Government grants are included and also that all gifts and donations are taken into consideration—previously, they were excluded—and that property that has been purchased by the association for the purpose of resale is to be taken into consideration when it is resold so that the proceeds will form part of that $100 000 figure.

This will mean a substantial number of what I regard as small associations will be caught by the audit requirements of the legislation. I do not have the figures for the additional number of associations that might be caught by this substantial broadening of the $100 000 figure to include a range of other receipts, but I asked the Attorney-General for that information by letter a week ago, and I would hope that before we finish the second reading debate, some information might be available about the various associations that might be affected by the change in the definition of that base figure.

In relation to the base figure, the consumer price index has increased since the December 1985 quarter, when the principal Act was assented to, by about 72 per cent. So, if one were to adjust the $100 000 figure for inflation to ensure that the application of the legislation to associations now has the same application as in 1985, one would have to increase the $100 000 figure to $172 000. In addition to that, one has to take into account the broadening of the range of receipts which are to be included within the $100 000 figure. I will propose that, taking all these matters into consideration and trying to ensure that the Associations Incorporation Act still has some interest for smaller associations and that the tough requirements of the legislation apply only to those in some substantial enterprise, the figure should be increased, by amendment, from $100 000 to $200 000, on the basis of the extended definition of gross receipts, which is in the Bill.

The present Act and the amendment require accounts to be audited by a registered company auditor, a firm of registered company auditors, a person who is a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia or such other person as may be approved by the commission as an auditor.

Since the 1985 Act was passed, the National Institute of Accountants has been established and has grown in status. It has examined the Bill and makes the point that members of the National Institute of Accountants who hold a current practising certificate should be authorised to conduct an audit. That is a reasonable proposition, and I ask the Attor-

ney-General to consider it. What the National Institute of Accountants does say in a submission made to me—and I would presume that a copy has also gone to the Attorney-General—is that the mere fact of membership of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia does not necessarily mean that a member is qualified to act as an auditor. Some members do not have a public practising certificate and, because they do not have that certificate, they are unlikely to have professional indemnity insurance and, in addition, may not necessarily have the qualification to undertake an audit.

I am not proposing that we limit the entitlement to be an auditor of an association if one is a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants, but it is an important point to be taken into consideration, and I would ask the Attorney-General to do that.

The National Institute of Accountants proposes that those who are members of the other two accounting bodies should be required to hold a current public practice certificate before being eligible to audit the accounts of associations, for the reasons that I have indicated. I have not raised that point with the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants, but it is an issue which, if the Attorney-General wishes to pursue it, ought at least to be raised with those two bodies.

The National Institute of Accountants also draws attention to the fact that new section 37 (3) requires the auditor to furnish to the committee of an association accounts in sufficient time to enable the committee to lay the same before the annual meeting of the association. That institute draws attention to the fact that, while the obligation is placed upon the auditor to provide the information, there does not appear to be an express provision requiring the committee of management of the association to cooperate with the auditor. I suppose that is implicit in the obligation to provide access to books, but that may be different from cooperating in the provision of information which may not be readily accessible from the books. I propose that this matter be clarified by an amendment, which will place a responsibility upon members of an association to provide information to an auditor when requested to do so.

Several other matters are raised by the Joint Legislation Review Committee of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants. I will draw attention to those now and, if the Attorney-General does not have a copy of the submission, he might be able to give consideration to the propositions. The Joint Legislation Review Committee draws attention to the reference in clause 3, paragraph *(g)* (line 30) to a chain of relationships being traced between various bodies under one or more of the earlier paragraphs. That relates to the determination whether or not a person is an associate of a member or a former member of an incorporated association. I have not ascertained where the description 'a chain of relationships' is derived from, but the question by the Joint Legislation Review Committee is whether this description was clear and acceptable in the Bill or whether there was some doubt about its interpretation.

The Joint Legislation Review Committee also refers to clause 25, which enacts a new section 37. In relation to the preparation of accounts, proposed subsection (3) provides:

> The auditor of an incorporated association must furnish to the committee of the association, in sufffficient time to enable the committee to comply with section 35 (5), a report that states . . .
> *(b)* in respect of accounts consisting of an account of receipts and payments and a statement of assets and liabilities, whether or not the auditor is satisfied that these accounts present fairly—
> (i) the results of the association's activities for the association's financial year;
> and
> (ii) the financial state of the association at the end of the association's financial year,
> notwithstanding that the accounts have not been prepared on the accrual method of accounting;.

There is a reference to 'have not been prepared on the accrual method of accounting' rather than to 'may not have been prepared on the accrual method of accounting'. The Joint Legislation Review Committee suggests the use of the word 'may' rather than 'have'. After paragraph *(d)* the committee also suggests the insertion of the word 'and'.

The Joint Legislation Review Committee suggests that there is a double negative in proposed section 39b dealing with the indemnifying of officers or auditors of the association. There is a provision which does not allow the association to undertake that course. Subsection (3) provides:

> Subsection (1) does not apply in respect of a contract of insurance not being a contract of insurance the premiums in respect of which are paid by the association.

It would seem to me that the second 'not' is inappropriate. It also seems inappropriate to the Joint Legislation Review Committee.

Clause 27 inserts a new division relating to the duties of officers. In new section 39d, which relates to the inspection of records, the National Institute of Accountants suggests that, rather than an inspection of records being undertaken only by a registered company auditor or a legal practitioner upon the order of the District Court, that should be extended to any person who is qualified under the Act to be an auditor of an association or a legal practitioner. That broadens it out into the extended range of persons who may be auditors, and I see no difficulty with that.

I turn now to the issue of fines. There are approximately 30 increases in fines throughout the Bill, a number being increased from $1 000 to $4 000. The new minimum is to be $1 000 and the maximum $15 000, and in some instances imprisonment. Some of the increases are reasonable, because fraudulent behaviour is involved. Others are not so reasonable, particularly because the fines apply whether the association is small or large. I suppose there are a number of options in relation to fines. One option is to have a lower fine for offences involving small associations and a larger fine for the bigger associations. Some might argue that this would make the penal provisions unwieldy; nevertheless, the option is attractive.

One must keep in mind that the range of offences and the fines imposed may now make it unattractive for individuals to volunteer to take offices in associations or to be committee members of an association or, for example, a small club, particularly when it is not a profit-making association, and generally speaking where no remuneration is payable to officers and committee members, even for out-of-pocket expenses for the time that they spend on the affairs of such a club or other association. That is not to ignore the fact that there are occasions when fraud, and not mere inadvertence, is involved, and profits may have been made by members to the disadvantage of the club or other association. I am not suggesting that we should play down the importance of deterring such behaviour, but some of the increases in fines, particularly for the small associations, are unreasonably high.

Clause 5 amends section 7, which provides that, where a document filed with the Corporate Affairs Commission contains an error, alteration or erasure or does not comply with the requirements of the Act or contains matter contrary to the law or contains matter which is false or misleading in a material particular, the commission can reject the docu-

ment and may require a person to file another document or furnish information. Failure to comply within 14 days with such a request by the commission is an offence for which the fine is increased from $1 000 to $4 000.

Those who have worked with small organisations and who prepare their own documents for filing with the Corporate Affairs Commission can readily recognise that many are not prepared in a particularly competent fashion; they are prepared according to the ability of the office bearer and may be in error. They may be misleading, but not deliberately misleading, and they may contain an erasure. In fact, even documents professionally prepared may contain an erasure. It seems very tough on the small organisation officer to be liable to a fine of $4 000.

I recognise that the court has a discretion when setting the penalty to take into consideration the gravity of the offence, but such an increase signals to the courts that it is more serious than it is presently regarded, and there is no provision to distinguish between the small and the large organisation. I suggest that there should be a two-tier level of penalty so that, if the offence occurs in relation to a small association that does not have to file audited statements, the penalty should be no more than $1 000 maximum and for others $4 000.

There are a number of other offences where a distinction can be drawn between small associations and those with gross receipts of more than $100 000 or $200 000, depending whether or not an amendment is carried. I propose that the fine for these offences for small associations be a maximum of $1 000 and for others $4 000 in the following areas, and there may be others which we identify as we go through the Committee stage of the Bill.

Proposed new section 39a contains a duty upon an officer to act honestly and with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office. I do not think anyone could quarrel with a significant penalty for those who do not act honestly. The difficulty is that this section follows the old Companies Code provision that combines honesty and due care and diligence in the one provision. So, if there is a distinction between the two duties, one could impose the higher fine in relation to failing to act honestly and the lower fine in relation to not acting with reasonable care and diligence. However, as they are in the same provision, I think it is fair that with small associations it be the lower maximum penalty and for larger associations the higher maximum penalty.

Again, for people who have been involved with small clubs or associations it is very difficult to determine what is not reasonable care and diligence. A lawyer might well advise a much higher level of care and diligence than an ordinary person from his or her own experience would believe was necessary. People might well forget to file a document at the Corporate Affairs Commission for three or four weeks. They might go on holidays and say that it can wait—it is only for the local tennis club or progress association. It may be that a committee member does not turn up for a couple of meetings and some decisions are taken in which the member should have been involved, or it may be that there are other duties which the member should have exercised but which, for one reason or another, he or she did not get around to. As I said earlier, I think that we must be careful that we do not make small associations so unattractive to inexperienced ordinary citizens that we deter this method of incorporation, which is useful for those small groups.

Proposed new section 39c establishes an offence for failing to keep such accounting records as correctly record and explain the transactions of the association and the financial position of the association. I have been to many annual meetings of small groups where annual accounts have been presented. I shudder to think about them. They have not been prepared in a proper professional accounting manner, but there is enough information to establish that the bank balance is, say, $250 and that the group has spent money on this and that, and that is the end of it. It may be that that might be sufficient—but I doubt it—under the new obligations imposed by proposed new section 39c. Where an incorporated association or officer contravenes or fails to comply with a condition imposed by the commission relating to the extension of any time limit, an offence is committed under proposed new section 49a. Again, I think that places a very heavy onus upon an officer, and an officer is defined as a person who occupies or acts in a position of a member of the committee of the association, or the secretary, treasurer or public officer of the association, or is concerned or takes part in the management of the affairs of the association, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position.

The definition also includes the holder of any other office established by the rules of the association (except a patron or the holder of some other honorary office that confers no right to participate in the management of the affairs of the association) or any person in accordance with whose directions or instructions the committee of the association is accustomed to act.

It may be that a member of a committee does not have a clue what the secretary or the public officer has been required to do by the Corporate Affairs Commission. However, an offence is committed by the officer—that is, a member of the committee—if there has been a contravention of or failure to comply with a condition imposed by the commission.

In proposed new section 51 there is an obligation to keep minutes of general meetings and of meetings of the committee and those minutes must be entered within one month after the relevant meeting. Also, those minutes must be signed by a member presiding at the meeting at which the proceedings took place or by a member presiding at the next succeeding meeting, and an offence is committed if that is not done.

I know of many small organisations where the secretary will keep a note of the minutes of the annual general meeting and write them up a few weeks before the next annual meeting. That would be an offence under this provision. I also know that at annual general meetings it is customary to confirm the minutes of the previous annual meeting, but that fails to satisfy the obligations imposed by this section. Again, whilst that may be appropriate for the big charitable organisations—the hospitals or religious organisations—where generally proper accounting expertise is available and where the members of the board of governors, the board of management or the committee of management are generally of a more experienced nature, that is fine. However, for small tennis clubs, social clubs, progress associations, and so on, I suggest that the onus is too heavy and the risk of penalty too high.

Under proposed new section 14 a person involved with an association must produce to the Corporate Affairs Commissioner or an authorised person books of account and other documents and papers when requested. Again, there is a penalty if that is not done. I would think that in the ordinary course gentle persuasion can result in these sorts of documents being produced. However, again, the onus is quite heavy. So, in relation to fines and offences I think

there are some major areas of concern. I am not suggesting that no offences should be created, but I am suggesting that they are too onerous and the penalties, particularly in relation to small associations, are too large.

I turn now to the question of secrecy. Under clause 9, which contains a proposed new section 17, a person authorised by the Corporate Affairs Commission may require a person to provide information. A person is not guilty of an offence for providing that information in circumstances set out in the section. The area about which I have some concern is that a civil liability may be attracted as a result of the provision of that information. I would be anxious to ensure that, unless there are some good reasons of which I am not aware for doing otherwise, we should ensure by an amendment to this provision that the possibility of that civil liability being attracted is specifically excluded.

In relation to the rules of an association, new section 23a which is inserted will allow the Corporate Affairs Commission to require provisions to be inserted in the rules dealing with membership; the powers, duties and manner of appointment of the committee of the association; the apointment of an auditor; the dates of the association's financial year; the calling of and procedure to be followed at general meetings; the management and control of the funds and property of the association; and, the powers of the association and by whom and in what manner they may be exercised.

There is also the manner in which the rules of the association may be altered and any other matter prescribed by regulation. I hasten to say that I think that some of these are reasonable, but again I see no reason for a Government agency to be involved in matters of membership, the powers and duties of the committee of the association and how they want to divide the responsibility between the general meeting of members (if there are members) and the committee of management.

I see no reason why a Government agency should be involved in the procedure to be followed at general meetings or the powers of the association. There may be a reason to limit the powers of the association, for example, not to enter into a guarantee but, without the Corporate Affairs Commission having any specific guidelines under the statute, it seems to me to be inappropriate for the commission to be involved in saying, 'You ought to have this power or you should not have that power as either a committee of an association or as an association generally, or that you ought to exercise this duty or that duty.' I do not see any reason why the procedure by which matters are dealt with at a general meeting should be the subject of a direction by the commission, or the manner in which the rules may be altered or any other matter prescribed by regulation. I would be proposing to delete a number of these provisions in which I do not believe the commission should be involved.

I have had many dealings with a whole range of incorporated associations, ranging from the very large to the very small, and I can say that no one is the same as any other and that there are always different provisions which those people who comprise the membership or the committee or management wish to have included for reasons that might be peculiar to them or their association.

Clause 16 relates to the question of rules and provides that the rules of an incorporated association may be altered only by special resolution of the association. I acknowledge that that is consistent with the corporations law, but I wonder why it is necessary for there to be any uniformity with associations. Some associations provide for ordinary resolutions and some for special resolutions. Some provide for other procedures and many also provide for some other organisations to approve an amendment before it becomes binding.

That is preserved in the principal Act but, again, I see no reason for the law to put all associations into a strait-jacket and say, 'You are all the same. You all have to have the same provision relating to the amendment of your rules, that is, only by special resolution.' I can understand the desire of a statutory agency like the commission to try to get some uniformity, but the whole object of associations incorporation law is to allow flexibility and to allow small bodies to take advantage of incorporation without necessarily being placed into a strait-jacket or having their procedures rigidly controlled. The fact of life is that in the ordinary community the majority of associations involve people who do not have the necessary competence or time to follow the letter of the strict regulatory law relating to the conduct of their affairs. I do not think any harm comes as a result of not following it so rigidly.

I now want to talk about the duties of officers. New sections are to be inserted by clause 27 dealing with the duties of officers. Some are obviously required for large associations, but for small associations there may be difficulty in compliance, particularly for the reasons I have already advanced on several occasions, that most of the people involved in many of the organisations lack any knowledge of the operation of an assocations law and the practice relating to it. Let me deal with a couple of examples. New section 39a (3) provides:

> An officer or employee of an incorporated association must not make improper use of his or her position as such an officer or employee so as to gain, directly or indirectly, an advantage for himself or herself or any other person, or so as to cause a detriment to the association.

The difficulty arises in relation to this provision as to what is meant by 'improper' and 'advantage'. The fine is $15 000 and four years maximum imprisonment, which are pretty hefty fines. I suggest that some attempt should be made to make the clause clearer, particularly in relation to 'impropriety' and 'advantage'.

An advantage may be gained by a person who becomes an officer of an association, for example, as a stepping stone for getting into Parliament or local government. It may be that that person persuades the committee of management to make public statements or to take action that will give the officer a public profile, and one has to question whether in those circumstances that ought to be subject to the provisions of this new section. Is that an advantage? Some say getting into this place is a disadvantage, but that is being facetious. Some might say that the use of a position to gain higher public profile in itself is improper. I raise this concern to ascertain whether it is possible for us to clarify the position, particularly in the light of the substantial penalty.

The second area relates to the rules of the association that may not exempt any officer or auditor or indemnify that person against any liability that would otherwise attach to that person in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the association. Such a provision is void, although it does allow the association to take out a contract of insurance and to pay the premiums in relation to any of these matters.

Members of committees of management of associations are constantly bedevilled by the question of liability for negligence or default. It is not an easy area to cover and to protect oneself against, particularly as the courts are extending the boundaries of liability of company directors for negligent acts or omissions and are applying it to organisations, whether they be companies limited by guarantee or ordinary associations.

In my view it would not be unreasonable for an association to try to protect its officers and committee members against personal liability for negligence and default in his or her involvement with the association, unless some criminal liability was incurred or the member of the association acted with reckless disregard of the consequences of an action. In a submission to me on this matter, the Institute of Company Directors raised this issue, which goes back to the question of large fines. Of course that is related to this issue now before us, with a maximum fine of $15 000 and four years imprisonment. The institute states:

> The possibility of such large fines for an instance of non-compliance with the regulations will put the legislation—

by regulations they really mean the whole area of regulation rather than the technical description of regulations—

> beyond the reach of many small clubs and associations. It will also make it very unattractive to individuals who might volunteer to be officers or committee members of such an association. These are not profit making associations; the officers and committee members of smaller associations (and even of some large ones) do not generally receive any compensation. The risk of serving as a committee member will simply be too great for the individuals concerned.
>
> In addition to the increase in fines, the Bill (clause 29) also imports into the Associations Incorporation Act, sections 589 to 596 of the Corporations Law. These provisions impose substantial civil liability on company officers when they incur a debt on behalf of the company and they knew, or should have known, that the company would not be able to pay the debt. These provisions were recently used by the Commonwealth Bank to obtain a judgment of $97 million against Mr Eise, an honorary and unpaid director of the National Safety Council. Mr Eise maintains that he was the victim of Mr Friedrich's fraud. Perhaps the judgment against Mr Eise can be justified on the grounds that the NSC was a very large organisation. It would be a vary harsh result if the organisation were smaller. If this is the liability that one may incur for serving as a committee member of the tennis club, most intelligent people will think better of it and refuse to serve. At least with respect to small associations this aspect of the Bill does not appear to be an instance where adoption of the Corporations Law provisions is appropriate.

That is very pertinent to the issue to which I have just referred.

There are several other areas that I want to touch upon, including the question of minutes of proceedings. An incorporated association must cause minutes to be kept and for these to be signed by the presiding officer at the meeting at which the proceedings took place or by a member of the association presiding at the next succeeding meeting. There is no reference to confirmation of the minutes. The normal practice in respect of the minutes of the proceedings of a committee is for the committee to confirm the minutes at its next or subsequent meeting or, if it is a general meeting, for the general meeting to confirm those minutes. In most cases it will not matter by whom they are confirmed, but in some instances it does matter that the committee or the general meeting has or has not confirmed the record of proceedings. There ought to be some reference to confirmation of the minutes as a true and correct record of the proceedings, and there ought to be some flexibility as to when that occurs, and not just at the next succeeding meeting.

The next area concerns the investing or depositing of money with an association. While the Corporate Affairs Commission may vary requirements of the Act, new section 53 tightens up considerably on an incorporated association inviting persons to invest or deposit money with the association. Before an invitation is made, a disclosure statement must be submitted. The disclosure statement must contain information set out in subsection (2). This means that no invitation may be made to any member or non-member to invest or deposit money unless the disclosure statement has been supplied. Undoubtedly, it will affect various denominational development funds and perhaps even sporting associations and other bodies seeking to raise money from their members, and even those which might have been established since 1 March 1985. The provision does not apply to an invitation by an association to persons who are not members of the association to invest or deposit money in a fund that was being maintained by the association on 1 March 1985.

I suggest that this should probably be varied further to a current date where the fund was in existence on 1 March 1985 or subsequently operated with the approval of the Corporate Affairs Commission. I would have thought also that it was not unreasonable to allow invitations to members to invest or deposit money with an association without such a disclosure statement and the disclosure statement only being required if the invitation is to be made outside the membership, and I will propose an amendment to that effect.

I now want to draw attention quickly to several other matters. First, in clause 5 in proposed section 7 (3) there is reference to a court of summary jurisdiction. That may be picked up by the Statutes Repeal and Amendment (Courts) Act when we change from a court of summary jursidiction to the Magistrates Court, but I draw attention to it.

[Sitting suspended from 6.7 to 7.45 p.m.]

The Hon. K.T. GRIFFIN: Prior to the dinner break I indicated that I have a few concluding remarks to make about specific provisions in this Bill. Consistent with the position I have taken, it is important to have those remarks referred to during the second reading debate so that the Attorney-General may take some advice on them. In relation to clause 9 of the Bill, which deals with secrecy, there is a division 6 fine, that is, $4 000, if an authorised person, that is, a person authorised by the Corporate Affairs Commission, acquires information and divulges or makes use of it in any other way outside the scope of his or her authority. It is a fairly serious matter to divulge such information when it is obtained under privilege, such as that envisaged in clause 9. Therefore, I ask the question whether $4 000 is an adequate maximum fine, and whether it should not be something like $8 000, which is a division 5 fine.

I draw attention to clause 23, which seeks to amend section 35 of the principal Act. Section 35 deals with accounts which are to be kept by an incorporated association. Proposed subsection (4) provides:

> The committee of an incorporated association to which this Division applies must cause a report of the committee to be made in accordance with a resolution of the committee and signed by two or more members of the committee, stating—
>
> *(a)* whether, during the financial year to which the accounts relate—
>
> (i) an officer of the association;
>
> (ii) a firm of which the officer is a member; or
>
> (iii) a body corporate in which the officer has a substantial financial interest,
>
> has received or become entitled to receive a benefit as a result of a contract between the officer, firm or body corporate and the association, and if so the general nature of the benefit;

I raise the question as to what the definition of substantial financial interest really means, keeping in mind that no shares are issued in associations and membership does not entitle a member to a share in either the profits or the capital assets of the association. However, with a body corporate, such as a company there are shares and it may be possible to identify a substantial financial interest in relation to a company. But my focus is on the reference to substantial financial interest.

I have already mentioned new subsection (6) referred to in clause 23, but I shall refer to it again for the sake of completeness. This provides that a member of a committee of an association who fails to take all reasonable steps to comply with or secure compliance with this section about the proper keeping of accounts is guilty of an offence. It also provides that, if the offence is committed with intent to deceive or defraud the association, creditors of the association or creditors of any other person or for any fraudulent purpose, the penalty is a division 4 fine, which is $15 000, or a division 4 imprisonment, or in any other case a division 6 fine, which is $4 000.

I believe there is no objection to that part of the offence which relates to intention to deceive or defraud, but the failure to take reasonable steps to comply with or secure compliance with the section relating to the accounts to be kept is a particularly onerous provision and places a great deal of responsibility on the shoulders of a member of the committee of an association in circumstances where that member may not necessarily have the active involvement or, for that matter, the confidence, to insist upon compliance with the section, even if he or she was aware of the obligation placed upon the member by the section.

Clause 29 deals with the power to compromise with creditors and imports into the Associations Incorporation Act provisions of the corporations law relating to compromise with creditors and winding up an incorporated association. The new section 40a (2) provides:

> An incorporated association may not reach a compromise or enter into an arrangement with any member of the association.

I would suggest that that is quite inappropriate. It may be that the association has entered into a contract for the provision of services or goods, or for some other purpose, with a person who is a member, the member has disclosed the interest in accordance with provisions of the Act and yet, if there is to be some compromise or scheme of arrangement, the association cannot enter into such a compromise or scheme of arrangement with that member. It may be that every other creditor is prepared to accept a compromise but it falls flat because of this provision. I cannot see the justification for it. It may be that something has escaped me, but at the moment I cannot see the need or the desirability for the provision in view of the relationships between members and an association.

In the same clause, but in new section 41 dealing with the winding up of an incorporated association, there is a provision setting out the grounds upon which an incorporated association may be wound up by the Supreme Court. Among the grounds is a provision that the association is unable to pay its debts. That is consistent with provisions under the old Companies Code and I think also under the current corporations law. However, for the purpose of determining whether or not an association is able to pay its debts, if a creditor serves a notice on the association demanding the payment of a debt which is to exceed $1 000 then due and that is not paid within three weeks after service of the demand, then the association is deemed to be unable to pay its creditors. That is a large amount of money for small associations: it is a very small amount of money for the larger trading-type associations. However, the concern I have is that it is relatively rigid. It may be that there is a dispute as to the fact that the $1 000 or more is then due and about the primary fact of indebtedness. My question is: what happens if there is a dispute in relation to indebtedness and as to whether or not the amount is actually due?

In the same clause, the Corporate Affairs Commission may issue a certificate for the winding up of an incorporated association on a number of grounds which are set out in the proposed subsection (7). One is that the incorporation of the association has been obtained by mistake or fraud. I have no difficulty with the reference to fraud, but I have some concern about the reference to mistake. I think that is probably consistent with the present provisions, but one concern that I have always had about this matter has been that there is no provision for compensation by the Minister or the commission for a mistake made by the commission or the Minister in the original incorporation. I would ask the Attorney-General to give some attention to that point.

In clause 32 there is an amendment to section 44 of the Act dealing with defunct associations. The Corporate Affairs Commission can remove the name of a defunct association from the register. This provision allows the restoration of the incorporation of an association where it is established to the satisfaction of the commission that the dissolution occurred as a result of error on the part of the commission. There is a provision in section 45 of the Act that property belonging to an association which is dissolved actually vests in the commission. I wonder whether, in the light of the amendment proposed in clause 32, it is necessary to provide for a revesting of property as a result of the restoration of incorporation.

Clause 34 enacts section 49a which gives the Corporate Affairs Commissions power to extend any limitation on time whether or not the prescribed period has expired. I think that is an appropriate provision. There is also a provision to exempt the association or any officer from the obligation to comply with any provision of the Act. Again, I raise the question whether, consistently with paragraph *(a)* of proposed subsection (1), that exemption can be given whether or not there has been a breach of the Act in relation to the obligation with which the officer or the association must comply. Clause 39 enacts new section 55 and provides:

> Unless the Minister otherwise approves, an incorporated association must not conduct its affairs in a manner calculated to secure a pecuniary profit for the members of the association or any of them, or for associates of the members or any of them.

I agree with that. On the other hand, I ask why the Minister is required to give approval and not the Corporate Affairs Commission. Throughout the principal Act most of the powers are vested in the commission which, under its own Act, is subject to the general control and direction of the Minister. Therefore, one asks why section 55 is to be treated differently. Proposed section 55 (2) provides:

> Unless the Minister otherwise approves, an incorporated association must not make a payment from its income or capital, or dispose of any of its assets *in specie*, to the members of the association or any of them, or to associates of the members or any of them.

I raise the question about work which might be done by a member of the association for the association or who provides goods to the association. I have always understood that in those circumstances, where there is a contract which is approved by the committee of management and the member involved who is a party to that contract directly or indirectly discloses his or her interest, then the contract can still be made. However, this suggests that there is a greater level of restriction which will not allow members who disclose such an interest to do work for an association of which they might be members or to provide goods to it. I think that needs to be revised. This provision may not be directed towards that situation, but I think it is wide enough to encompass it.

I raise a question about new section 62 (4) in clause 46 which relates to the examination of persons concerned with associations. It imports the investigation and examination provisions of the corporations law, which enables a person to be examined by the Corporate Affairs Commission or by

someone nominated by the commission to undertake that work. Subsection (4) provides:

An examination under this section must be held in public except to such extent (if any) as the court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

I am all for public examination, but it seems to me that this is not in the nature of a formal prosecution; it is more an examination to identify evidence rather than to proceed with a prosecution. In those circumstances, there may be prejudice to the individual who is the subject of the examination if it is held in public. I wonder whether it should be held in private, unless, by reason of special circumstances, it is desirable to hold the examination in public.

I have not had an opportunity to look at proposed section 62e, which deals with proceedings for offences and relates particularly to summary offences. Again, I wonder whether, as I indicated earlier in relation to another clause, this is consistent with the legislation that was passed just prior to Christmas for the restructuring of the courts. The final matter is typographical, but it should be raised. In schedule 2, which basically deals with statute revision issues, there is a reference to section 47 (7) being amended. I think that should be section 46 (7).

Subject to all those matters on which there may be some controversy, particularly in relation to the distinction between large and small associations and the obligations placed upon small associations and their members, which need to be addressed by the Attorney-General in reply and which undoubtedly will probably be pursued in the Committee stage, I repeat the Opposition's support for the second reading to enable the matter to proceed to a closer examination.

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

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

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

That on the commencement of the Parliamentary Committees Act the following members be appointed to the Environment, Resources and development Committee, viz.: the Hon. T.G. Roberts, the Hon. M.J. Elliott and one other and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

(Continued from 27 November. Page 2363.)

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

Line 4, strike out 'one other' and insert in lieu thereof 'the Hon. H.P.K. Dunn'.

Amendment carried; motion as amended carried.

SOCIAL DEVELOPMENT COMMITTEE

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

That on the commencement of the Parliamentary Committees Act, the following members be appointed to the Social Development Committee, viz.: the Hon. C.A. Pickles, the Hon. I. Gilfillan and one other, and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

(Continued from 27 November. Page 2363.)

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

Line 3 strike out 'one other' and insert in lieu thereof 'the Hon. L.H. Davis'.

Amendment carried; motion as amended carried.

LEGISLATIVE REVIEW COMMITTEE

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

That on the commencement of the Parliamentary Committees Act, the following members be appointed to the Legislative Review Committee, viz.: the Hon. M.S. Feleppa, the Hon. G. Weatherill and one other, and that a message be sent to the House of Assembly in accordance with the foregoing resolution.

(Continued from 27 November. Page 2363.)

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

Line 3, strike out 'one other' and insert in lieu thereof 'the Hon. J.C. Burdett'.

Amendment carried; motion as amended carried.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

In Committee.

(Continued from 26 November. Page 2273.)

Clause 6—'Liability for rates.'

The Hon. ANNE LEVY: I do not propose to move the amendment standing in my name, the same amendment has been put on file by the Hon. Mr Irwin, who presumably put it on file for the same reasons that I initially put it there.

The whole purpose of clause 6, which amends section 183 of the Act, is to clarify that where council land is leased the lessee is regarded as the principal ratepayer and then to ensure that, where rates are due on a property that is leased and council has given notice to the lessee that rent should be paid to the council instead of the owner in order to meet the rate debt and instead that rent is paid to the owner and not the council, the owner must them pay that money to the council within one business day of receipt and, furthermore, to restore a charge of 5 per cent to overdue rates collected under these rent notices as applies for other overdue rates.

Following the drafting of the Bill, the South Australian Institute of Rate Administrators felt that an amendment to the clause was necessary. It argued that where land is held from a council under a lease or licence the council may wish to come to an arrangement with the occupier that the occupier is not to bear the cost of any rates levied against the property. This seems very reasonable. However, Parliamentary Counsel's argument was that the Bill as originally drafted would allow that to happen. The occupier would technically remain the principal ratepayer, but such an agreement could, of course, result in a complete rebate of the rates.

When the Institute of Rate Administrators raised this question, the LGA considered it and, perhaps to clarify the matter, suggested to me that the amendment that I have on file should be moved. I presume it suggested the same to the Hon. Mr Irwin, so that he put on file the same amendment. However, subsequent to that, I was approached by solicitors from Norman, Waterhouse and Mutton, which is the firm used by the LGA and numerous councils. The solicitors argued that this amendment should not proceed, that it was not necessary and that, in fact, it could cause confusion and difficulties with some of their client councils.

My reaction to the approach from Norman, Waterhouse and Mutton was to say that on this matter I would be guided by the LGA and that the solicitors should talk to the LGA, for whom, I may say, they regularly act.

Following further talks between their solicitors and the LGA, the LGA then informed me that it believed it was best not to proceed with the amendment but to continue with the original clause 6 of the Bill as it would not prevent councils making arrangements through rebates or whatever mechanisms they prefered to use if they wished to do so but that amending the clause as suggested might cause problems for some councils.

Consequently, at the request of the LGA I will not move this amendment, and the Hon. Mr Irwin might be persuaded likewise not to move his amendment. If he does, I indicate that, at the request of the LGA—after discussion with its lawyers—I will oppose the amendment.

The Hon. J.C. IRWIN: I thank the Minister for her explanation. It is true that I have had the same parallel advice almost all the way through from Parliamentary Counsel who helped me draft the amendment. Rate administrators and Norman Waterhouse have contacted me.

What disappoints me is that the Minister wrote to me only this morning with some argument that I appreciate concerning other clauses that we will consider later. I do not know why the Minister did not include some explanation of this in that same letter. Perhaps it has come together only at the last moment. It is a disappointment, as much as I appreciate the correspondence, that the Minister did not give us time to think about her position on this clause, especially as we had the same amendments.

Perhaps one can say that we are a little rusty on the first day back, and flicking through bits of paper, seeing how the amendments work and determining which are acceptable and which are not is the cause of some confusion. Perhaps because of the time lapse since we last debated this matter it will result in benefits to local government, to ratepayers and to local government electors. In this matter it is difficult to tell who is right.

I accept the Minister's explanation that the matter has been accepted by the LGA, which has not indicated anything to me at all. I accept that the LGA wants the Minister to take out this amendment. However, I remind the Committee of the argument advanced by a former Norman Waterhouse senior partner, Brian Hayes, QC, and Crown Law regarding what is a majority of a council voting. There are two different opinions, and no-one will ever know who is right until it is tested by a court. This may not be a minor example, but it is another example where there are a number of advisers and their opinions differ.

I indicate to the Minister and the Committee that I will not proceed with the amendment and that I am happy to let the provision stand. I assume that there is no amendment to this clause, which I am happy to let stand. I hope that local government is able to work with the Act to its satisfaction.

The Hon. ANNE LEVY: I thank the Hon. Mr Irwin for his comments. I apologise if my letter to him did not include this issue. I had presumed that the LGA would indicate to the honourable member its change of view after speaking to their solicitors in the same way as they spoke to me. I regret that they have not done so, but I can assure him that there was no intention on my part to spring things on him at the last minute.

The Hon. J.C. IRWIN: I thank the Minister for her explanation. My simple question relates to new subsection (4a) of section 183. The subsection provides:

> Where the council gives a notice under subsection (4), an additional charge of 5 per cent of the amount in arrears is payable and recoverable as part of those rates.

Is that 5 per cent per month, per week or what? It is not as clear as the position in section 184 (8c), which provides:

> On the expiration of each month from that date interest of the prescribed percentage of the amount in arrears including the amount of any previous unpaid fine and interest is payable.

Why is not the same wording used, because I do not know what the 5 per cent applies to? Is it accumulating or simple interest?

The Hon. ANNE LEVY: It is a flat 5 per cent as a penalty, which is the same as in section 184 (8b) where a flat penalty of 5 per cent is payable. Really, it makes the situation in section 183 analogous to that in section 184. If it is worded differently, it may be that with the lapse of time drafting styles change. There is no intention to make it different.

Clause passed.

Clauses 7 and 8 passed.

Clause 9—'Contiguous land.'

The Hon. J.C. IRWIN: One council—I think Murray Bridge—wondered whether this clause covers two councils whose boundary cuts through a piece of land where differing rates apply.Does it cover that sitn adequately?

The Hon. ANNE LEVY: I understand that this clause will apply only to land within the area of one council. For the purposes of rating, two bits of land may be regarded as contiguous and therefore rated as one piece if the separation is only by a road, street, lane, footway, court, alley, railway, thoroughfare, watercourse or a reserve. However, it would have no effect at all on a line drawn through an allotment that was the boundary of one council with another. In that situation each council is, of course, completely responsible for its own rating policy.

Clause passed.

Clause 10 passed.

New clause 10a—'Procedures to be observed in relation to certain activities.'

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

Page 4, after line 4—
Insert new clause as follows:
10a. Section 197 of the principal Act is amended—
(a) by striking out paragraph *(i)* of subsection (3);
(b) by inserting after subsection (3) the following subsections:
(3a) The council must, before submitting an application to the Minister under this section, cause notice of the project of proposal to be published in a newspaper circulating in its area.
(3b) A notice published under subsection (3a)—
(a) must describe the project or proposal with reasonable particularity;
(b) in relation to a project—
(i) must state the estimated cost to the council of carrying out the project and the means by which the project is to be financed;
and
(ii) must identify any land that would be directly affected by the project;
(c) must invite interested persons to make written submissions to the council in relation to the project or proposal on or before a date stated in the notice (which must be a date falling at least one month after the date of publication of the notice).
(3c) The council must consider any representations made in response to the notice and, as part of its application, report to the Minister on—
(a) those representations;
and
(b) any other consultation that the council has undertaken with members of the public in relation to the project or proposal.;
(c) by striking out paragraph *(c)* of subsection (5);
and
(d) by striking out subsections (6), (7) and (8).

I apologise for taking some time to speak to this series of amendments, because it was not until I considered some aspects of the Bill and the legislation itself after my second reading speech that I decided to look at a way of putting some accountability, if you like, by local government into its Act. So, my new clause 10a has its origins in my consideration of clause 11 which relates to controlling authorities by two or more councils. My amendment, to which I will come soon, seeks to delete section 200a and to add words, the effect of which would be to allow two or more councils to carry out projects outside of their respective area.

Members know from past debates that the Opposition is opposed to what is termed 'entrepreneurial activity' of councils. That point of view is extended from one council to any number acting together as a joint authority. In fact, it is our view that joint authorities acting inside or outside their area creates an even worse situation, and it can allow a powerful local government authority to compete even further with private enterprise or private business which is already struggling within its own council area. No-one, including the Minister, has been able to furnish me with good examples or reasons why a council or councils would want or need to operate outside their area.

The Hon. Anne Levy: Waste dumps.

The Hon. J.C. IRWIN: I know. That is an example that I have used in my second reading speech, but I cannot see why waste dumps cannot be run by private enterprise. They do not have to be run by councils and neither do recycling dumps.

The Hon. Anne Levy: Is the Adelaide City Council going to puts its waste dump in Victoria Square?

The Hon. J.C. IRWIN: No. If the Minister followed the logic through the Adelaide City Council could have its rubbish dump operated by a private operator in someone else's council area.

The Hon. Anne Levy: Yes, but the honourable member is not leaving it the choice. Unless the Adelaide City Council puts its waste dump in Victoria Square—

The Hon. J.C. IRWIN: The Adelaide City Council could call for tenders for someone to run its rubbish dump. It does not even have to run it or to have anything to do with it.

The Hon. Anne Levy: But the honourable member is saying that it cannot.

The Hon. J.C. IRWIN: No, I am simply saying that a council or councils that come together as an authority, if they want to, to run a rubbish dump, a cemetery or a recycling depot, they could run it by private enterprise wherever they liked. They would not even have to have anything to do with it.

The Hon. Anne Levy: But what if they want to have something to do with it?

The Hon. J.C. IRWIN: I have said before and I will say again that I am sure there are good and reasonable examples, such as the ones we have talked about, where joint authorities could run rubbish dumps or recycling depots as a service to their communities, but some of the activities that are covered by the general allowance within the Act go well beyond what are service activities and can embrace any activity that presumably the Minister or her delegate could allow to happen. It could be anything, such as a hotel or a marina.

The Hon. Anne Levy: But that is not part of this clause. That was debated and decided by Parliament some time ago.

The Hon. J.C. IRWIN: I know. I am trying not to regurgitate all of that, but the Minister's interjecting is causing me to do it. The Local Government Association has no problem with what I am raising. Its only problem that it has put to me is that some parts of the Act have been amended so many times and are so *ad hoc* that they are getting out of kilter and they would rather see everything done again. That is the association's only criticism. It has nothing against what I am trying to do because it knows that there need to be some constraints on councils. As I have tried to put forward, some of the groundwork that is needed in order to go to the Minister to get the okay to go ahead with a project should be well understood by the people who actually put up the money—the ratepayers and the people who live in the electorates.

My experience—and I am sure that it is the Minister's as well—is that some councils completely neglect that area. They have this lovely bunch of money that is someone elses and they think 'Whacko, we are not getting enough grants; we can't fleece the ratepayers or the businesses any more, therefore we'll go into business.' By way of this series of amendments I am trying to make sure that the local people know what their council is doing. At the end of the day, another of my amendments is that that report should be made fairly soon after the end of the financial year.

The Hon. Anne Levy: What we are dealing with now has nothing to do with going outside council areas.

The Hon. J.C. IRWIN: No, it has not, but I am linking my justification for doing this in new clause 10a with what is going to happen then we come to clause 20.

The Hon. Anne Levy: I would have thought that this could stand on its own, regardless of what happens in clause 20. Whether or not councils go outside their own area is a different matter from whether they need to advertise and consult.

The Hon. J.C. IRWIN: That is right, it is a different matter, but to my way of thinking and, I think, a lot of people's thinking, allowing joint authorities to work anywhere in the State is somewhat linked to their responsibility to get permission, in a sense, from their electors and to report back to their electors. That is what I am talking about now, but I have gone further into the argument that is more in the area of section 200.

As I said previously, if we could be assured that these joint projects would be of a service nature to their areas our fears would be somewhat allayed. However, I do not expect to get these assurances, so we have to believe that the changes to section 200a could lead to the entrepreneurial profit making activity anywhere in South Australia. My amendment to section 197 is therefore in a sense linked. It seeks to strengthen the process of ministerial approval that is now done by delegation for major projects covered by section 197 (1). Section 197 (5) provides:

> The Minister before making a decision may direct a council—
> *(a)* to obtain other approvals,
> *(b)* to consult with other authorities,
> and
> *(c)* to invite representation from the public on the project proposal.

Section 197 (3) provides:

> An application for ministerial approval under this section must be accompanied by such information as the Minister may require, which may include a whole range of detail, purpose or alternative projects, cost or profit sharing, feasibility, independent expert advice, etc.

These are all good and proper areas for advice to a Minister giving or not giving approval. However, the emphasis is on 'the Minister may require', and I expect it would be a foolish Minister or delegated person who would not insist on all relevant information. If the giving of ministerial approval carried with it a responsibility in the case of failure, it would be quite a different matter. The Hon. Mr Griffin had alluded to that when he dealt with the associations incorporation

legislation earlier. My amendment, by way of subsection (3a), seeks to ensure that the council must, before submitting an application, publish a description of the project or proposal and must publish the estimated cost to the council and the means by which the project is to be financed. It must identify any land directly affected by the proposal, and invite interested persons to make written submissions in relation to the proposed project.

Proposed new subsections (3a), (3b) and (3c) provide that councils must do certain things, and replaced subsections (5) *(c)*, (6), (7) and (8) where the Minister currently has a discretion and may give certain direction. My advice is that single or joint council authorities with project proposals would be covered by my amendment for proposals inside and outside their area. I urge members to pass the amendment

The Hon. ANNE LEVY: I in no way argue with the question of accountability of a council to its ratepayers, as is implied in the Hon. Mr Irwin's amendment. I completely leave aside here the question relating to the amendment to section 200, which is a totally different matter as to whether a council can undertake a project outside its area or whether a controlling authority can undertake projects outside its area. The Hon. Mr Irwin's amendment is suggesting a carefully prescribed form of consultation with the community where certain projects will be undertaken. In effect, it is expanding on the original amendment, which states that the council must supply the detail of any consultation that it has undertaken and the outcome of that consultation.

I can assure members that as Minister I will inquire about those details and, if no consultation had occurred, I would say, 'Go and do some.' In this amendment, the Hon. Mr Irwin is proposing a form of mandatory consultation and accountability of the council to its ratepayers, as opposed to one requested and insisted on by a Minister. So, there is no argument with the mover regarding the sentiments which lie behind this amendment. Currently the LGA is opposing this amendment not because it opposes the principle of consultation and accountability but because it has a committee, the LGA Accounting Committee which is currently examining a whole range of council financial provisions as part of the negotiation process that is occurring and also as part of bringing in the new accounting system for local government, which would apply as from 1 July 1993. This committee feels that it is much better to look at this matter along with many others, rather than to deal piecemeal with one particular aspect of the consultation and accountability on financial matters.

There is no disagreement whatsoever on the sentiments: it is really a question of timing. Certainly, the LGA would prefer that these matters were dealt with as part of the whole review of financial matters which is currently being undertaken and which I can assure members will lead to legislation relating to that matter. So, while I formally oppose the amendment, I certainly will not call for a division on it. If enacted, the legislation can be re-amended as part of the negotiation process if it were felt desirable in terms of the whole style of the financial provisions relating to local government in the Act when this is considered by this Parliament following the negotiation process.

The Hon. I. GILFILLAN: I support the amendment, which does achieve a worthwhile aim. From the Minister's remarks, I believe that she probably foresaw the fairly high percentage of success in the amendment.

The Hon. Anne Levy: I do not oppose its sentiments at all.

The Hon. I. GILFILLAN: So you have said very lucidly in your contribution. This amendment does recognise that the councils should be open and revealing to the ratepayers, and I will not expand on the arguments that have been put forward in favour of the amendment both by the mover and the Minister.

New clause inserted.

New clause 10b—'Controlling authorities established by one council.'

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

Section 199 of the principal Act is amended by inserting after subsection (9) the following subsections:

(10) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.

(11) The report must be incorporated into the annual report of the council.

The same comments that were applicable to the previous clause could be made about this clause. I have been briefed by the LGA on its accounting standards and how it is moving towards the Australian standards, and I appreciate that briefing. The briefing was reasonably lengthy, and I realise it is only part of the process and that more briefs will come later. The brief indicated—and I have forgotten the dates now—that it will be well over 12 months before the standard will be applied.

The Hon. Anne Levy: The date is 1 July 1993. This year is being used for training.

The Hon. J.C. IRWIN: Yes, the first reporting period will be at the end of next year. Major legislative changes will occur this year for local governments as they move away from the bureau and into their own new waters, but I am not sure when that will happen. We have had similar advice from the LGA, but it has differed slightly in a sense. The Minister mentioned my point about adhockery, which is already there and this legislation adds more to that.

I speak now to new section 10b, which amends section 199 relating to controlling authorities established by one council, and new section 200 relating to controlling authorities established by two or more councils. My proposed amendment seeks to strengthen the reporting procedure in that a report containing prescribed information must be made on the authority's activities for the preceding year and must be incorporated in the annual report of the council. This is consistent with section 42a of the Act which was incorporated recently. Again, I ask for the support of the Council.

New clause inserted.

Clause 11—'Controlling authorities established by two or more councils.'

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

Page 4, lines 7 to 9—Leave out paragraph *(a)*.

The Opposition has a dilemma in regard to this clause. We have previously voiced, and I repeat, our disapproval of certain powers to carry out entrepreneurial activities. I shall not regurgitate that. Our objection extends from one council to two or more which may attempt these activities, even if the activities are carried out, as they still are in the Act, in any part of the area of the councils. The Act had some hold back, because we would have two councils agreeing within the area of two councils which was a joint authority. I feel that there was some control there by those two councils, and, more particularly, by the people who were in those two councils.

The first part of the proposed amendment to section 200 is to take out 'to carry out any project in any part of the area of the councils' and to substitute 'to carry out any project on behalf of the councils.' If passed, that gives an open ticket to councils to combine as an authority to carry out projects anywhere in the State.

The Hon. Anne Levy: You have not stopped a single council undertaking a project anywhere in the State.

The Hon. J.C. IRWIN: We are talking about section 200, which refers to two or more councils.

The Hon. Anne Levy: If one council can, why cannot a combination of councils?

The Hon. J.C. IRWIN: The same would apply. I have not sought to make that amendment. I suggest that there is no restriction on the ingenuity that two or more councils, with ministerial approval, can bring to bear, to use their rate funds to finance all sorts of enterprises outside their respective areas with no regard for the efforts of another council area or to its effect on private enterprise with which the council authority may compete. We contend that rubbish dumps or cemeteries need not necessarily be confined to councils. There is no reason why private enterprise cannot run those activities.

Our dilemma is that it is difficult to formulate an amendment to this clause which would attempt to differentiate between what would be termed a council's (or councils') legitimate service to its areas and to the activities in its area and one which clearly falls into the entrepreneurial area. The LGA understands the position that I have put forward and has some sympathy for it. I reiterate that we are opposed to the proposed change and believe that there is no legitimate reason for councils to be able to operate outside their areas without any restriction.

The Hon. ANNE LEVY: The amendment moved by the Hon. Mr Irwin, as indicated in his papers, has two sections. I am wondering whether they can be voted on separately. The first is to leave out paragraph *(a)*, which is to remove something from the Bill; in other words, to leave something in the original Act. The second one, after line 17, is to add various words which are analagous to those which the honourable member has moved and added to section 199. It would seem perfectly proper that if these reporting conditions apply to an authority set up by one council, they should apply also to an authority set up by more than one council. The previous amendment having succeeded, I would not oppose that second part.

The CHAIRMAN: We are taking them as two separate parts. We are dealing only with the first part, page 4, lines 7 to 9.

The Hon. ANNE LEVY: So we are dealing with the amendment to what the Hon. Mr Irwin is indicating by his amendment—that section 200 should stand as it is and not have part of it removed as proposed by the Government.

It is a moot point whether the Hon. Mr Irwin's amendment will achieve what he wants it to achieve. The Act provides that 'two or more councils may, with the approval of the Minister, establish a controlling authority to carry out any project in any part of the areas of the councils or to perform any function or duty of the councils under this or any other Act.'

The Bill seeks to remove that part which provides that they can set up a controlling authority to carry out any project in any part of the areas of the councils. The Hon. Mr Irwin wants to keep that bit in, on the ground that he does not think that regional controlling authorities should have the ability to go outside the area of the individual councils. I oppose this on two points. Section 199 of the Act discusses controlling authorities established by one council. Section 200 describes controlling authorities established by two or more councils. There is nothing in section 199, which deals with controlling authorities set up by one council only, to prevent that controlling authority going outside the area of that council. As the Hon. Mr Irwin said, a controlling authority established by one council could go anywhere in the State. Where we have a controlling authority set up by two or more councils, the Hon. Mr Irwin wishes to prevent such an authority going outside the area of the councils. I cannot see why it should be more restrictive for an authority set up by two councils than it is for an authority set up by one council.

The Hon. J.C. Irwin: I overlooked that and I will ensure that it is not overlooked in the House of Assembly.

The Hon. ANNE LEVY: Apart from that, the controlling authority would be left with the function to perform any function or duty of the council under this or any other Act. There is plenty of legal advice that such a controlling authority can go outside the areas of the councils if in so doing it is able to perform a function of its constituent councils or a duty of its constituent councils. So, the amendment moved by the Hon. Mr Irwin is not only illogical in the view of the controlling authorities established by one council in section 199 of the Act but it also will not achieve what he thinks it will achieve, because the legal advice is that, provided Part B remains, if it is a function or a duty of the councils that set up the controlling authority, they can go outside their areas.

The Hon. I. GILFILLAN: I oppose the amendment. I think that with the successful passage of 10b and the subsequent amendment, which we will be dealing with shortly, there is adequate disclosure and answerability of council to ratepayers, which is my prime concern. That having been assessed, if the activity or enterprise—and I am not an enthusiast for local government being involved in enterprises and I have said that elsewhere—

The Hon. Anne Levy: Would you like them to do recycling?

The Hon. I. GILFILLAN: It would probably be done more efficiently by private enterprise. I am not wedded to the fact that everything that is nice to be done has to be done by a public entity. We have seen to our lamentable cost in South Australia what a balls-up Government enterprises can make of them. So, I am not wedded to the idea of local governments getting locked into Port Adelaide flower projects wherever they are, even if they are on Kangaroo Island.

So, my approach to this issue is that if ratepayers of the councils approve of an enterprise and that activity should more appropriately take place outside the area that is embraced by the council or councils involved, that is fine, I do not hassle about that. So, I find myself in full sympathy with the argument the Minister has put up and I oppose the amendment.

Amendment negatived.

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

Page 4, after line 17 insert new word and paragraph as follows:
and
(c) by inserting after subsection (17) the following subsections:
(18) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.
(19) The report must be incorporated into the annual reports of each constituent council.

I refer to liability lying against members of the controlling authority (section 16b). Why do we not use words to link that back to the members of the controlling authority? If one or more councils make up an authority is it just logical that the liability flows back from the authority to the constituent councils of the authority?

The Hon. ANNE LEVY: In many cases it would flow back. Under the legislation any controlling authority is guaranteed financially by the councils that set it up. So, if the controlling authority were found liable for damages for

something and it was not able to meet the costs of that, the constituent councils would have to pick up that cost. That would flow back automatically. The Bill provides that it would lie against the controlling authority itself to pay any debt if it were able to do so. However, if it were not able to do so, it flows back to the council anyway.

The Hon. J.C. IRWIN: I now refer to incorporation under the Act for an authority. Only the other day I had a letter passed to me emanating from the North Adelaide Development Board. The letter stated:

It can also be said that a number of these groups are not incorporated under the Local Government Act 1934 and therefore are faced with further difficulties.

Does it follow that all joint council authorities are incorporated under the Act, or any authority that is set up by a council? Let us say that it is the North Adelaide Development Board that is incorporated and, therefore, its private enterprise members are covered for liability. I refer to those private enterprise members on the board who are not councillors. Are they covered by an indemnity for sitting on the board and making decisions?

The Hon. ANNE LEVY: I am afraid I cannot indicate whether or not the North Adelaide Development Board is a controlling authority. One would need to look at the manner in which it was set up, its constitution and so on, to be able to determine whether it is classified as a controlling authority. But if it is, all members of the controlling authority will be indemnified by this clause, whether they are members of council or community members who have been appointed by the councils to be members of the board. It is not limited just to those who are members of council.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13—'Moveable business signs.'

The CHAIRMAN: Because of the complex nature of the amendments, I think we should canvass all the opinions in respect of the definition of 'moveable sign'.

The Hon. J.C. IRWIN: As there does not seem to be a large gap between the wording of my amendment and that of the Minister I would defer to the Minister so that I can hear her argument in support of her amendment, as her advice would be worth listening to.

The Hon. ANNE LEVY: I move:

Page 4—

Line 31—After 'premises' insert ', but does not include a sign of a kind excluded from the ambit of this definition by the regulations'.

After line 31—Insert new definition as follows:

'moveable sign' means any free-standing or moveable sign and includes a moveable business sign.

I am sure that with patience we will arrive at a satisfactory resolution of this clause. Everyone agrees that change is necessary, there is simply disagreement as to the form of the change.

My first amendment is a new definition of 'moveable sign'. Previously we had a definition of 'moveable business sign', because distinctions were to be made between different types of moveable signs. A distinction is being drawn between a moveable sign and a moveable business sign. I believe the Hon. Mr Irwin proposes that any kind of sign can be excluded from the ambit of this definition by the regulations, and my definition does not include that.

The Hon. J.C. Irwin: We seem to have the same wording.

The Hon. ANNE LEVY: I wish to add a definition of 'moveable sign'. The complication comes from the fact that my first amendment comes at line 31, whereas the Hon. Mr Irwin's comes at line 26. My amendment coming after line 31 relates to the paragraph at the bottom of the page of amendments which relates to the ability of a council to prohibit moveable business signs. The amendment is best discussed in those terms. If the Committee does not wish to accept my amendment, which enables a council to prohibit absolutely the placing of a moveable business sign, then my changed definition, which is dealt with further up, will not be necessary and the Hon. Mr Irwin's definition would be all that was required.

While it does not relate at all to the actual words before us in the amendment, it really is an argument as to whether my subsequent paragraph *(b)* will be accepted. In other words, should councils have the power by by-law to prohibit moveable business signs in any parts of their areas. If the Committee does not agree with that prohibition, my changed definition is not necessary and the Hon. Mr Irwin's amendments will be appropriate. It seems that everyone is agreed that a council should be able under a by-law to set standards for moveable business signs or moveable signs of any sort and regulate their style, placement, etc.

The difference comes from whether councils should have the ability to prohibit entirely moveable business signs. I argue on two grounds that councils should have that power. Streets and roadways are public places, and the guardians of those public places are the councils. It is for them to ensure that those public places remain public places available for the use of the public.

There has been a great deal of legal argument until now as to whether councils did or did not have the power to prohibit sandwich boards. Some legal advice has been that councils did have that power, but other advice has been that they did not. It has never been decided in the courts, but different councils have taken different policies. We are attempting here to clarify the situation once and for all.

It is agreed that councils should have the power to control these signs, but I feel that as the guardians of the public place they should have the power also to say that in a particular area there should be no moveable business signs at all. The amendment proposed by the Hon. Mr Irwin will result in any business having the absolute right to put out a sandwich board provided that it complies with the standards set by by-law. They will have that right to put a private business sign on what is public space—the street. I feel that there might well be occasions when a council would be quite within its rights and would be applauded if it said that on a particular streetscape, for the amenity of that street, it did not want sandwich boards, no matter how big or small or bright or dull—that it is not proper to have sandwich boards in a particular area.

There may not be many such areas, but one can think of a couple of types of examples. There are places in the Adelaide City Council area and doubtless in other council areas where footpaths are 45 cms wide. On such a narrow, little footpath it could be regarded as totally inappropriate to have sandwich boards. However, unless a council does have a power of prohibition, it will not be able to prevent businesses putting sandwich boards on such footpaths.

Another example one might consider, again in the Adelaide City Council area, is an area where the amenity is such that one felt that sandwich boards were not appropriate. One could consider perhaps the north side of North Terrace, our cultural boulevard. The beauty of that street, which people walk up and down, is enhanced by trees and heritage buildings. There is a great deal of tourist promotion relating to the enjoyment of North Terrace, particularly its north side, as a cultural boulevard. It seems to me that it should be within the rights of the Adelaide City Council to say, 'We do not want sandwich boards on the north side of North Terrace.'

I am not saying personally that there should or should not be sandwich boards on the north side of North Terrace,

but I feel that the city council, as the guardian of that public place, certainly for the residents of Adelaide and probably for most of the residents of the metropolitan area who treasure the north side of North Terrace, should be able to say, 'We do not want sandwich boards on the north side of North Terrace.' If councils do not have that power of prohibition as well as the power to set standards, they will not be able to prevent sandwich boards being placed in areas such as the north side of North Terrace or in streets where footpaths are only 45 cms wide. I am sure that other examples could be thought of.

So, I would not expect councils to abuse this power and prohibit frequently the placement of moveable business signs. I am sure councils are just as keen for businesses in their area to do well and to advertise as are the businesses themselves. It benefits not only the owner of the business but the whole community and the council area within which that business is situated. However, I maintain that there could be occasions—where a council would validly (and I think it would be applauded if it did so) prevent sandwich boards being placed in certain parts of its area.

The Hon. I. GILFILLAN: I do not believe it is appropriate to have this power of complete prohibition in the legislation because the by-laws are very wide-reaching. I think it is within the capacity of any council that really wanted to deter kerbside sandwich boards to make those involved comply with such restrictive conditions and standards that it would be unattractive for a particular operator to go ahead and put them up. Part of our major reaction to this whole move was to avoid what I saw as petty infringements on the activities of small business and the community. I recommend my amendments which are on file. I think they are about as near perfect as one can get.

On the issue of the clause of prohibition, which the Minister identified accurately as the major sticking point, I think it is the one that we ought to debate at this point. I indicate clearly that I am opposed to the retention in the Bill of a complete prohibition clause such as the one indicated in the Minister's series of amendments.

The Hon. J.C. IRWIN: I acknowledge the fair summation by the Minister about the definition. We have gone further from that to talk about the point that we are at now, because it is important. I accept the Minister's advice on clause 10 relating to no action against a council. That was not contained in our amendment, but it is contained in the amendments of the Minister and the Hon. Mr Gilfillan.

I agree with the Hon. Mr Gilfillan. I do not have a problem with a business having a right to have a moveable sign on a public space. I suppose that in another sense there are plenty of mobile cars moving around Adelaide with signs on them. I do not link them to moveable signs, but they are using public space. I refer to parliamentarians and people advertising businesses on a public road. I have visited a number of cultural boulevards around the world—and other members have done so more frequently than I—but I cannot recall any that are sterile with absolutely no signs on them at all.

I accept what the Minister said, that her personal opinion would not be to completely exclude sandwhich boards, but to give the council the ability to exclude them from its area if that is what it wants to do. I have a problem with going to the extreme of totally prohibiting all signs: that is unfair on business. We must have a balance somewhere between what businesses want and what councils want on behalf of their electors, as well as what people want both inside and outside a particular council area. Some good points are contained in everyone's argument, as always, but it is that balance that we are looking for. The Opposition is sticking to its part of the amendment, which is similar to Mr Gilfillan's, on this point, and we propose to move further amendments later. If that gells the argument in relation to the necessity of which definition to take, we can proceed from there.

The Hon. ANNE LEVY: I plead again to the Hon. Mr Irwin and the Hon. Mr Gilfillan, that by removing the council's power to prohibit entirely sandwich boards in any one street, they are endorsing the possibility of sandwich boards on the north side of North Terrace, and that there is no way that the Adelaide City Council can prevent sandwich boards on the north side of North Terrace. The council will be able to say that they cannot be more than a certain size, that they cannot be more than one colour or that they must be in black and white.

The Hon. I. Gilfillan: Or that they cannot intrude a certain amount onto the footpath.

The Hon. ANNE LEVY: The council will be able to say that the boards cannot intrude more than a certain amount onto the footpath, but it will not be able to say, 'We cannot have sandwich boards on the north side of North Terrace; we do not feel that is part of the amenity of North Terrace.' I cannot recall ever seeing sandwich boards on the Champs Elysee. I have never been to Berlin, but I strongly suspect that they are not on the Unter den Linden. Many famous avenues around the world are admired for their beauty, and I believe it is inappropriate to have sandwich boards in such places.

The Hon. Diana Laidlaw: Are there any now along North Terrace notwithstanding no by-law provision to prohibit them? I think the only sandwich board I have seen is when the amateur art groups have their displays.

The Hon. ANNE LEVY: The fact that there have not been any sandwich boards—except for rare occasions—on the north side of North Terrace may not be because there is no by-law: it may be that the legal situation is unclear at the moment. However, we will make the law clear by this legislation. It will no longer be a matter of planning.

The Hon. Diana Laidlaw: It will be a matter of commonsense for people along North Terrace; people will not do it.

The Hon. ANNE LEVY: There will be nothing to prevent them. One will rely on the commonsense of people. The law will now clearly say that people have a right to use sandwich boards, but it has not said that until now. Some councils have requested planning approval, others have tried to apply prohibitions in certain areas, others have said it is open slather and the legal situation has been very confused. However, this Bill will make absolutely clear that people have a right to use sandwich boards, provided the board complies with certain standards. Once this Bill is passed, there will be nothing to stop anyone putting a sandwich board on North Terrace, provided they comply with the standards. They would have the right to do so, and the fact is that, although Ms Laidlaw might join me in moral indignation, that would not affect those people's rights. They would have every right to do so and, if she or I touched that sandwich board or attempted to remove it, we would be thieving, and we would have no right to do so.

The Hon. Diana Laidlaw: I am sure we could persuade them.

The Hon. ANNE LEVY: There are people who are not open to the persuasions of either the Hon. Ms Laidlaw or me. I am sure there are people in the community whom we have tried to persuade and whom have resisted our persuasions. I do not have the faith in the ability to persuade every single individual in relation to the rightness of one's point of view. I honestly fear that there will be places, such as the north side of North Terrace—and I am sure others

could think of other areas—where it will be an absolute right to place a sandwich board, unless the council does have the ultimate power to prohibit sandwich boards on a particular street.

The Hon. J.C. IRWIN: I do not want to prolong this matter, because we are going over the same ground. I reiterate my amendment, which provides:

(a) be placed in a manner, and subject to conditions, specified by the by-law;

and

(b) comply with such standards as are specified by the by-law.

I agree with the Hon. Mr Gilfillan that there are plenty of powers contained in the legislation for the council to put in its by-law those conditions and standards that it wants. It is wrong of us to concentrate only on the cultural boulevard on the northern side of North Terrace.

The Hon. Anne Levy: It is important.

The Hon. J.C. IRWIN: It is very important, but then every council has an area which is important culturally, in a business sense, and so on. It is wrong to mention just one area. North Terrace contains some impressive bodies such as the university, the Art Gallery, the Museum, Government House, and the Library. If any member of those bodies was going to transgress to put out signs which are eyesores to that part of the boulevard—

The Hon. Anne Levy: It might be the lessee of the coffee shop.

The Hon. J.C. IRWIN: Okay. I have faith in the power of persuasion of people in the community to retain what they want in their area. I do not have a problem with the north side of North Terrace; I am certain we are covered. Why not let a year or so go by and see whether or not this legislation works. I would rather have what we have now, as contained in the Hon. Mr Gilfillan's and my amendments, than an overriding prohibition which may reduce the signage in a council area to absolutely nothing; I cannot accept that.

The Hon. ANNE LEVY: The Hon. Mr Irwin is being somewhat hypocritical when he suggests that, by having a clause that the sign be placed in a manner subject to conditions specified by the by-law, the Adelaide City Council would be able to prevent sandwich boards on the north side of North Terrace.

The Hon. J.C. Irwin: They don't have to be sandwich boards.

The Hon. ANNE LEVY: It's sandwich boards we are talking about.

The Hon. J.C. Irwin: It could be moveable signs.

The Hon. ANNE LEVY: Yes, that includes sandwich boards.

The Hon. J.C. Irwin: A city by-law can say that we will not have sandwich boards on North Terrace.

The Hon. ANNE LEVY: No. With the Hon. Mr Irwin's amendment, it will not be possible for the Adelaide City Council to say, 'We will not have sandwich boards on North Terrace.' That will not be within its power.

The Hon. I. Gilfillan interjecting:

The Hon. ANNE LEVY: But standards are not a prohibition. I am sure that any court would say that we cannot set standards which are totally unreasonable, such as saying that they can be only two centimetres high. That would not be setting a reasonable standard. Setting standards and conditions is not prohibition. Therefore, it will not be possible for the Adelaide City Council to say, 'We do not want sandwich boards on the north side of North Terrace.' To pretend that paragraph *(a)* can be used to prevent them is to be hypocritical. If we want to prohibit them, we should accept the power of the council to prohibit.

The Hon. I. Gilfillan: If standards do not determine what the shape of the structure is, what would it be? Obviously it can be embraced by that, in my opinion.

The Hon. ANNE LEVY: The standards can be embraced, but not the prohibition. The council can say that they cannot be more than a metre high or more than a certain width and that they must be made of certain material which will not hurt people if they bump against it.

The Hon. I. Gilfillan: A single sheet or some other structure?

The Hon. ANNE LEVY: No, that is not a sandwich board.

The Hon. I. Gilfillan: That is the point; you do not have to have sandwich boards.

The Hon. ANNE LEVY: But they will not be able to prevent sandwich boards, because people will have a right to put up sandwich boards, subject to certain conditions. However, they will have an absolute right to put up sandwich boards and the council will not be able to prohibit them, which is my concern.

The CHAIRMAN: The Minister, the Hon. Mr Gilfillan and the Hon. Mr Irwin have moved amendments to lines 26 to 31 and after line 31. I therefore put the question that the words proposed to be struck out by the Hon. Mr Gilfillan and the Hon. Mr Irwin stand part of the Bill. The 'Noes' have it. We now go on to the new definition.

The Hon. ANNE LEVY: I should like to divide on that.

The Council divided on the amendment:

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

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

Pairs—Ayes—The Hon. C.J. Sumner. Noes—The Hon. J.F. Stefani.

Majority of 3 for the Noes.

Words thus struck out.

The CHAIRMAN: We now have the new definition of 'moveable sign' as proposed to be inserted by the Hon. Mr Irwin be so inserted. Whilst Mr Irwin is the carrier of it, it is the same amendment as was moved by the Hon. Mr Gilfillan.

The Hon. J.C. IRWIN: I understand that mine is slightly longer than the one moved by the Hon. Mr Gilfillan.

The CHAIRMAN: Yes, it is.

The Hon. J.C. IRWIN: Having listened and debated for some time the matters that flow from it or that will be influenced by that definition, I would stick to moving that amendment. I believe it is the better amendment.

The Hon. I. GILFILLAN: I am prepared to believe the Hon. Mr Irwin. If he tells me that his amendment is better than mine, who am I to argue?

The Hon. ANNE LEVY: I would agree. We are now dealing with the definition of 'moveable sign'. My information is that the Hon. Mr Irwin's amendment is to be preferred as it allows flexibility to exclude something from the ambit of the definition should it be required.

The Hon. Mr Irwin's amendment carried.

The Hon. ANNE LEVY: I move:

Pages 4 to 6—Leave out subsections (2) to (17) (inclusive) and substitute:

(2) A council may, by by-law—

(a) provide that any moveable sign (or moveable sign of a specified class) placed on any public street, road or footpath within its area, or within any specified part of its area, must—

(i) be placed in a manner, and subject to conditions, specified by the by-law;

and

(ii) comply with such standards as are specified by the by-law;

(3) A person may, without further authorisation from the council, place a moveable sign on any public street, road or footpath if—

(a) to do so does not contravene a by-law under subsection (2);

and

(b) the sign does not, by being so placed, unreasonably endanger the safety of any member of the public who might use that street, road or footpath, or unreasonably obstruct or hinder the free and proper use of that street, road or footpath by any member of the public.

(4) A person who places a sign on any public street, road or footpath in contravention of a by-law under subsection (2) is guilty of an offence.

Penalty: $200.

(5) An authorised person may remove from any public street, road or footpath a sign that has been placed on the public street, road or footpath in contravention of a by-law under this section.

(6) If an authorised person removes a sign pursuant to subsection (5)—

(a) the authorised person must take reasonable steps to give notice of his or her action to the owner of the sign, or to a person who was apparently involved in placing the sign on the public street, road or footpath;

and

(b) if the sign is not claimed within seven days, the authorised person may sell, destroy or otherwise dispose of the sign as he or she thinks fit.

(7) A person is not entitled to the return of a sign removed under this section unless the person pays to the council the reasonable costs incurred by the council in removing and storing the sign.

(8) Except as otherwise recovered under this section, the council may recover any reasonable costs incurred in removing, storing or disposing of a sign under this section as a debt due to the council from the person who placed the sign on the public street, road or footpath.

(9) If a sign is sold pursuant to subsection (6) *(b)*, the proceeds of sale must be applied towards any costs recoverable by the council under this section and any excess must be paid to the owner of the sign (unless that person cannot be ascertained or located by the council after making reasonable inquiries, in which case the excess belongs to the council).

(10) No action lies against a council, an officer or employee of a council, or an authorised person, on account of—

(a) anything done, or omitted to be done, in good faith in relation to the operation of this section;

(b) any damage or injury suffered as a result of a moveable sign being placed on a public street, road or footpath by a person (other than by a person acting on behalf of the council).

The series of amendments that I have on file and those of the Hon. Mr Irwin, differ in several minor respects. We differ in relation to subsection (6) *(b)* purely on the question of the time for which the council must hold the sign before it disposes of it if it is not claimed. That relates to the situation where a sign is confiscated which departs from the standard set in the by-law and how long the council must hold it before it can dispose of it. I suggest a period of seven days and the Hon. Mr Irwin suggests 30 days. I argue for the seven days on the basis that, quite apart from the fact that I see no reason why council should have its areas cluttered up by an unwanted sign for 30 days instead of just one week, if members care to look at the Local Government Act they will see that if a car is left standing in the street and the council takes the car away to clear the street for use by the public, it need only hold it for seven days before disposing of it if it is not claimed. That is currently in the Local Government Act and it seems to me absurd that we should place more stringent conditions on the holding of a sandwich board than we do on a car. In consequence, it seems to me that to have the seven day period as opposed to the 30 days makes it more consistent with other parts of the Local Government Act.

The other area in which the Hon. Mr Irwin's amendments differ from mine is in subsection (10), which deals with indemnity. My amendment deals with this issue, but the Hon. Mr Irwin's does not. However, I understand that the Hon. Mr Irwin is now happy to consider agreeing to that provision. So, it would seem to me—and I will accept your guidance on how this should be moved, Mr Chairman—that the Hon. Mr Irwin and I differ only in relation to the number of days for which a council must hold a sandwich board and it seems to me that seven days makes more sense than 30 days in terms of the provisions of the Local Government Act.

The Hon. I. GILFILLAN: I move:

Pages 4 to 6—Leave out subsections (2) to (17) (inclusive) and substitute:

(2) A council may, by by-law, provide that any moveable sign (or moveable sign of a specified class) placed on any public street, road or footpath within its area, or within any specified part of its area, must—

(a) be placed in a manner, and subject to conditions, specified by the by-law;

and

(b) comply with such standards as are specified by the by-law.

(3) A person may, without further authorisation from the council, place a moveable sign on any public street, road or footpath if—

(a) to do so does not contravene a by-law under subsection (2);

and

(b) the sign does not, by being so placed, unreasonably endanger the safety of any member of the public who might use that street, road or footpath, or unreasonably obstruct or hinder the free and proper use of that street, road or footpath by any member of the public.

(4) A person who places a sign on any public street, road or footpath in contravention of a by-law under subsection (2) is guilty of an offence.

Penalty: $200.

(5) An authorised person may remove from any public street, road or footpath a sign that has been placed on the public street, road or footpath in contravention of a by-law under this section.

(6) If an authorised person removes a sign pursuant to subsection (5)—

(a) the authorised person must take reasonable steps to give notice of his or her action to the owner of the sign, or to a person who was apparently involved in placing the sign on the public street, road or footpath;

and

(b) if the sign is not claimed within 30 days, the authorised person may sell, destroy or otherwise dispose of the sign as he or she thinks fit.

(7) If a sign is sold pursuant to subsection (6) *(b)*, the proceeds of sale belong to the council.

(8) No action lies against a council, an officer or employee of a council, or an authorised person, on account of—

(a) anything done, or omitted to be done, in good faith in relation to the operation of this section;

(b) any damage or injury suffered as a result of a moveable sign being placed on a public street, road or footpath by a person (other than by a person acting on behalf of the council).

I also have an amendment on file relating to these issues which refers to a 30 day requirement. I indicate my support for the 30 days at whatever stage that is contested. The defaulted moveable sign—it may not necessarily be a sandwich board—may be inadvertently left in a way that contravenes the by-law and to have the risk of it being destroyed after seven days because a council has a particular vendetta in relation to a certain small business—and it does happen—is not a reasonable option. I doubt whether many signs will be left unclaimed for the full 30 days and I indicate briefly my support for the 30 days as compared to the seven days.

I think there may be one other issue in my amendment that does not appear in the amendments of the Minister or the Hon. Mr Irwin. My amendment to subsection (6) *(a)* provides that an authorised person must, as far as is reasonably practical, warn the owner of a sign or a person who is apparently involved in placing the sign on the public street, road or footpath that the sign has been so placed in contravention of the by-law and give that person a real opportunity to remove the sign or cause it to be removed. Perhaps that is in the other amendments, but I cannot find it.

The Hon. Anne Levy: No, it is not.

The Hon. I. GILFILLAN: I put it to my colleagues, particularly to the Minister and the Hon. Mr Irwin, that it is a reasonable thing that the owner of a sign or the person who is involved in the placing of it does have the opportunity to remove the sign and, therefore, to cause him or her, or the authorised person or the council no further bother. I ask the Committee to consider that. I am reluctant to include in the legislation the provision that the person with the offending sign has to pay reasonable costs incurred by the council in removing and storing the sign.

The Hon. Anne Levy: They're not.

The Hon. I. GILFILLAN: I have been close enough to local councils and local governments to see some of the rather parochial ill-will that can erupt between some small businesses and some people in the council. I hope that it does not occur frequently in the future, but it does have the potential to occur and the Bill does not indicate how such so-called 'reasonable costs' will be calculated. In subsection (8) as listed by the Hon. Jamie Irwin and, I assume, it is the same in the Minister's amendment, council may recover any reasonable costs under this section as a debt due to the council.

That gives the council some considerable power in extracting payment of that debt. Those are two points that I would ask my colleagues to consider before finally indicating how they will support the final draft of this batch of amendments. First I support the 30 days and, secondly, I ask members to consider the question that the authorised person should be obliged to warn the owner so that the offending sign can be removed with a minimum of fuss before it is actually removed and, thirdly, I ask them to consider this question of reasonable costs.

I cannot see that there is any particular burden on a council to have picked up and stored either a sandwich board or a single sheet board of the type that would be offending in the street. It seems to me that this is fraught with more problems and little money would be obtained for the sake of leaving the potential of a dispute and causing ill-will.

The Hon. ANNE LEVY: I must oppose the first point raised by the Hon. Mr Gilfillan. It is in his amendment but not in that of either the Hon. Mr Irwin or myself. He suggests that before an authorised person removes a sign that is quite unreasonably obstructing the footpath they are obliged to tell the owner of the sign. It might be 10 o'clock at night. It may be 2 o'clock in the morning and there are no street lights and the sign is a hazard that certainly should not be there at that time.

For someone to come across that sign and not be able to remove it without first finding out who owns it and ringing them up and giving them the opportunity to come and take the sign away would not be appropriate. Someone would love being woken up at 2 o'clock in the morning and be told to move their sign. They would think the council was being far more unreasonable than if the sign was just picked up and moved. It is unreasonable to expect an authorised officer in all circumstances to contact the owner before removing what may be a dangerous public obstruction.

The Hon. J.C. IRWIN: I will try to sort through this clearly. Prior to today we considered carefully the amendments that were before us. We agree to the Government's amendments from subsection (3) onwards. I disagree in respect of the seven days and agree with the Democrats on that. We are happy to include subsection (10). That no action lies against a council is a reasonable provision and it is reasonable not to expect the council to cover insurance and other costs on behalf of people who want to have their sandwich boards out there. I accept that. I hope that helps in sorting it out, because it will be difficult to go through the amendments. I will not reply directly to the Hon. Mr Gilfillan, except on the 30-day/7-day difference that we have with the Government. Beyond that, we support the Government's amendments.

The Hon. I. GILFILLAN: I want to speak again briefly in favour of my amendment. On reflection, members will see that this is a practical proposal. I remind the Minister that my amendment provides 'the authorised person must so far as reasonably practical' and obviously at 2 o'clock in the morning no-one would say it is reasonably practical. An authorised person may be moving through an area picking up any sign that he or she believes is contravening the Act without having any obligation to find the deli owner and, for some reason or other they are not getting on well, it imposes a cost in the flow-on clauses to that person. Not only do they lose the sign but they also have to pay the costs. They do not have a say in how much the costs are. It is left entirely up to the council. If they do not pay, it is a debt recoverable by the council from that person.

My amendment recognises that quite often a person may have offended inadvertently and will quickly nip out and say, 'I am sorry, I will take the sign away or move it somewhere else so that it is no problem.' The costs of council storing are minimal but, where the sign is not reclaimed, in my amendment it can be solved and the proceedings are totally those of the council. If someone is so indiferent that they will not get their sign after 30 days, under my amendment they have forfeited any value that may come from the sale of the sign and that would go to the council. The council does not have to calculate how much its costs were and pay the excess to the person involved.

Not only is it fairer, but it reduces the amount of risk of confrontation and it reduces the fuss and bother of trying to work out the actual cost and then reclaiming it from the offending owner of the sign. I am sorry that to date I have not been able to persuade either of my colleagues to support my amendments, but I believe they are eminently more practicable than the amendments put on file by the Minister.

New subsections (2) to (17) negatived.

The Hon. Mr Irwin's amendment to insert new subsections (2) to (9) carried; the Hon. Anne Levy's amendment to insert new subsection (10) carried; clause as amended passed.

Clause 14 passed.

Clause 15—'Septic tanks.'

The Hon. J.C. IRWIN: Why is no mention made of the Department of Environment and Planning or any authority that would have an interest in septic tank effluent? I cannot understand why the Health Commission is being deleted from this part of the Act and no mention is being made of any other principal body or authority such as the Department of Environment and Planning in relation to the whole area of septic tanks.

The Hon. ANNE LEVY: As I understand it, there is the question of standards. Standards are going to be established under the Public and Environmental Health Act. There will certainly be regulations under that Act which will set the health standards with which a septic tank effluent disposal scheme must comply. There is certainly no question of not having sufficient standards, although I am sure that if we did not have them the Hon. Ms Laidlaw would be able to persuade people to be reasonable.

Clause passed.

Remaining clauses (16 to 20) and title passed.

Bill read a third time and passed.

METROPOLITAN TAXI-CAB (MISCELLANEOUS) AMENDMENT BILL

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

ADJOURNMENT

At 10.10 p.m. the Council adjourned until Wednesday 12 February at 2.15 p.m.