LEGISLATIVE COUNCIL

Thursday 13 February 1992

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Aboriginal Lands Trust (Parliamentary Committee and Business Advisory Panel) Amendment,

Corporations (South Australia) (Miscellaneous) Amendment,

Correctional Services (Drug Testing) Amendment,

Criminal Law Consolidation (Self-Defence) Amendment,

District Court,

Enforcement of Judgments,

Environment Protection (Sea Dumping) (Coastal Waters and Radioactive Material) Amendment,

Fisheries (Miscellaneous) Amendment,

Flinders University of South Australia (Joint Awards) Amendment,

Goods Securities (Highways Fund) Amendment,

Housing Cooperatives,

Justices Amendment,

Justices of the Peace,

Magistrates Court,

Motor Vehicles (Historic Vehicles and Disabled Person's Parking) Amendment,

Pay-roll Tax (Miscellaneous) Amendment,

Petroleum (Miscellaneous) Amendment,

Pollution of Waters by Oil and Noxious Substances (Miscellaneous) Amendment,

Residential Tenancies Amendment,

Road Traffic (Safety Helmet Exemption) Amendment,

Sheriff's Amendment,

South Australian Health Commission (Private Hospital Beds) Amendment,

Stamp Duties (Assessment and Forms) Amendment,

State Emergency Service (Immunity for Members) Amendment,

Statutes Amendment (Crimes Confiscation and Restitution),

Statutes Amendment (State Heritage Conservation Orders),

Statutes Repeal and Amendment (Courts),

Strata Titles (Resolution of Disputes) Amendment,

Superannuation (Miscellaneous) Amendment,

Wheat Marketing (Trust Fund) Amendment,

Wine Grapes Industry.

QUESTIONS

CHILDREN'S COURT ADVISORY COMMITTEE

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

Leave granted.

The Hon. K.T. GRIFFIN: The Children's Court Advisory Committee report for the year ended 30 June 1991, tabled this week, refers to some major developments being considered or noted by the committee. Regrettably, the committee plays its cards very close to its chest and communicates nothing as to its recommendations on the developments it has considered or noted.

The committee reports that it 'examined the issues surrounding the hearing of certain matters by judges of the Children's Court'. This related to the appropriateness of magistrates dealing with certain offences which should be dealt with by a judge of the Children's Court if reasonably practicable. The committee says it sent its findings and a recommendation for action to the Chief Justice and the Attorney-General.

The committee also sent to the Attorney-General a report with recommendations on administrative and legislative changes to deal with delays in the juvenile justice system. The report says that following receipt of detailed responses from police, Department of Family and Community Services and the Court Services Department 'each stage of the system was analysed and timeframes were established to set clear performance guidelines'.

The committe also reported on a fast tracking concept proposed by the Police Department for speeding up the process of dealing with young offenders in the inner city area.

It also considered a number of proposals and options for substantial change to the juvenile justice system, but it is not clear whether or not a report was made on these proposals and options. I am sure members will acknowledge that these are all matters currently under the public spotlight. My question to the Attorney-General is: can and will he indicate what recommendations have been made to him by the Children's Court Advisory Committee, and will he release any report and papers accompanying such recommendations? Also, can he indicate what action the Government proposes to take on those recommendations?

The Hon. C.J. SUMNER: I am happy to examine that question and bring back a reply.

PINE FORESTS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister for Local Government Relations a question about pine forest plantation council rates.

Leave granted.

The Hon. L.H. DAVIS: In February 1991 the Legislative Council passed amendments to the Valuation of Land Act which were described in the second reading as 'minor amendments now needed to take into account changing administrative requirements'. Nowhere in the Government's explanation of the Bill was mention made that the effect of the Bill was to amend the definition of capital value and so enable local councils to rate all private forests in South Australia. The Minister of Local Government (Hon. Anne Levy) handled the Committee debate on this Bill. I advised the Minister during the Committee debate that the Valuer-General's office had confirmed that the land value of pine plantations would be increased by between 100 per cent and 400 per cent as a result of bringing into account the capital value of pine forests.

At the time, I contacted the six councils and two major private forest owners in the South-East, namely, SEASAPFOR and CSR Softwoods. The Government, as it turned out, had contacted absolutely no-one. It was news to the council and to the two companies concerned until I spoke to them. It was left to me as the Liberal's forests spokesman to consult with these parties about the likely impact of the

legislation. After all, these were minor amendments to take into account changing administrative requirements.

At that time, I predicted to the Minister that the two private sector forest operators could face additional council rates of between $200 000 and $500 000, but the Department of Woods and Forests, with 75 per cent of all pine plantations in South Australia, would continue to be exempt from council rates. What has happened since this legislation was passed one year ago? Local councils have done what I predicted they would do and were legitimately entitled to do. The result is that SEAS-SAPFOR and CSR Softwoods between then have copped an extra burden of $350 000 per annum in council rates for their pine plantations in the South-East. That is not to mention the numerous other smaller private sector operators in forests throughout South Australia. This is at a time when the timber industry has been savaged by the worst recession in 60 years.

Not only that, but CSR Softwoods has encouraged about 100 farmers to plant about 4 000 hectares of pine trees under contract and SEAS-SAPFOR has about 27 000 covenant holders. So, both the farmers and covenant holders will have these rate increases passed on to them. The Minister of Local Government rammed the legislation through Parliament a year ago, but what does she say now? I can see the Hon. Terry Roberts opposite looking crestfallen. I am not surprised, because he alone amongst all the members on the Government benches at least understands what I am talking about.

In a letter to Mr David Plumridge, President of the Local Government Association, of 2 January 1992, the Hon. Anne Levy expressed concern about the large rate increases imposed by several councils on privately owned forests as a result of the amendment to the Land Valuation Act. I will quote from this letter signed by the Hon. Anne Levy as follows:

> It has been drawn to our attention that these large rate increases up to 400 per cent are seriously disadvantaging the South Australian forest industry.

Further, she states:

> The forest industry is a most significant one in this State and its future expansion is being jeopardised by . . . rating discrepancies. There is concern too that such high rates will affect the development of wood lots for effluent disposal, tree planting and soil conservation, both of which are policies being actively promoted by the Government.

At that stage, I rubbed my eyes with disbelief, because that is exactly what I told the Minister a year ago. In this letter to the President of the Local Government Association, bitching as she was about the local councils putting up rates too high on pine forests owned by private operators, the Minister went on to say that the Government was going to do a backflip. The Government was now proposing to amend regulations under the Valuation of Land Act to exempt from rating by local councils any trees planted for timber production and disposal of effluent to prevent land degradation. So, we see the Bannon Government, having let the genie out of the bottle was now trying to stuff the lid back on.

South-East district councils are understandably angry at the Government's backflip. Millicent Town Clerk, Mr Brennan, has made the point that Woods and Forests pine plantations are not rated, and a report in the *Border Watch* of 17 January reports that the Hon. Anne Levy irritated South-East councils during a meeting in Adelaide on 16 January by refusing to discuss the Woods and Forests Department rates issue as, indeed, she refused to discuss it when this matter was being debated in this Council one year ago. As Councillor McEwen, Chairman of the Mount Gambier District Council, said, why invite Mr Mutton (Chief Executive Officer of Woods and Forests) to meet with the councils on 16 January, not invite some of the private companies and then actually refuse to discuss Woods and Forests? The fact is that if Woods and Forests were required to pay rates like its private sector counterparts, it would be up for at least $1 million annually. My questions to the Minister are as follows:

1. Does the Minister now admit that the Bannon Government is financially stupid and made an unforgivable and farcical error in amending, without any consultation whatsoever, the Valuation of Land Act to allow council rating of private sector forests?

2. What will the Government do about this matter now that it is so deeply lost in the woods?

3. Does the Government intend to examine the possibility of allowing council rating of Woods and Forests Department pine plantations, which would necessarily reduce the rating burden for all ratepayers in affected council districts?

The Hon. ANNE LEVY: In responding to the questions from the honourable member, I should like to make clear a few points. The comment regarding the presence of Mr Mutton was most unfortunate, and I have since had an apology and an explanation from the people concerned at the meeting. At the beginning of the meeting it was explained that Mr Mutton was not there in his role as CEO of the Woods and Forests Department; he was there as Chair of the Government Land Resource Management Committee. That was made clear to all those present, and it has since been acknowledged by those who made adverse comments regarding his presence. Any imputation regarding Mr Mutton's presence has been fully withdrawn.

I am sorry that the honourable member has seen fit to raise this matter in this place. It is a complete furphy, and there is no question—

The Hon. L.H. Davis: He could have changed his hats, because it was highly irrelevant.

The Hon. ANNE LEVY: The role in which he was present was made very clear to the meeting, and that was acknowledged by all those present. As I say, I have had correspondence regarding this, and any imputation has been fully withdrawn. I regret that the honourable member has seen fit to bring up this matter in this place when it has been fully settled and mutually agreed elsewhere.

The Hon. L.H. Davis: Never mind the sideshow: let's get on to the main act.

The Hon. ANNE LEVY: I indicated that, before speaking, I wanted to clear up one or two points. I have now done so, and I will now turn my attention to the rest of the honourable member's diatribe. The question of rating of Woods and Forests Department property was not discussed at that meeting, because the meeting was not called to consider the question of rating of Government land. It has been agreed with the Local Government Association that the whole question of financial transfers between the two levels of government is a matter to be discussed in the negotiation process. It is not just a question of whether the Woods and Forests Department should or should not pay rates. In looking at that question, one must look at the whole question of the council rates payable on all Government-owned land to local councils.

There is also the question of many taxes and charges which the State Government does not levy on councils. There is a long tradition that Governments do not tax each other and, if we are to depart from that principle of Governments not taxing each other, we must look at the whole range of taxes that Governments do not currently charge each other. There would be the question of payroll tax, and land tax, neither of which local government pays at the

moment. A whole range of charges and taxes that neither level of government levies on the other must be considered in their entire context. As I said, it is one of the matters that will be included in the negotiation process.

That was why the question of whether or not Woods and Forests land should be subject to rates was not discussed at that meeting. That was not the place to consider it: it is not something to be picked out and considered in isolation from the whole question of taxes and charges between different levels of Government. With regard to the specific questions which the honourable member asked, I think I have answered the third one. The answer to the first question is 'No'. The answer to the second question is that discussions are continuing.

The Hon. L.H. DAVIS: As a supplementary question, is the Minister admitting that the Government is now going to do a backflip on rating of private sector forests for council purposes? Is it now seeking to exempt private sector forests from rating by local councils, which is a complete turnabout on their position of 12 months ago?

The Hon. ANNE LEVY: Mr President, I do not think that is a supplementary. I think I have answered that question. I think that was the second question which the honourable member asked in his first group of questions following the diatribe to which I have replied that discussions are continuing.

NATIONAL RAIL INITIATIVE

The Hon. DIANA LAIDLAW: I seek leave to make an explanation prior to asking the Minister representing the Minister of Transport a question about country rail lines in South Australia.

Leave granted.

The Hon. DIANA LAIDLAW: The Commonwealth Parliament has passed legislation to establish the National Rail Corporation (NRC). Complementary legislation was passed last year by the Victorian Parliament and has since been introduced in both the New South Wales and Western Australian Parliaments. Meanwhile, I note that the lead story in today's *Australian* indicates that, as part of the Prime Minister's economic package to be announced on 26 February, there is some suggestion that a $1 billion ultra efficient rail corridor will be created between Brisbane and Adelaide. In South Australia, however, Premier Bannon has not yet signed the NRC agreement, so it remains unclear what role, if any, South Australia will play in this important and long overdue national rail initiative.

It also remains most unclear about what is to be the future, if any, for South Australia's country railway lines not required by the NRC. I have a series of questions to the Minister:

1. Why is the Premier, Mr Bannon, stalling on signing the National Rail Corporation agreement?

2. Does South Australia's participation in the national rail initiative require legislation to repeal the Rail Transfer Agreement of 1975?

3. What is to be the fate of all of South Australia's country railway lines currently operated by Australian National but not required by the National Rail Corporation? They include the Leigh Creek line, the lines to Broken Hill, Mount Gambier and Whyalla, the lines in the Eyre Peninsula and the Murray-Mallee, and the lines to Balaklava, Burra, Eudunda and Angaston.

4. Are all these lines to remain in the possession of the Commonwealth and to be operated by a revamped smaller version of Australian National?

5. Alternatively, are they to be privatised, or are they to revert intact (that is, not just the land corridor but also the railway line) to State ownership? If the latter, has the Federal Minister for Land Transport, Mr Brown, indicated whether or not the Government is prepared to transfer the lines to South Australia at no cost, or will it require South Australia to repurchase the lines that we sold in 1975 and at what cost?

6. Finally, there is considerable concern in a number of country areas due to the prospect of the standardisation of the Adelaide-Melbourne railway line. If that goes ahead, will all railway services in the Murray-Mallee area and to Mount Gambier cease to operate because neither the Commonwealth Government, the National Rail Corporation nor the State Government are prepared to pay the costs associated with standardising these broad gauge lines to link into the new standard line between Melbourne and Adelaide?

The Hon. ANNE LEVY: I think that some of those questions would be better asked of the Federal Minister for Land Transport, but I will refer all those questions to my colleague in another place and bring back a reply.

JAMES A. NELSON SCHOOL

The Hon. M.J. ELLIOTT: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about the closure of the James A. Nelson School.

Leave granted.

The Hon. M.J. ELLIOTT: In November last year it was announced by Dr Ken Boston, Director-General of Education, that the James A. Nelson School for the disabled would be phased out by January 1993. James A. Nelson School has 75 chronically disabled students who need specialised care. It was announced that students would be relocated to 'existing and additional special education facilities'.

Parents concerned about what alternatives would be provided for their children were told in meetings with the Education Department that one of the facilities which would be available for James A. Nelson students was a new $1.1 million specialist centre to be established at Salisbury Park Primary School. This facility was also promised by the Education Department in the education budget 1992 publication.

Parents of James A. Nelson students were also told that a specialist facility would be available at Golden Grove. To date, the proposed Golden Grove facility has been scrapped altogether. In addition, not one inch of the foundations of the promised $1.1 million facility at Salisbury Park Primary School has been laid. It is a widely held belief that this centre will never be opened. Currently, special schools around Adelaide, such as Christies Beach Special School, are at or near capacity. These centres will be unable to take the James A. Nelson students without the relocation of their current students into mainstream schools. While many acknowledge that special school students can benefit from education in mainstream systems, they point out that this should occur only when it is appropriate to meet the needs of the student involved rather than simply to accommodate other students, and this has special resource implications.

I have had parents telephoning me and asking whether the Government is going to keep its promise in relation to Salisbury Park Primary School and asking, if not, where will the students of James A. Nelson School go and, if they are to be relocated to existing special schools, will there be the necessary funding and facilities to cope with their special needs? My questions to the Minister are:

1. Will commencement and completion dates be given for both the Salisbury Park Primary School and the Golden Grove centres for the multiply disabled students?

2. Will the Minister give an undertaking that the James A. Nelson School will not close until all students have an alternative accessible school, with all facilities and staffing levels as good as or better than those at James A. Nelson School?

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

NON-PERFORMING TEACHERS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about non-performing teachers.

Leave granted.

The Hon. R.I. LUCAS: Last year, the Education Department launched two schemes aimed at encouraging non-performing teachers to either quit the education system or improve their performance. One of these schemes, the $10 million Changing Directions Scheme offered retraining grants of up to $42 000 to teachers who were dissatisfied with teaching and seeking a new career. At the time of the launch of this scheme, the then Director-General of Education, Dr Boston, stressed that the retraining grants were not a 'retirement benefit' nor 'a scheme to reward incompetent teachers'. Despite this it seems that the response to the offers of the retraining grant was poor because on 19 September last year Dr Boston said that the 184 grants had not yet been filled.

Recently, I have been provided with information claiming that at least one recipient of these grants received a grant outside the supposed guidelines of the scheme. For example, the following accusation has been made about a teacher who has now left the Education Department after receiving a retraining package. I will omit the teacher's name, however I am prepared to supply details to the Minister at a later stage. The letter complains that decisions to offer some grants were made without proper investigation by the department. The letter reads, in part:

> [name supplied] had been on leave from term 3 1990 and all of 1991.
>
> She was working, first, for AMP then with Women's Investment Network—full time, all the time receiving an income. She was given $42 000 'changing directions' [grant] even though other people were denied access because we believed . . . the printed brochure.
>
> She has openly bragged about getting the money and taking an overseas holiday on the proceeds—best of both worlds.
>
> Your Party is concerned with Public Service payouts according to the papers—please take a good look at the Education Department.

The brochure referred to by the correspondent is a departmental document entitled, 'Why Change Direction'. On the matter of eligibility for receiving the changing directions grant, the brochure says in part:

> To be eligible for the Changing Directions Scheme, an employee . . . must currently be on active service (that is, teachers currently on any form of extended leave without pay are ineligible).

I am sure that most members would be concerned if there was evidence that some Education Department staff were rorting the system in order to capitalise on this retraining grant. My questions are as follows:

1. Will the Minister investigate the specific allegations of the case I have just outlined and review the operation of the scheme to establish whether there were any other examples of posible abuse?

2. Will the Minister provide details on how many departmental staff have been approved for a payout from the department under the scheme, and in each case will the Minister indicate the classification held by the individual and the amount of grant in each case?

3. What action has the department decided to take with perceived 'non-performing' teachers who have still not applied for the scheme?

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

SPINAL INJURY REHABILITATION UNIT

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about the Spinal Injury Rehabilitation Unit at the Hampstead Centre, Northfield.

Leave granted.

The Hon. BERNICE PFITZNER: The standard of accommodation of the Spinal Injury Unit is at the level of a developing country, according to the community and staff in that area. I visited the unit and noted that the exits from the rooms did not accommodate access by wheelchairs, that the Government-owned land next to the unit had grasses 1 metre high and therefore a health hazard, that there were rodent and bird droppings on doors and footpaths, and that there was general rusting and deterioration of the whole building. I also understand that there is an asbestos problem in the roof lining which prevents any roof repair and that, although the episode of the mouse nibbling a patient's toes was an isolated incident, there is still evidence of the presence of rodents in the staff lockers.

There have been five plans proposed by the Chief Executive Officer of the Royal Adelaide Hospital, Dr Brendon Kearney, in conjunction with the staff of the unit. There is a concern also regarding the site of the gymnasium. I understand that the staff are completely disillusioned and depressed about the situation. Dr Kearney states that there are some differences between the staff's requests and what is achievable. The South Australian Health Commission has only just received from Dr Kearney this year the feasibility report relating to the unit. My questions are:

1. When will the unit staff know the final plans for the upgrading of the building?

2. If there are different expectations for the upgrading of the building between Dr Kearney's plans and the staff plans, will he be able to resolve these differences?

3. What is being done about the potential fire hazard and asbestos hazard?

4. What is being done to prevent further rodent attacks on patients' lower limbs?

5. What is being done to the gymnasium, which will be .8 km away from the proposed upgraded wards—and .8 km is a long way for paraplegics?

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

TISSUE DONATIONS

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question about the legal position of executors and the donation of human tissue after death.

Leave granted.

The Hon. I. GILFILLAN: Yesterday in this place I asked the Attorney a question relating to the Hocking family and the role of an executor who sought an injunction preventing the family's burial of their late father last year. As a result of that question the Attorney agreed to examine their case and consider the possibility of legislation. Following on from that I now find there is a question relating to the role of executors in dealing with organ/tissue donations of the deceased.

In South Australia the Transplantation and Anatomy Act 1983 states in Part III under the heading 'Donations of Tissue after Death' that in gaining authorisation for the removal of tissue from the body of a deceased person the designated officer must simply contact the 'senior available next of kin' for approval. Nowhere in the Act does it state that approval must also be sought from an executor where appropriate.

A letter I received last month from the Hocking family referred to the cornea eye bank at the Flinders Medical Centre and the Australian Kidney Foundation. Mr Ivan Hocking contacted both organisations in relation to transplant donations and was told by Professor Coster of Flinders Medical Centre that:

> ... they collect the cornea from the deceased in the metropolitan area ... 12 hours after death, but ideally six hours. The procedure is to ring the next of kin and ask for their consent ... they certainly do not get executor's consent ...

Mr Hocking was also told by a spokesperson for the Australian Kidney Foundation:

> ... they only contact the next of kin. The kidneys have to be collected from the deceased within 2½ hours of death. As you can imagine both organisations would not have the time to ask executors for their consent ...

I have sought two legal opinions on this matter and both suggest that there appears to be a serious oversight as to the role of the executor in relation to this Act. Common Law gives executors total power over the deceased, not the next of kin, while statute law seems to only need approval of next of kin in relation to tissue donations from a deceased person.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: The interjection was that statute law overrides common law. However, statute law is silent as to any role of an executor in the handling of tissue for transplant. The point of the question is to clarify the situation, which may well be quite uncertain and is uncertain for two separate lawyers whom I have approached on the matter. It needs to be resolved, if only to clarify it for the public's reassurance. This creates a dilemma if in the case of a deceased person the next of kin gave approval for the donation of organs or tissue and an executor hostile to, or at arms' length from, the family sought an injunction. Both legal opinions told me this creates a legislative grey area, as they refer to it. I ask the Attorney:

1. Does he agree with me and my other legal opinions that the role in relation to the power of executors dealing with approval for tissue donations is not clear in existing statute?

2. If so, will he examine the legislation in question and, if need be, introduce amendments to clarify the situation?

3. Can the Attorney also seek legal opinion in order to assure individuals who intend to donate organs after death and the members of their families likely to be involved in giving consent that they are secure from any preventive or punitive measures taken by an executor?

The Hon. C.J. SUMNER: The honourable member raised an issue relating to the power of executors of wills yesterday. I undertook to examine that matter and I will do the same in relation to this question.

COIN OPERATED GAMING MACHINES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about coin operated gaming machines.

Leave granted.

The Hon. J.C. BURDETT: We received in our boxes earlier this week from the Lotteries Commission a glossy brochure about coin operated gaming machines. The front cover contained the words 'the secure cost-saving alternative for clubs and hotels'. Perhaps it would have been best directed to the clubs and hotels; it was a sales plug. Inside was an introduction containing five and a bit lines and four other sparsely set out pages, giving information which had previously been disseminated, anyway.

This document was, of course, highlighted in yesterday morning's *Advertiser*, because according to the *Advertiser*—supported by the apparent photographs—the document had been sanitised by the removal of the reference to political corruption. The sanitisation was said to have occurred by order of the Premier. This is not the issue that I propose to raise, because it was raised by question in another place yesterday.

My question relates to the spending of the commission's money to peddle its views on issues which must be—and which in fact now are—the subject of a Bill and which are, therefore, a matter of Government policy. The *Advertiser* said that the cost of the reprinting following the sanitisation was $3 000.

There is also the original print and there were also previous papers put out by the Lotteries Commission. I refer in particular to the information paper put out by the commission dated 3 June 1991. There was also other propaganda. I do not deny that the commission should have the opportunity to spend some of the money for which it is accountable on giving information about the position, but this is a matter of Government policy, and I raise the issue of the Lotteries Commission spending its money on this propaganda. My questions are:

1. Was the cost of the reprint after sanitisation $3 000?
2. What was the cost of the original print?
3. What was the cost of the information paper?
4. What was the cost of other public relations matter put out by the commission?
5. Who are the consultants employed by the Lotteries Commission in promoting its bid to run the proposed coin-operated gaming machines, and where are they based?

The Hon. C.J. SUMNER: Obviously, I will have to take those questions on notice and refer them to the Treasurer for a response. However, I should clarify one point asserted by the honourable member during his explanation, and that concerns the status of this Bill. It is Government policy to introduce the Bill, but all members of the Labor Party, whether in or out of Cabinet, are being given a conscience vote on this matter as it involves the extension of gambling. So, it is possible that some members of Cabinet may vote against certain sections of the Bill. Members are not bound in this case to vote in a particular way, a free or conscience vote being allowed on it. That needs to be clarified but, subject to that, I will attempt to get the information requested by the honourable member.

LOCAL GOVERNMENT

The Hon. J.C. IRWIN: My question is directed to the Minister for Local Government Relations, although I do not necessarily expect an answer today. Can the Minister

advise what evidence, such as council minutes giving authority to borrow, is required by the Local Government Finance Authority or a bank when negotiating a term loan or short-term overdraft type of facility with a council? Section 41 of the Local Government Act does not allow a council to delegate its power to borrow money or to obtain any form of financial accommodation. Does a council have to update its authority each council financial year in respect of overdraft facilities with the LGFA or a bank?

The Hon. ANNE LEVY: I am not sure what the honourable member's question refers to, but I will certainly seek advice if it is a question of interpretation of the Act. I had always understood that a council—like a Government—is a continuing body. The fact that members may change does not alter the fact that it is a continuing body. As with State or Federal Governments, the political affiliation of a Government may change but the Government is bound by all that the Government has done, so there would be no necessity to reaffirm decisions made by a previous council.

Any decision made by a council stands until it is rescinded. I am pretty sure that that is certainly the general situation. As members will recall, it was a matter of some contention in the Stirling bushfire situation whether a council was bound by decisions made by the same council comprised of different membership, and it was certainly held that they were so bound because it was a continuing body. The honourable member has raised his question with regard to a particular situation and, while I imagine that the same principle would hold, I am happy to have the matter examined and bring back a reply.

PASTORAL AREAS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Lands a question about public access roads in pastoral areas.

Leave granted.

The Hon. PETER DUNN: A recent sad event in the North saw a young surveyor lose his life as a result of heat-induced problems after he left his vehicle when it was bogged in the mud, which seems a rather rare occurrence. However, it has been brought to my attention that some liability could be incurred by pastoralists in the area because there was no signage. If one looks at maps of the area where the man lost his life, one sees that the road is not a main surveyed road but appears to be a station track. The Pastoral Lands Act, as we now have it, is fairly clear that public access roads must be gazetted by the Minister and shown on maps so that people negotiating those areas or driving through stock routes are aware of what those roads are and where they are.

There is some confusion in the pastoral industry about where these public access roads are, about where the stock routes are and where their liability lies in this regard. In this case the vehicle was bogged in mud, but there was no sign indicating that the road was impassable. Bearing in mind this recent accident, my questions are:

1. Could any legal liability be placed on pastoralists by travellers who may have an accident while negotiating station-made tracks?

2. Will the Minister have these public access roads gazetted as soon as possible as this may help future outback travellers?

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 seek leave to make an explanation before asking a question of the Minister of Tourism, representing the Minister of Housing and Construction, about Tourism South Australia accommodation.

Leave granted.

The Hon. DIANA LAIDLAW: As all members will recall, last December the majority of Tourism South Australia's office was relocated from the 18 King William Street headquarters to Norwich Centre at 1 King William Road, North Adelaide. I am advised that this transfer suited SACON well, because it was already paying substantial rent for a lease of over 1 200 square metres at the Norwich Centre and that it would be doing so for another five years because the lease does not run out until 30 June 1997.

The area had been vacant since the Department of Local Government moved out. The area in question at Norwich Centre is leased by SACON for $165 a square metre per month, plus rates and taxes, which makes a grand total of about $204 000 per annum for the floor space. In addition to the floor space the lease includes 26 car parks, four of which are under cover, costing SACON $3 465 per annum, and there are a further 22 open spaces involving a rental of $14 520 per annum. I ask the Minister:

1. Are SACON's lease obligations at Norwich Centre amounting to $220 000 per annum, or $1.1 million until 30 June 1997, the reason why, I am now advised, that SACON is reluctant to see Tourism South Australia move out of this building to a new site in the city?

2. What is the cost per square metre to rent floor space and car parking space at the Australis Centre, Chesser House, the Rheem building on North Terrace or the former CBA building on King William Street?

3. What floor space area is TSA now seeking in order to accommodate the Minister of Tourism's desire to place an enlarged TSA on one site permanently?

4. What price per square metre is SACON paying at present for floor space to accommodate the travel centre in the AMP building and the regions division in Hooker House, 33 King William Street?

5. What income is SACON forgoing per month since TSA moved out of 18 King William Street?

The Hon. BARBARA WIESE: I shall be happy to refer those questions to my colleague in another place, and I am sure that he will provide answers. I would like to correct one thing that the honourable member said. There is no desire by the Minister of Tourism to provide for an enlarged Tourism South Australia. There are no plans to provide for a larger organisation at this point, but there is a desire to have accommodation that is big enough to cater for the existing number of people employed in the organisation in space that is appropriate under Public Service regulations.

AGE DISCRIMINATION

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about age discrimination.

Leave granted.

The Hon. K.T. GRIFFIN: At the launch in early December of 'A fair go at any age', the Attorney-General indicated that he was examining one concern that had been drawn to his attention by employers, and that was that in both State and Federal awards there was a provision for different rates of pay fixed according to the age of employees, particularly those under the age of 18 years.

Soon after that, the Retail Traders Association published a media statement that drew attention to that commitment and welcomed it. The Retail Traders Association indicated that, from its point of view, in the various awards under which its members operated, anomalies were created in the context of the broad principle of the age discrimination legislation. Many members would have also received an open letter to State members of Parliament from Mr Richard King, who runs an enterprise known as Mocare (S.A.). In that letter he says in part:

As a small businessman struggling to survive in a depressed business environment, not of my own making, I am becoming increasingly frustrated by legislation enacted in this State. An example of this is the new equal opportunities legislation, which is supposed to prevent discrimination based on a person's age.

My company currently has a vacancy for a junior storeperson aged 16-17 years. Due to the current legislation I was unable to advertise the age of the person I required. Consequently, I placed a 'legal' advertisement in the *Advertiser* on 6 November 1991. I received approximately 300 replies to my advertisement, none of which was for a person under 19 years of age. The consequence of this is as follows:

1. Forty dollars wasted on the advertisement.
2. 300 people wasting their time, money and energy on an application for a job that did not exist for them.
3. Six hours of my staff's valuable time spent on vetting each reply.
4. My company still has a vacancy for a junior storeperson.

He goes on to make some rather caustic statements about members of Parliament and the real world.

I should make clear—as the Attorney-General undoubtedly will if I do not—that the Liberal Party supported the age discrimination legislation, and we do not resile from that. At the time, as I recollect, questions were raised about anomalies in industrial awards as well as specific age limits fixed by various pieces of legislation, but this issue of conflict with Federal and State awards has raised its head more so now that the legislation is in operation than was evident at the time. In view of the Attorney-General's indication at the launch of the 'Fair go at any age' publications, is he able to indicate to the Council what progress is being made in the examination of the conflict, if any decision has been taken whether or not the conflict will be resolved and, if so, in what way?

The Hon. C.J. SUMNER: I personally believe the matter should be resolved in some way to overcome what I think is an anomaly. However, the matter has not been determined finally by Government; it is still being examined at present because of industrial implications. I will chase the matter up and try to get a response as quickly as I can.

SHACK SITE TENURE

The Hon. PETER DUNN: I understand that the Minister for the Arts and Cultural Heritage has an answer to a question I asked on 13 November about shack site tenure.

The Hon. ANNE LEVY: I seek leave to have the answer inserted in *Hansard* without my reading it.

Leave granted.

My colleague the Minister of Lands has provided the following response:

1. The meetings to which the honourable member refers have been conducted on behalf of the Minister of Lands as part of the review of unacceptable coastal shack sites.

This review was undertaken by PPK Consultants Pty Ltd who were commissioned by the Government to provide an independent assessment of the criteria and standards which should be used to determine the environmental sustainability of Crown lease shack sites. Based on those standards and assessment a small percentage of sites have been identified as potentially suitable for freeholding, subject to the implementation of management plans.

The meetings were attended by staff from the Department of Lands and the consultants. They were called to provide a forum for explaining the results of the consultants' report and to outline Government policies and procedures in relation to shack administration.

2. The review considered only those Crown lease sites which have previously been identified (through earlier studies such as the 1983 review) as not suitable for freehold tenure. All leases included in the study are administered under the Government's policy which provides for life tenure occupation of unacceptable shack sites.

Sites which were previously held under a terminating tenure (that is, the term of lease would have expired between 1994 and 1999) are held under a non-transferable life tenancy and, by policy, these leases are not to be sold or transferred. There is also a considerable number of sites which are held under a life tenancy which is transferable to an incoming tenant who would then gain a non-transferable life tenancy. Leases in this category are those which were held as a life tenancy prior to the Government's policy announcement of 4 November 1989.

3. The consultants have applied the highest and best standards of environmental sustainability to take account of the risk to the shacks and the public coastline from a variety of factors including erosion and flooding potential. These are standards which have been incorporated in the Government's policies for coastal development and would apply to any development, irrespective of the tenure of the land. In adopting these criteria South Australia is drawing on international experience and standards.

4. The review procedures provide an opportunity for lessees to assess their shack areas against the criteria used by the consultants. They may then provide evidence which would refute the consultants' assessment (for example, tide records which show that the area is not subject to the standard of the one in one hundred year flood return). Alternatively, they may choose to prepare a management plan which could be implemented to overcome the problems identified by the consultants (for example, designation of legal and practical access to their sites or provision of signs or walkways to assist public access to the beach).

5. The specific questions in relation to Arno Bay shacks would need to be dealt with through a management plan. The management planning process cannot be used to circumvent existing planning and development policies, particularly where these relate to questions of public health (for example, South Australian Health Commission requirements for septic systems).

6. It is recognised that there are past developments which would not now meet the requirements for new coastal development. Those planning decisions were made on the basis of the best available knowledge, at that time, and the growth in knowledge and awareness of the environmental impact of development along the coast should be used to guide our current decisions.

7. Whilst it is recognised that the shacks in many country areas provide recreation for local farming communities, it is this Government's view that recreational use of the coast should be developed sensitively and in accordance with sound environmental policies. The development of management plans, and subsequent freeholding of shack sites, in areas such as Port Broughton and Port Gibbon indicate that it is possible to achieve this objective of environmentally sensitive recreational use.

The reference to metropolitan development is not relevant to the consideration of a change in tenure for shacks sited on Crown land which is leased for occupation. In the case of metropolitan Adelaide, development has already occurred and the land is held under freehold title. The Government's responsibilities in the latter situation require it to provide protection to existing freehold sites. To freehold shack sites which are shown to not be environmentally sustainable in the longerterm would lead to the general community unnecessarily assuming a financial burden for the long-term protection of those shacks.

TRANSPORTABLE HOMES

The Hon. PETER DUNN: Has the Minister for the Arts and Cultural Heritage an answer to a question I asked on 17 October about transportable homes?

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Minister for Environment and Planning has informed me that no instructions have been given by the Department of Environment and Planning banning further transportable-type buildings from being erected in Innamincka. However, the draft plan for the Innamincka township contains recommendations which indicate that development should be designed so as to retain and enhance the historic outback character of the town by incorpo-

rating such design aspects as masonry, stone or framed and clad external walls, the use of galvanised iron roofing and incorporation of verandahs.

Negotiations have been taking place with the Uniting Church for the transfer of the title of land on which the Australian Inland Mission building sits to the Department of Environment and Planning. Once the transfer of title has taken place, plans will be further developed for the initial stabilisation and ultimate restoration and reconstruction of the Australian Inland Mission building as a visitor centre for Innamincka Regional Reserve.

The transportable buildings are currently being used to provide a storage area and temporary accommodation for park staff, prior to the completion of the restoration of the Australian Inland Mission building. The buildings will be moved as soon as practicable, following the commencement of the restoration program.

REGISTRATION SCHEME

The Hon. PETER DUNN: I understand that the Minister for the Arts and Cultural Heritage has an answer to a question I asked on 20 November about road transport registration.

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The honourable member's explanation suggests some confusion as to the impact of two separate issues involving road transport registration.

The Minister of Transport has informed me that the Federal Interstate Registration Scheme (FIRS) came into operation on 1 January 1987, as a means of overcoming the situation whereby purely interstate road transport operators were avoiding payment of registration charges due to a previous interpretation of the Constitution that to charge such operators would be deemed a restriction of interstate trade (section 92).

To date FIRS has been effectively restricted to covering conventional six axle articulated units and other vehicles operating with a mass of less than 42.5 tonnes. That is, B-Doubles and road trains have not been recognised under FIRS.

The recently announced amendments (to take effect from 15 November 1991) to the Interstate Road Transport Act (1985), which sets up FIRS, allows for the registration of B-Doubles (but not road trains) under FIRS. The main impetus for this change is suggested to be to encourage States such as Victoria to allow the operation of B-Doubles in their jurisdiction.

It is important to note that this gives interstate operators another option, as FIRS only applies to purely interstate operations, it being illegal to operate intrastate under FIRS. Operators registered on 'State' plates can still operate interstate providing that any required permit fees are paid (New South Wales and Victoria). Local or intrastate operators will not be affected and for the time being will continue to pay local registration charges. For example, the local registration charge for a B-Double is around $4 400, which is much lower than the $12 370 to apply for some B-Double configurations under FIRS.

The designated B-Double network to apply under FIRS has been developed in close consultation with Department of Road Transport officials and matches exactly the South Australian B-Double network. Accordingly, FIRS registered B-Doubles will not be permitted access to routes that would not also be open to local operators to use.

The issue of general increases in road transport charges is suggested to relate more to the possible outcome of the agreement signed at the July 1991 Special Premiers' Conference (SPC) establishing a national heavy vehicle (defined as greater than 4.5 tonnes gross) registration, regulation and charging scheme.

The National Road Transport Commission (NRTC), to be established following the July 1991 SPC agreement, will have the task of determining zonal road transport charges, with the first instalment to be recommended by March 1992 to apply by January 1993.

In the context of this exercise some very significant charge increases have been suggested. It is important to note that whilst heads of Government noted some of the charge increases proposed to date, they did not endorse any indicative charge levels presented to them. Consequently, any discussion of ultimate charge levels is speculative at this stage. The South Australian Government will not hesitate to reject any recommendations it believes are unjustified.

The extension of the existing FIRS operations to B-Doubles will not cause local operators any hardship and will in fact provide interstate operators an additional option. Consequently, there would seem to be no justification to oppose the extension, which has been developed in consultation with the South Australian Government. In any event it is only intended that the new measures apply for a short time, as FIRS is to be subsumed into the porposed national heavy vehicle scheme.

RIVERLAND COOPERATIVES

The Hon. M.J. ELLIOTT: I understand that the Attorney-General has an answer to a question I asked on 22 October about Riverland cooperatives.

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

Leave granted.

The Minister of Agriculture has provided the following response:

1. The Government believes there is considerable evidence that such rationalisation would assist the long-term viability of the cooperative fruit packing industry and the Department of Industry, Trade and Technology has sought to encourage and support rationalisation moves and initiatives over a sustained period. Some progress has been made but it would appear that further substantial rationalisation is necessary and desirable. In this regard the department has been encouraged by the recent, in principle, decision by the various cooperatives to rationalise and to appoint a facilitator to assist the process.

2. The Government has been directly involved through the Department of Industry, Trade and Technology and has sought to encourage and facilitate rationalisation initiatives and moves over a number of years.

3. The day-to-day management of Berrico is now in the hands of a receiver. The receiver recently met with 200 grower members and gave an undertaking that Berrico will continue to trade and has guaranteed payment for fruit. The Government will continue to act as a facilitator and supporter of initiatives aimed at enhancing the long-term viability of the industry.

SUPERANNUATION FUNDS

The Hon. M.J. ELLIOTT: Does the Attorney-General have an answer to a question I asked on 30 October about superannuation funds?

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

Leave granted.

The Minister of Finance has provided the following response to the honourable member's question.

The preamble to this question states that 'the auditors have noted in their report: special investments have been valued where possible by independent valuers. Where independent valuations are not available investments have been valued by the members of SASFIT having regard to market conditions.'

This quote, from the notes to the accounts prepared by SASFIT, is not a comment from the Auditor-General. It is a note which was inserted by SASFIT.

One presumes that the Auditor-General would have commented upon the valuation procedures in his report if he had cause for concern.

It is SASFIT's policy to obtain external valuations for the majority of assets each year and to ensure that periodically each asset is externally valued. However, once valuation methodologies have been set it is both appropriate and cost efficient to undertake update valuations internally. It should also be noted that several assets in the portfolio are of a fixed income nature and simply require application of an appropriate discount rate in order to determine a value. This type of valuation can quite comfortably be conducted internally.

It should be emphasised that valuations are examined as part of the audit of SASFIT's accounts by the Auditor-General. I am quite satisfied with SASFIT's approach to its valuations and do not propose to request any changes.

The capability of the funds to meet their ongoing financial commitments under the Superannuation Act and the Police Superannuation Act are actuarially reviewed on a regular basis. When last reviewed by the Public Actuary the funds were considered to be capable of meeting these ongoing financial commitments.

Pursuant to the respective Acts, the State Superannuation Funds will be actuarially reviewed as at 30 June 1992 and the Police

Funds as at 30 June 1993. I do not believe that it is appropriate or necessary to seek additional reports prior to those dates.

As the defined benefit schemes' liabilities are significantly related to price and wage movements, SASFIT's investment strategy of allocating 35-40 per cent of its portfolio to CPI linked assets provides a high degree of protection against the long-term growth in liabilities due to inflation. The remainder of SASFIT's portfolio is split mainly between properties and equities which should, over the long term, grow in line with the national economy albeit with greater year-to-year volatility in asset values.

COORONG

The Hon. M.J. ELLIOTT: I understand that the Minister for the Arts and Cultural Heritage has an answer to a question that I asked on 13 November about the Coorong.

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

My colleague, the Minister for Environment and Planning, has advised that discussions on the proposal to drain surface water and intercepted groundwater from the Upper South-East to the Coorong have progressed to the stage where a detailed report entitled 'Dryland Salinity Impacts and Related Groundwater and Surface Water Management Issues in Counties Cardwell and MacDonnell, South-East South Australia' has been considered by the Government. Considerable technical, economic and environmental matters still need to be resolved and this work has begun. A draft EIS is to be prepared as part of this work and management options will be developed in consultation with the local community. The draft EIS is planned to be available for comment in October/November 1992.

Any structural or physical works are unlikely to start before the completion of an EIS. The Government is aware of the importance of these issues and has directed that the necessary studies and designs be completed as soon as possible.

JOBSTART

The Hon. R.I. LUCAS: I understand that the Minister for the Arts and Cultural Heritage has an answer to a question I asked on 22 October concerning JobStart.

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

My colleague, the Minister of Employment and Further Education, has advised that in relation to the questions raised by the honourable member it is pointed out that 'JobStart' is a Program administered by the Commonwealth Department of Employment, Education and Training (DEET) and as such is not under State control or direction.

However, the honourable member's concerns are noted in that an employed person would appear to have been penalised because an employer seems to have taken advantage of the subsidies available under the program.

As a consequence the honourable member's questions in this regard were directed to a senior officer of DEET for appropriate comment.

The response is as follows:

The JobStart Program provides subsidy payments to employers in the private sector who engage and improve the employment prospects of disadvantaged job seekers, with subsidy rates geared to relative disadvantage and age. The intent of the program is for the employer to retain the job seeker after the period of subsidy ends.

The main objectives of the program are:

(a) to provide access to employment, in the private sector, for job seekers who because of long-term unemployment or other difficulties are unable to compete on an equal basis in the labour market; and

(b) to enhance the employment prospects of job seekers assisted under the program through the provision of employment experience which will provide, improve or maintain their job related skills, motivation and confidence.

Assistance under JobStart may be offered to job seekers who:

(a) are aged 16 years or more (or younger and in receipt of Young Homeless Allowance);

(b) are currently unemployed and away from full-time education and training; and

(c) have been registered with the CES as unemployed for six months (26 weeks) continuous and are actively seeking employment throughout the registration;

(d) are specially disadvantaged (see Employment Access Program guidelines CES Manual Section 36.1 for listing and definitions of especially disadvantaged groups); and

(e) are considered by the CES to be uncompetitive in the job market without JobStart assistance.

CES must ensure that vacancies accepted for JobStart comply with the relevant State/Territory/Local Government laws and general community standards and are likely to achieve the objectives of the program. The CES should not promote underemployment, poor work practices or inappropriate employment under the program.

In all cases employers will be required to agree to pay wage rates specified in the relevant award and abide by all award conditions (or agreed nominated award where no aware otherwise exists).

Positions must normally be available for continuous employment for at least three months after the expiration of the agreed subsidy period. Shorter job durations may be considered when a seasonal vacancy offers the prospect of leading to other seasonal work and/or other continuous employment.

The CES has the discretion to refuse vacancies under the JobStart program if there is good reason to believe that the employer will not comply with the specific requirements or objectives of the program. Vacancies should not be accepted under the program if an employer insists on referrals having specific experience and/or qualifications in a manner designed to avoid selecting an employee from the program target group.

Subsidies paid to employers under JobStart arrangements cannot exceed the award rate payable to the employee for the position in which he/she was placed.

In the case raised by the honourable member (without access to additional information about the employment conditions of the photographer) it would appear that he may not have been employed in a normal salaried position but under the same form of contract arrangement.

Under JobStart, placement would be under relevant award conditions. Therefore it may have been possible for the subsidy to exceed that amount paid under alternative arrangements to the photographer but the employment conditions under JobStart may have been quite different.

The CES is required to monitor JobStart placement activity to avoid any practice indicating employers obtaining an ongoing supply of subsidised labour. Recent guidelines have been adopted requiring an agreement from employers that employment would be continuous for at least three months beyond the subsidy period.

Any specific cases where employer abuse is perceived/detected should be raised with the local CES and/or DEET so that individual cases can be investigated; any remedial action, as required, can be taken in respect of that case and/or future requests for subsidies under the program.

Answers to the first three questions from the honourable member are covered in the response from DEET. However, responses to all four questions are summarised below:

1. The Minister of Employment and Further Education is concerned if individuals with initiative are being penalised because of JobStart. The Employment and Training Division of the Department of Employment and TAFE is on the alert to raise with DEET any apparent conditions in some Commonwealth labour market programs and this watching brief will continue.

2. The response from DEET makes specific mention that subsidies paid to employers under JobStart arrangements cannot exceed the award rate payable to the employee. If previous agreements were below the award conditions, a restoration to the award level with the JobStart subsidy would appear as a greater amount.

3. The last two paragraphs of the DEET reply specifically address steps that have been taken for the CES to monitor JobStart placements to avoid an ongoing supply of subsidised labour.

4. The Minister of Employment and Further Education will raise these issues with the Federal Minister of Employment, Education and Training. However, with Commonwealth funded programs it is appropriate to raise specific instances of alleged abuse directly with the Commonwealth Employment Service of DEET or via colleagues in the Federal Government.

MOUNT GAMBIER RAIL SERVICE

The Hon. I. GILFILLAN: I am informed that the Minister for the Arts and Cultural Heritage has an answer to a question that I asked on 20 November about the Mount Gambier rail service.

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

At a meeting between Minister Frank Blevins and Federal Minister for Land Transport, Bob Brown, it was agreed that Australian National would prepare for Mr Brown a report examining ways by which the Mount Gambier 'Blue Lake' service could be reinstated, and provide costing for the reinstatement of the service plus those to Whyalla and Broken Hill.

Like the honourable member, the State Government is anxious to see the contents of the report. The report was commissioned by the Federal Government and Minister Blevins expects to receive his copy from his Federal counterpart soon.

Mr Blevins has contacted Mr Brown to request a copy of the report. He has also suggested that, if both Ministers agree, the contents of the report be made public.

RADIOACTIVE WASTE DUMPING

The Hon. I. GILFILLAN: Does the Minister for the Arts and Cultural Heritage have an answer to a question that I asked on 13 November about radioactive waste dumping?

The Hon. ANNE LEVY: I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Government is aware that SX Holdings and the Roxby Joint venturers are discussing a commercial agreement relating to the disposal of wastes from Port Pirie. A formal approach is expected from the joint venturers when such an agreement is reached. No formal application from the joint venturers has been received at this stage.

One of the conditions of the consent for SX Holdings to crack monazite at Port Pirie states (in part):

> The person having the benefit of this consent shall not commence construction of the stage 3 plant until the proponent has entered into an agreement with the operators of the Olympic Dam project for the disposal of monazite residue in areas sited and designed to the approval of the Minister of Mines and Energy. The agreement must be satisfactory to the Minister for Environment and Planning . . .

SX Holdings will need to comply with this condition. The condition makes it clear that monazite residue will only be able to be disposed of at Olympic Dam with the approval of the Minister of Mines and Energy.

The procedural steps involved in any decision made by the Minister of Mines and Energy will be consistent with the terms of the indenture. If necessary, the Government will seek advice on the legality of these processes.

ACTS INTERPRETATION (CROWN PREROGATIVE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 2573.)

The Hon. C.J. SUMNER (Attorney-General): In reply, I thank the Hon. Mr Griffin for his support for this Bill. In relation to the honourable member's question relating to liability of the Crown under statutes passed since 20 June 1990, I supply the following information: first, the effect of the Bropho decision is that it is more likely that statutes passed since 20 June 1990 do in fact bind the Crown in any event though, as I indicated in my second reading explanation, the matter is not free from doubt, hence the need for this amendment.

Secondly, Parliamentary Counsel has been involved from the outset in discussions concerning the appropriate legislative response following Bropho. Furthermore, Bropho's case has necessarily been a matter for consideration in the drafting of legislation since the decision was handed down.

Thirdly, the Crown Solicitor has written to all Ministers, bringing to their attention this proposed amendment and suggesting that agencies should:

(a) review statutes administered by that agency where the principal Act was passed before 20 June 1990 so as to determine whether that Act is intended to apply to the Crown and the practical effect of it doing so and advising. In light of the uncertainty arising from the Bropho case it may be sensible that the Act be amended to expressly exempt the Crown or the relevant activity, if it is thought desirable that the Act not apply;

(b) review any proposed statutes and to review any statutes passed since 20 June 1990 to ascertain whether the Crown should be exempt from those statutes.

At this stage the Crown Solicitor has not been made aware of any problems with legislation passed since 20 June 1990. The more difficult area is the effect of Bropho on pre-20 June 1990 legislation, and attempts have been made to identify potential problems. The Council should be aware that there may be the need from time to time to introduce Bills to clarify the situation with respect to these statutes.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: In the light of the Attorney-General's reply at the second reading stage, do I understand correctly that there is currently an examination of the effect of the passing of this Bill on legislation enacted since 20 June 1990? Do I understand correctly that there is also an examination as to whether any special attention ought to be given to legislation enacted prior to 20 June 1990, but that, at the moment, no problems have been identified? If that is a correct understanding of what is happening, this Bill obviously comes into effect on assent, because it has not been provided that it should come into effect on a date to be proclaimed. If it comes into operation on assent, is the Attorney-General satisfied that, notwithstanding the circulars to various Government departments, it is appropriate for it to come into operation upon assent?

The Hon. C.J. SUMNER: I am advised that the Crown Solicitor, in accordance with the information I provided to the Council, wrote to all Ministers concerned, bringing their attention to the amendment. To date, the Crown Solicitor has received only one response indicating any concern, and that may have to be dealt with in due course. But the Crown Solicitor cannot see any difficulty with proclaiming that the Act come into effect on assent. As I think I indicated, Parliamentary Counsel has been drafting statutes, where relevant, taking into account the Bropho decision, since 20 June 1990, in any event.

Clause passed.

Clause 2 and title passed.

Bill read a third time and passed.

CROWN PROCEEDINGS BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 2575.)

The Hon. C.J. SUMNER (Attorney-General): In reply, I thank the Opposition for its support of this measure. The Hon. Mr Griffin raised some matters on which I will now comment and provide further explanation. First, the honourable member asks for an update on the progress of

legislation in other jurisdictions. The Commonwealth provision to amend section 64 of the Judiciary Act was included in an omnibus Bill, the Law and Justice Legislation Amendment No. 2 1991. The relevant provision was defeated in the Senate.

I am advised that the Commonwealth does not now propose to attempt to amend section 64 of the Judiciary Act, and the effect of that section will remain as interpreted by the High Court in *Commonwealth v Evans Deakin Industries Ltd.* This State has argued in a number of cases that section 64 does not have this effect of State liability. This issue has recently been heard by the New South Wales Full Court and can be expected to be considered by the High Court in due course (*Commissioner of Railways v Peters* (1991) 102 ALR 579).

This matter has not yet been discussed at a Standing Committee of Attorneys-General meeting and I am unable to say what effect the defeat of the proposed amendment to section 64 of the Judiciary Act will have on the commitment of the other States to introduce modern Crown Proceedings Bills similar to the one we are now considering. As at November 1991 all other States had yet to introduce their Bills to update Crown proceedings legislation. I must say I would hope that the exercise of producing a uniform Crown Proceedings Bill has not been in vain. The Solicitors-General have given this matter lengthy consideration and I believe it is an exercise worth proceeding with.

Secondly, the Hon. Mr Griffin is critical of the provision in clause 17 which provides that there are cases where right of Crown to legal representation is restricted. Clause 17 (1) 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.

The Hon. Mr Griffin states that it could be 'very messy for the Government if a range of public servants is appearing in tribunals on behalf of the State Crown or Attorney-General'. The Hon. Mr Griffin instead suggests that rather than limiting the right of the Crown to legal representation, the other party should be able to be legally represented.

It is pointed out that the provision on which clause 17 is based is in fact section 12a of the current Crown Proceedings Act. This section was first inserted in 1975 and was, in fact, amended by the Hon. Mr Griffin when he was Attorney-General in 1980 to make clear that the Crown may be represented by any officer or servant of the Crown, not only officers of the Public Service. As clause 17 is almost exactly the same as the current section 12a, I have difficulty in accepting the honourable member's criticism.

The object of this Bill is that, as far as practicable, the Crown and the ordinary litigant should be in no different position in relation to either the matters of procedure or substantive law. If an ordinary litigant does not have the right to legal representation then neither should the Crown—that is what this clause provides. The reason for not allowing representation in some jurisdictions is to keep costs down. To suggest as the honourable member does that if the litigant is involved in proceedings against the Crown he should have the right to legal representation, is to subject the litigant against the Crown to greater expense than other litigants in that jurisdiction where legal representation is limited and this proposition is unacceptable.

Thirdly, the Hon. Mr Griffin asks for a list of those jurisdictions in which clause 17 may have some application. The small claims jurisdiction has been mentioned by the honourable member. Other areas in which there is some limit or rights of representation include the Residential Tenancies Tribunal and some commercial arbitrations.

Fourthly, the Hon. Mr Griffin expressed some reservations as to the ambit of clause 9, which, among other things, will allow the Attorney-General of any State or Territory or the Commonwealth to intervene or appear in certain legal proceedings in this State. It is considered that the rights conferred by clause 9 are appropriate. The power of intervention enables the Attorney-General (of this and other States and the Commonwealth), to intervene in proceedings for the purpose of submitting argument on issues of public importance. It is considered that these words appropriately limit the power of intervention. It is not expected that interstate Attorneys-General and counsel will regularly appear in our courts.

Fifthly, the Hon. Mr Griffin asks what the prescribed information referred to in clause 13 might be. This provision is again taken from the current Crown Proceedings Act, section 6 (1). No information has ever been prescribed under that section. However, the Crown Solicitor advises that he can envisage situations in which information might need to be prescribed. For example, at present the Crown Solicitor acts for Government agencies but, if he did not act for a particular Government agency, there might be a need to require the name of the solicitors acting for the agency in proceedings, or there might be a need to require that the name of the department most closely associated with the proceedings be endorsed on the proceedings. The Crown Solicitor advises that, to date, there have not been any problems because parties have pleaded these cases properly and adequately but, because the Crown is a different creature from the ordinary litigant, it is sensible to have flexibility.

Bill read a second time.

CRIMINAL LAW CONSOLIDATION (RAPE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 2576.)

The Hon. DIANA LAIDLAW: I support the second reading of this Bill and wish to speak to it in very general terms and probably in historical terms. The first point I want to make is in relation to my father, who was a member of this place in 1976 when this Bill, generally termed the rape in marriage Bill, was first introduced. Since that time, he has often reflected on his role in this place—the good times and the bad—and has referred to the controversial Bills with which he was involved, one of course being the Santos Bill and what we were to do with our gas supplies in relation to the the future power requirements of the State.

However, the other legislation to which he often refers is this so-called rape in marriage Bill. He relates stories of how he was dealt with with considerable hostility by members of the Women's Council of the Liberal Party for his belief that this Bill should pass and of how he was accused of destroying marriage and defiling women. A whole range of accusations were made concerning the stand he took in relation to this Bill. In fact, I think that threats about losing preselection are not confined to today; they were just as commonplace in 1976. I recall some women telling my father that he would not get preselection again if he supported the Bill. Ultimately, he chose not to seek re-election for the Party, so that threat was never put to the test.

However, it is interesting today that we debate the extension of the rights of women to prosecute for allegations of

rape in marriage. I have not received one letter or phone call following the stories in the paper last year that this Bill was to be introduced and to proceed. So, a lot has changed in that period between 1976 and today. It is interesting that, even in our own Party, when the Party room considered these matters, there was hardly a blink. I find it particularly interesting how perhaps we have matured as a community and as members of Parliament in looking at some of these issues. We are perhaps more humanitarian and compassionate and not as rigid in our belief in and maintenance of institutions. Perhaps we are more understanding about the role of people as individuals and the support that they require in times of stress and anguish.

I am pleased to see that the Attorney-General has introduced this Bill. At the time the measure was first introduced in 1976, South Australia led the rest of Australia—possibly even the rest of the world—with its innovative legislation. Over the years, we have fallen far behind the progress that has been made by other States and nations. It is good to see that we are now catching up to that status in maintaining our proud record in terms of the passage of social legislation in this State. I am very pleased to be associated with this Parliament because of its proud record of innovative, compassionate and forward-looking social legislation. I have always counted this rape in marriage measure as one such piece of legislation. I am pleased to be associated at this time with the advancement of this legislation for women in this State.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: Some questions were asked during the second reading debate to which I will now respond. The Hon. Mr Griffin pointed out in the course of debate that the High Court has spoken recently on the matter of marital rape immunity. The case is *The Queen v. L*, and interested members may find it in volume 66 of the Australian Law Journal Reports at page 36. The main point of the case was whether there was any inconsistency between State laws on the subject and Commonwealth laws about marriage. The High Court held that there was not. In so doing, the High Court held that, even if marital rape immunity was ever the common law, it is no longer the common law because such a view of the marital relationship is completely out of tune with the needs of modern Australian society. The Government agrees with that proposition.

The Hon. Mr Burdett asked whether I intend to give the police any particular directions about rape in marriage cases. I do not intend to do so. The point of what the courts have now said, and what this Bill says, is that rape is rape, and that the fact that the parties are married has nothing to do with it. I do not believe that the law on rape will be abused in this regard. That has certainly not been the experience in any of the other jurisdictions in which the immunity has been abolished for some time now.

As the Hon. Mr Griffin indicated in his speech, I do not believe that honest and reasonable medical practitioners have anything to fear from the other aspects of this Bill. A similar provision is already in effect in Victoria.

Clause passed.

Clause 2—'Offences involving sexual intercourse.'

The Hon. ANNE LEVY: I wish to comment on this clause. While we may be one of the last States in Australia to implement this legislation, we were, of course, the first to attempt to bring it in. I can well recall the debates in 1976, when we attempted to bring in the law, as it will be once this Bill is passed. However, it was members opposite who prevented that being achieved at that time. The Hon. Ms Laidlaw was not a party to that debate or perhaps its outcome might have been different. However, it was a very novel approach at that time, and the concept obviously disturbed many of the members opposite at that time.

The Hon. Diana Laidlaw: Some more than others.

The Hon. ANNE LEVY: Yes. I recall lengthy debates, involving particularly the Hon. Mr Ren DeGaris, both in this Chamber and in the conference. There was a very vociferous division of opinion between himself and myself, amongst others. It is thanks to him that, while we were the first State to attempt to change the law regarding rape and marriage, we were to be the last State to achieve what we attempted to do the first time. I am very glad indeed that we will finally achieve what we set out to do 15 years ago.

Clause passed.

Title passed.

Bill read a third time and passed.

SOUTH AUSTRALIAN LOCAL GOVERNMENT GRANTS COMMISSION BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1913.)

The Hon. J.C. IRWIN: The Opposition supports the second reading of this Bill. It was introduced in November last year, but it became caught up generally in the turmoil as Parliament came to the end of the session prior to Christmas and was not proceeded with then. We do not have any great problem with this new legislation. My consultation with those people in local government and with others interested in the measure has certainly not thrown up anything other than support for the South Australian Grants Commission, and the new proposals in these amendments.

The proposal is to consider an Act to provide for the continuing existence of the South Australian Local Government Grants Commission, to provide for the exercise and performance by it of its powers and functions and to repeal the South Australian Local Government Grants Commission Act of 1976, and for other purposes.

I will give a brief background to this. The South Australian Local Government Grants Commission was established under the South Australian Local Government Grants Commission Act of 1976. The primary function of the commission is to make recommendations to the responsible Minister on the allocation of Commonwealth general revenue assistance grants to local governing authorities in South Australia. These funds are paid to the State under the provisions of the Local Government Financial Assistance Act 1986, as amended. At present the commission consists of three part-time members appointed by the Governor on the nomination of the Minister. One member is nominated by the Minister after consulation with the association. The commission is supported by three officers who are full-time employees of the Treasury Department.

The Bill's main objective is to repeal the Local Government Grants Commission Act 1976; to provide for the continuation of the Local Government Grants Commission; to reflect the provisions of the Commonwealth Local Government Financial Assistance Act 1986, as amended, relating to the distribution of Commonwealth financial assistance grants to local government; to reflect the agreement reached between the State and the Local Government Association of South Australia about the Grants Commission in respect of membership and referral to the commission of matters relating to local government finance; and to provide other

minor changes to administrative arrangements, for the indemnity of commission members, consistency between the Commonwealth Local Government Financial Assistance Act 1986 and the State Grants Commission Act in the method and principles used for the distribution of grants; and to provide for changes to certain administrative arrangements in accordance with the agreement negotiated between the State and local government about the Grants Commission.

I have been privileged and fortunate enough to have a very long association with the South Australian Grants Commission—I believe since its inception, when I was at that time a local councillor. It takes a fair while to understand how it works, but that is not unusual. I do not think that applied just to me; I remember many efforts by the commission in coming around to councils and spending a great deal of time at seminars trying to explain the methodology. That methodology has changed over the years since the grants first started to come through in any great measure from the Whitlam Government and then from the Fraser Government, which took the process in another direction and a step further. However—

The Hon. Anne Levy: Yes, it was 1986 when the first lot came through under the new rules.

The Hon. J.C. IRWIN: Yes, that is right, under the new rules. I can say without fear of contradiction that the South Australian Grants Commission has always been held in very high regard and has always been very highly respected by all members in local government and by the community at large—those people who understand the role that it plays.

I take this opportunity to signal to the Minister that I do not have any amendments. During the Committee stage I will ask some questions, but I will not incorporate that series of questions in my second reading contribution. I will take this opportunity to raise two matters. I will raise the issue of roads during the Committee stage, because road funds from the Federal Government are now coming through the South Australian Grants Commission. It is a very important matter for every local government area, but especially for country people and country councils, which still have roads as a very high priority. They look after that area fairly jealously, and it will perhaps be better for me to concentrate on that during the Committee stage.

I would like to mention the distribution of grants since 1986-87 and the population drift from rural areas. I do not mean just to concentrate on the effect on rural areas, but I will link it in to where it affects the cities as well. The population drift from the country areas of South Australia to the metropolitan area and to the Hills is having a disastrous effect on rural communities and farmers. The State and Federal Governments must recognise—and I understand that they do—that rural development, education and health and a number of other matters, must be just as much a priority for those reducing country populations as it is for those in the city.

From 1985 to 1990 the overall population of South Australia has increased by 5.55 per cent. If one looked at the later figures one would see that was now slightly more than that. The figures were based on local government regions and showed that in the same period the population in the metropolitan area has grown by 6.46 per cent, with the southern Hills and Kangaroo Island areas showing the greatest increase of 16.97 per cent. Country areas show an increase of only .71 per cent. The effect of this movement of population has already been felt by local councils in many ways, not the least being the cost of having to maintain the roads to an ever-increasing standard with a reduced number of people paying rates.

Councils such as Cleve have had a reduction of 22.5 per cent; LeHunte down 26.9 per cent; Kimba down 21 per cent; Carrieton down 24.35 per cent; Mount Gambier district down 26.85 per cent; and I think that Whyalla is down by 12 per cent, to 14 per cent. These council areas must be feeling the financial loss of their ratepayers. Either they will have to increase the rates or drop the standard of service that they offer to the community.

At present, only 1 per cent of young people in rural communities are seeking tertiary or further education. This is because of the lack of facilities or because the cost is too great to attend centres requiring students to live away from home. Many of these young people are moving to the cities in the hope of finding a job. Many family members who have lost their job in rural areas are being forced into the city, and farmers who can no longer afford to keep their farm are also ending up in the cities.

The drift from the country to the cities will be critical to the future of our rural industries, with nowhere near the number of young people staying on the farm and learning the trade as they have in the past. The farms and the farmers simply cannot afford to have their young people employed on the home farm.

As I said earlier, this will be critical for the cities because the movement of the population from the country into the cities is coming not only from intrastate but also from interstate. This will necessitate a ribbon development or development that is spread out over metropolitan Adelaide. As we all know, the cost of transport, roads, electricity and water to service these houses being taken up by people moving from the country is very high. They take up the cheapest houses they can get and they are probably the furthest from the centre of the city. I have not attempted to quantify that cost, but it is a cost and I argue that with the use of grant money—and perhaps some part of the formula can take this into consideration—we should do everything we can to keep people in their regional areas rather than reluctantly having to accommodate them in the cities.

I have raised the matter before, but a quick glance at the methodologies for the distribution of grants since 1986-87 to 1991-92 shows that 14 metropolitan councils and four rural councils have had their grants increased by more than 20 per cent over that time. Five councils in the metropolitan area and 10 in the rural areas have had a decrease of 15 per cent or more. If one looks at all councils, one will see that from 1986-87 to 1991-92, 80 have had increases in grants, and 40 mainly rural councils—but not in the Riverland, in which almost every town has had an increase—have had decreased grants. We should be mindful of those figures when we consider how the Grants Commission is performing its important role.

The Hon. I. Gilfillan: Is it discriminating against the country again?

The Hon. Anne Levy: Definitely not.

The Hon. J.C. IRWIN: It is obviously based mainly on capital valuations, and the Hon. Mr Gilfillan, as a farmer, knows that his property has a reasonably high value, although that does not relate to the cash flow from it. We have talked about that before. As we get near to the end of this seven year phase of the new methodology of the Grants Commission it will be more obvious that the money is flowing away from capital rich areas to those that are not so capital rich. As many of us, and as many people in small business, have argued, it has no relationship to the cash flow position. I indicate that we support the second reading and passage of the legislation, although I will ask some questions in Committee.

The Hon. I. GILFILLAN: The Democrats support the second reading of the Bill, which seeks to repeal the current Local Government Grants Commission Act 1976 and replace it with a new Act. In so doing, the Bill will reflect the provisions of the Commonwealth Local Government Financial Assistance Act 1986 and fulfil the terms of the agreement struck between the State Government and the LGA in relation to matters of local government finance.

The need to repeal the 1976 Act and replace it with a totally new Act comes, as I understand it, on the advice of Parliamentary Counsel, who noted during the drafting process:

> Such a large number of amendments would have been needed that it would be far simpler to repeal the old and come up with a new piece of legislation.

I am prepared to accept the wisdom of the Parliamentary Counsel's advice on that matter. The system relating to local government grants currently in place has not attracted any undue criticism to my mind or that I have heard, so my comments here will be brief. As I have indicated, the Democrats support this Bill but there are some questions in respect of specific clauses to which the Minister may be able to provide answers in Committee. I assume that the Minister will have advisers present as we are about to go into Committee.

The Hon. Diana Laidlaw: The Minister may know it all.

The Hon. I. GILFILLAN: It is interjected that the Minister may know it all; there is a reasonable chance of that. I will reserve my questions for the Committee stages and indicate support for the Bill.

The Hon. ANNE LEVY (Minister for Local Government Relations): I thank honourable members for their support of the Bill and point out that this is historic legislation in that it is the first piece of legislation resulting from the negotiation process set up between State and local government after the signing of the memorandum of understanding between the two tiers of government. Numerous items have been negotiated already and many more are still to be negotiated. Several of those which have been or are to be negotiated will result in legislative change being required, so I can assure members that they will have plenty more legislation to consider resulting from the negotiations between the two tiers of government. This is the first only of many. I hope all the subsequent ones will equally have their support.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

The Hon. J.C. IRWIN: My question could be self-explanatory, but does the definition of 'council' include the Outback Areas Trust and those areas in the unincorporated areas not under a formalised council?

The Hon. ANNE LEVY: It will involve any body prescribed as a council for the purposes of this Act. The Outback Areas Trust has been so prescribed in the previous Act and certainly will be so prescribed under this Act. It receives its share of Federal funds as if it were a council for the benefit of people living in unincorporated areas.

Clause passed.

Clause 5—'The Account.'

The Hon. J.C. IRWIN: As to the method of funding the commission (I am not talking about the total grants to the commission), the best way to explain my question is to refer to last year's annual report of the Grants Commission which states:

> The funding of the commission also formed part of the agreement. The agreed best method was to seek an amendment to the Commonwealth Act to enable a deduction for the administration costs of the commission to be taken off the total grant. For as long as this method is delayed it was agreed by the LGA and State that the commission will be funded via interest generated by investing the grants for as long as necessary in the LGFA.

I understand the Minister has explained that before. The annual report continues:

> By this method councils' grants are not reduced but by agreement are delayed for the requisite few days.

Has any movement been made by the Commonwealth to enable the deduction of expenses to come directly from the grant, or will we now proceed with that investment option to enable enough funds to be paid for the administration from the total grant that comes through?

The Hon. ANNE LEVY: This matter has been taken up with the Commonwealth Minister and, in fact, I was discussing it further with him when he was in Adelaide only two days ago. No decision has been made yet and, even if the Federal Government does give a favourable response, I imagine it will be some time before it could amend the Federal legislation in order to achieve that. In consequence, we can take it that the question of delaying payments for a few days so that the interest accumulated during those days can be used for administrative purposes will be the method of funding for the next financial year. I do not expect the matter to be resolved, certainly not with Commonwealth legislation before them, but discussions are still continuing on this matter.

The Hon. J.C. IRWIN: I take it that the Commonwealth does not have any objection to this as an interim or perhaps a permanent measure. Obviously, the Commonwealth has not objected to the Minister that the commission is doing that. The Minister and the LGA have come to an agreement that the commission can invest those funds to get its administration costs: it is not unhappy with that even though it might be the way it wants it to happen in the end.

Does the commission invest the first quarterly payment in order to get its administration funds for the whole year or does it do this three or four times throughout the year? Every time a quarterly payment is received from the Commonwealth, does the commission invest that amount to get its administration costs for the quarter or for the whole year?

The Hon. ANNE LEVY: I do not know the answer to that question, but I will inquire of the Grants Commission whether it is done for small times or one large time. The Commonwealth has not indicated acceptance or rejection at this stage; officially it is still considering the matter. I point out that a new Federal Minister was apppointed a couple of months ago so that the new Minister has a bit of catching up to do. To that extent, I think that, as this matter is not urgent in that the Grants Commission by agreement can be quite adequately funded, it is probably not the matter of highest priority to the Federal Minister for Local Government. However, I assure the honourable member that if and when a formal response is received I shall be happy to let him know.

Clause passed.

Clause 6 passed.

Clause 7—'Payment of amounts.'

The Hon. J.C. IRWIN: According to the annual report of the Grants Commission for the 1991-92 year, interim arrangements for the distribution of local road funds have been put in place to minimise disruption to councils while longer-term arrangements are negotiated between the Commonwealth and the Australian Local Government Association. Details are expected to be finalised by the end of the calendar year (December 1991). For 1991-92, road funds are identified within the total grant payments to councils

and allocated according to existing principles. Was that arrangement finalised by the end of last year?

The Hon. ANNE LEVY: The matter has not yet been finalised, again partly due to the change in Ministers at Federal level. The Federal Minister for Local Government was in Adelaide this week to discuss the matter with the Australian Local Government Association executive, which met for the first time in Adelaide. I can reassure local government that the new Federal Minister appreciates the problems that would be caused were this money not only untied but just added to the pool for distribution under the criteria used for general financial assistance grants.

The Minister comes from a country electorate in New South Wales and is well aware of the problems that could be caused if that procedure were implemented in one go: it would lead to a chaotic situation. What the final outcome will be has not yet been fully determined; there may again be phased-in stages and so on, although the Minister obviously expects to have this matter settled in the not too distant future.

The Hon. J.C. IRWIN: So, the Roads Advisory Committee will go on making recommendations to the commission about how to distribute some of that money. I think the road fund is divided into two parts: formula funding and special works. Is it envisaged that until some other decisions are made the Roads Advisory Committee will go on consulting with councils and giving the commission advice on how some of that road money will be distributed?

The Hon. ANNE LEVY: That is certainly occurring at the moment. The division of the road money into general road money and special projects is a South Australian matter. In other States, while there is the possibility for a special project it is virtually non-existent and I am sure there would be no concern if it ceased to exist. South Australia is in a different situation where up to 23 per cent of local roads money is allocated to these special projects. It may take a little while to negotiate that particular question as South Australia is in a different situation from other States. However, as I understand it, in the meantime the Roads Advisory Committee will continue its activities as in the past.

Clause passed.

Clause 8 passed.

Clause 9—'Conditions of membership.'

The Hon. J.C. IRWIN: I assume that the membership of the commission comprises a part-time Commissioner and two part-time members.

The Hon. ANNE LEVY: While their activities are considerable and at some times of the year may be full time, at other times of the year there is less activity, so they are certainly part-time positions.

The Hon. J.C. IRWIN: Why has no provision been made for a declaration of interest? There may well be others, but I can recall two local government departmental heads who were members of the Grants Commission, and I do not think that in the Act or in this Bill any provision is made for a declaration of interest. I recall one departmental head who was a member of the Grants Commission and who also dealt with the Stirling council. Many boards and commissions are set up where declarations of interest are required, but that is not required here.

The Hon. ANNE LEVY: I am not quite sure why that is so except that it was not provided in the old Act. As far as I am aware the members of the commission have always been most meticulous regarding possible conflict of interest and, when necessary, have disqualified themselves from taking any part.

It seems to me that this would apply not so much to State representatives but to local government representatives on the commission, who may well be members of a council in the local government sector. It also seems to me that there is far more potential for conflict of interest with members nominated by the Local Government Association. However, I have sufficient faith in any of the people appointed to the commission that they would ensure that, in a conflict of interest situation, they would take no part in any deliberations.

The honourable member mentioned the question of Stirling. I would point out, as has been pointed out before, that the then CEO of the Department of Local Government, who was also a member of the Grants Commission, took no part whatsoever in any dealings with Stirling council through the Department of Local Government. I also point out that, throughout that matter being dealt with by the Government, the officer in the Department of Local Government who was responsible for it was the Deputy Director. The Director had delegated all responsibility to him for the question of the Stirling council, and she took no part in it whatsoever and was not kept informed about the matter. Therefore, if the matter ever came to the Grants Commission, no conflict of interest would arise as far as she was concerned in terms of her membership of the Grants Commission.

That was a deliberate decision taken many years ago and strictly adhered to throughout the whole Stirling controversy. I am sorry if the Hon. Mr Irwin was not aware of that fact. I know there have been suggestions by some irresponsible people that there was a conflict of interest, but the possibility of that conflict of interest was realised right from the word go, and the situation was clearly avoided.

The Hon. J.C. IRWIN: I did not want to do anything more than use it as an example that had arisen.

The Hon. Anne Levy: I did not want it written in that there had been a conflict when there had not been one.

The Hon. J.C. IRWIN: Well, I will never accept that explanation. Not only should we be impartial but also we should be seen to be impartial. Let us say that there are two different rules existing here. One rule is when we declare an interest in this place, and I think I am the only one whom I can recall having declared an interest in recent years. It does not preclude us from the discussion; it is just a different type of declaration that lets people know that you might be persuaded by your other interests. In a local council you must declare an interest, leave the room and not take any part in the proceedings. I am not sure which is the better rule but, whichever one is used, there should be a declaration that you have an interest, and that should be recorded, whether or not you are in here and can vote and talk as hard as you like on any subject. However, it is important to me that it be recorded.

Those who do not take part in the discussion make it very difficult for one of the commissioners who was the former President of the Local Government Association and who is still associated with the council. The Minister said that people in local government might well have a conflict of interest more so than others, and I am not trying to defend that position, but there is nothing to stop having something in the Bill which states that, if the commission is dealing with that council, that person should declare an interest and say, 'Well, I am a member of the Port Lincoln council (for example)', and that should be clearly recorded. There are other areas in which boards and commissions require declarations of interest, and I wondered why this one does not require that.

The Hon. ANNE LEVY: The honourable member has raised an interesting question. I think the situation in Parliament is the exception rather than the rule and, in general,

people with a potential conflict of interest do not take part in discussion or decision making. That is certainly understood for any Government-appointed committee. For example, the numerous advisory committees that give advice on grants in the arts are made up of peer groups, in other words they are practising artists, and they may well have to deal with an application from the particular group with which they are associated. It is clearly understood that, in such situations, they declare their interest, leave the room, take no part in the decision making and are unaware of the decision until it is communicated to the group in the normal way. It is clearly understood that that is the procedure to be followed with any Government-appointed committee. It certainly applies in local government, and I am sure that it would also apply in the Grants Commission.

Clause passed.

Clause 10—'Remuneration and expenses.'

The Hon. J.C. IRWIN: How is the budget for the commission arrived at, and is it approved by the Minister and the Local Government Association or just by the Minister?

The Hon. ANNE LEVY: The remuneration for all Government-appointed committees is determined by the Commissioner of Public Employment, I think, and there are tables of allowances or remuneration for all Government-appointed committees in various categories. They are categorised according to the responsibility and time involved with any particular committee, so that the remuneration is determined neither by the Minister nor the Local Government Association, but by the Commissioner of Public Employment who, as I say, determines remuneration into four categories of committee. It would be a question of determining into which category this particular commission fell. I think I remember what the remuneration is, but I hesitate to repeat a figure, because I may have remembered the wrong one. But if the honourable member is interested, I would be happy to find out that information for him.

The Hon. J.C. IRWIN: Thank you, Minister. I suppose that information is already in the report that I have beside me, and it would be a ballpark figure for this year, anyway. How is a budget arrived at? I suppose we could come to that when we come to clause 14, which relates to staff. The budget obviously includes the number of staff where the numbers are not decided by a Government employment body but by the commission itself, hopefully in consultation with the Minister and the Local Government Association.

Clause passed.

Clause 11—'Proceedings of the commission.'

The Hon. J.C. IRWIN: In relation to subclause (2), the commission comprises only three members, but two members constituting a quorum can in fact, with a casting vote and a deliberative vote to the chair, decide an issue. In effect, that means that one person can decide the issue. I say that without any reflection at all on the commission, because its performance in the past has been absolutely exemplary and I imagine that will continue to be the case in the future. I do not believe that they would make very important decisions with only two members present if those two members disagree; in other words, if someone has a casting vote, one person can decide the issue.

The Hon. ANNE LEVY: That may be true but, as the honourable member has mentioned, there is a provision for proxies to be appointed and this is undertaken specifically so that there can always be three people present when the commission meets. As far as I am aware, this has never caused any problems. With each person having a proxy, if someone is absent, there is a proxy who can take their place. Moreover, as far as I am aware, the commission has never come to voting: its decisions have always been by consensus with unanimity being achieved. Strict voting has not been necessary in the past and I doubt that it will be in the future.

Clause passed.

Clauses 12 and 13 passed.

Clause 14—'Staff.'

The Hon. I. GILFILLAN: Clause 14 provides:

> The commission will have such staff . . . as is necessary for the purposes of this Act.

Can the Minister indicate how many staff currently serve the needs of the commission and whether this number is expected to change under the new commission?

The Hon. ANNE LEVY: I think that the current staff of the commission consists of three people. It is certainly not expected to change. While we are passing the Act now, the new arrangements regarding the housing of the commission and its new mode of operating and so on was agreed between State and local government nearly 12 months ago. When the commission moved to Treasury (it is housed in the Treasury Department) and, with the backup that can be expected from Treasury, at that stage I think the staff was reduced to three people, and no further change is expected through passing the legislation. In fact, the commission has been operating under the new arrangements for nearly 12 months now.

Any change to the arrangements regarding the administration of the commission would, of course, have to be agreed with the Local Government Association. They are the key players in this matter. It is purely for convenience and mutual benefit that the commission is now housed in Treasury, with, I might say, the enthusiastic endorsement of the Local Government Association.

Clause passed.

Clause 15—'Functions of commission.'

The Hon. J.C. IRWIN: I refer to subclause (1) *(b)*, which provides:

> . . . to perform other functions assigned to the commission by or under this Act or by the Minister.

In a sense, that subclause is linked to clause 16 (1) which provides:

> In the exercise of its functions the commission may hold such inquiries and make such investigations as it considers necessary.

I think that the Hon. Mr Gilfillan and I were on the same track in this regard. The commission staff comprises the three commissioners, their deputies and the staff. Bearing in mind that, if the staff are employed for the full year, they have to fill up their time for the full year but, if they go outside and put on more staff and spend more money on doing something assigned to the commission by the Minister, that has to be funded and it will deplete the grants that go to local councils. Does the Minister envisage a situation where she might ask the commission to undertake some fairly hefty investigation work for her, or has she had to use the commission before to do any specific task?

The Hon. ANNE LEVY: As far as I am aware, no such task has ever been referred to the commission. I cannot, of course, say that it will never occur in the future, but it is perhaps difficult to see what might be appropriate. However, I can assure the honourable member that no such referral would ever be made without the complete agreement of the Local Government Association.

It may well be that, in connection with the road grants to which he referred earlier, it would be desirable to undertake some analytical work and, if the Local Government Association made such a request, I would be happy formally to request the commission to undertake such work. However, it would only be with the full concurrence and probably at the suggestion of the Local Government Association

that this occurred. Particularly with the location of the Grants Commission in Treasury and its great knowledge of the finances of local government, there could well be questions relating to the finances of local government overall on which valuable analysis is required and the commission could well be the most appropriate body to do it, because of the great database which it already has, rather than someone else trying to turn around and collect the data again. Tasks which may seem enormous to someone outside, given its database, may be very quick and trivial from its point of view. I reiterate that I would never dream of assigning them any function without having fully discussed it with the Local Government Association beforehand.

The Hon. I. GILFILLAN: I intended to ask a similar question to the one that has just been asked and I want to clarify a matter. The answer to the question about what the Minister had in mind as to what alternative functions could be given to the commission by her or a succeeding Minister seemed not to be identifiable at this stage. It is almost a sort of provisional clause in case something looms on the horizon. If my assumption is incorrect, I would ask the Minister specifically what functions does she consider could be assigned to the commission?

The Hon. ANNE LEVY: I made reference to that in my response to the Hon. Mr Irwin. The commission does have a vast database on the finances of local government throughout this State. There may be cases where some change is proposed, be it to road funding or some other matter involving the finances of local government. The question could be asked, 'What would be the effect on local government if?'

The Hon. I. Gilfillan: It would be like research.

The Hon. ANNE LEVY: Research, yes. It could well be research involving the finances of local government, which the commission, because of its database, would be able to do readily and far more rapidly than someone else who would not have the appropriate original information.

The Hon. I. Gilfillan: It wouldn't be doing a bit of gardening out the front of the Treasury building.

The Hon. ANNE LEVY: No, I would not expect it to be gardening outside the front of Treasury building. Another function that could well come in—as the Hon. Mr Irwin and I were discussing earlier—is the distribution of road grants. Currently, clause 15 (1) of the Bill provides that one of the functions of the commission is to make recommendations to the Minister as to the amounts that should be paid to councils by way of grants under this Act. The grants under this Act are the Commonwealth funds, which are amounts received under the Commonwealth Act in respect of allocations that have been approved under that Act, that is, the Commonwealth Local Government Financial Assistance Act. It may well be that, if the Grants Commission was asked to handle road grants, that would be another function to be assigned to it, because road grants do not come under the Federal Act to which this legislation refers. So, if that were to be a permanent arrangement, it would have to be a legal one under the Act.

Clause passed.

Clauses 16 and 17 passed.

Clause 18—'Consideration of recommendations.'

The Hon. I. GILFILLAN: Under clause 18, the Minister has the power to either approve or reject the recommendations of the commission. If they are rejected, the commission must review its recommendations, and then it may or may not amend or alter that recommendation before resubmitting it to the Minister for approval the second time around. However, after reading clause 18, my understanding is that once re-submitted the Minister must approve the recommendation whether or not it has been amended. Will the Minister indicate whether that is the case and, if so, could it force the Government to accept recommendations of the commission despite initial rejection?

The Hon. ANNE LEVY: I appreciate the hypothetical point made by the honourable member. I can assure him that to my knowledge the Minister has never done other than approve the recommendations first time around. There is also the inter-relationship with the Federal Government. It is Federal money and the grants must be approved by the Federal as well as the State Minister. When I receive recommendations from the Grant Commission, I immediately send them to Canberra to get the approval there before any council can be notified of the grant that it has received.

The fact that the Minister can refer back for further consideration is a desirable part of the legislation, if the Minister felt that the commission was ignoring or was unaware of some matter that could influence the distribution of the grants. However, if that has been drawn to the attention of the Grants Commission and it has duly considered the matter and decided to stick with the original recommendation, the process would lose its respect and credibility in local government if the Grants Commission recommendations were not then approved.

The Hon. I. Gilfillan: Subclause (4) does virtually tie your hands.

The Hon. ANNE LEVY: Yes, I agree. The ability of the Minister to refer the recommendation back for further consideration is highly desirable, because there may be some particular circumstance of which the Minister is aware and of which the commission is not.

The Hon. I. Gilfillan: I am not arguing that it is an undesirable situation: I am just clarifying with the Minister that that is her understanding of it.

The Hon. ANNE LEVY: Yes, that is certainly my understanding. Seeing that it is not part of this legislation and seeing that it is Federal money, there must be approval at the Federal level also for the grants. I presume that the Federal Minister also would have the power to ask for reconsideration, and to my knowledge that has never occurred. The Hon. Mr Irwin did mention the great respect and credibility of the Grants Commission throughout the local government community, and this arises because it is seen to be impartial, independent and extremely fair. If the legislation were drawn up any other way, there may be hesitancy about the commission's impartiality, independence and fairness.

Clause passed.

Clause 19—'Information to be supplied to commission.'

The Hon. I. GILFILLAN: I understand that this clause will empower the commission not to pay a grant to a council under certain circumstances where the commission believes that the council has not complied with some requirement or requirements of the commission. It seems to be a fairly obvious observation, and I really only want confirmation from the Minister that my understanding of it is correct. Clause 19 (3) provides:

> Where a council fails to comply with a requirement under subsection (1) or (2) in relation to a financial year, the commission is not bound to make a recommendation as to the payment of a grant to that council.

In simple terms, I believe that that empowers the commission to say, 'If, you have not played the game you do not get the dollars.'

The Hon. ANNE LEVY: I agree with that interpretation, except to point out that it is not any condition which a council may not have fulfilled: it relates to the provision of information.

The Hon. I. Gilfillan: Under subclauses (1) and (2).

The Hon. ANNE LEVY: Yes, under subclauses (1) and (2) the commission has the power to request any information—and this certainly means financial information—as to just what is the state of financial affairs of any council and, understandably, if the council is applying for grants, it would be perfectly fair and reasonable that the commission should have available to it complete information as to the financial affairs of the council. I would endorse their not providing any grants to a council that withheld relevant financial information. I hasten to say that I am not aware of any council ever having done so.

The Hon. I. Gilfillan interjecting:

The Hon. ANNE LEVY: When you say, 'deprived of funds' do you mean those who have received a lower grant? You do not mean receiving no grant?

The Hon. I. Gilfillan: If they are affected by clause 19.

The Hon. ANNE LEVY: I do not think so; I think the commission is entrusted with this responsibility.

The Hon. I. Gilfillan interjecting:

The Hon. ANNE LEVY: Well, they are refusing a grant on the grounds that the council has not supplied the financial information that has been requested of them. If they do not submit audited accounts and if they do not provide the financial information that the commission is requesting, I would most certainly endorse their receiving no grant. When taxpayers' money is being handed out, even to another level of government, there must be full disclosure.

The Hon. I. GILFILLAN: There is no dispute about that, but there may be a dispute between a particular council and this requirement. I do not want to draw it out, but I gather from the Minister's answer that she will not be drawn into it under any circumstances that she can foresee.

The Hon. ANNE LEVY: I suppose one could envisage some situation where that might occur. In my experience that has never occurred, either with me, as Minister, or with any of my predecessors. Councils have always cooperated fully with the commission in supplying any information that the commission has requested; it is to their advantage to do so.

The Hon. J.C. IRWIN: I do not want to attempt to read the mind of the Hon. Mr Gilfillan, but I think that some of the questions relate somewhat to the uncertainty of the future. Local government is going out on its own and until now everything has been very good. I have acknowledged that up until now and hopefully it will be the case from here on. However, the Local Government Association represents all councils in South Australia, and that is a very strong point. That has not always been the case, but certainly over the life of the commission, as I remember it, it has built up to the position where it does affect and represents everybody, even though within the organisation there are some upheavals—that is healthy.

However, over time, some councils have been threatening to pull out and perhaps when we go into unchartered waters next year when they are more out on their own there may well be some that want to go their own way; they may not want to go the way of the LGA, or to deal with whatever constraints are put on them, or their relationship with the South Australian Government or the Federal Government may be strained. Generally, I think there is uncertainty and therefore we are questioning a little more closely and using clause 19 as a vehicle for that questioning. We are near the end of the Committee stage and that is why I have asked so many questions.

The Hon. ANNE LEVY: I thank the Hon. Mr Irwin for his comments; perhaps he knows something I do not. I should perhaps point out that, while the content of this legislation was agreed between the State Government and the Local Government Association, a council does not have to be a member of the Local Government Association to receive a grant through the Grants Commission. It merely has to be a legally constituted local government body, as defined, and including the Outback Areas Trust, to be eligible. The Local Government Association, *per se*, is not mentioned in this legislation.

Clause passed.

Clauses 20 to 22 passed.

Clause 23—'Regulations.'

The Hon. J.C. IRWIN: I must confess that I do not remember seeing any regulations under the Act that we are about to repeal.

The Hon. Anne Levy interjecting:

The Hon. J.C. IRWIN: Maybe there are not. However, I refer to the fearful formula which is in the present Act. Section 7 provides that 'G' equals 'A' by 'PC' divided by 'TP'. I will not go into the details of the formula except to refer to 'TP', which equals a number adopted by the commission as an estimate of the total population of the areas of all councils in the State on 30 June. Will the new formulae or whatever comes from the Federal legislation, and the details there now, be spelt out in the regulations and changed as they change? I guess it is easier to change a regulation than it is to amend legislation, but for those councils that want to try to keep up with the principles, will the details be spelt out in the regulations?

The Hon. ANNE LEVY: There is certainly the ability to spell them out in the regulations, using the provisions of clause 23. It may be that in some cases it is a question not of regulations but of guidelines or information. I am sure the commission is more than happy to provide information regarding its procedures, formulae, and so on, to any council that requests them. It is not a secret body; it is delighted to share information with councils. I would certainly expect the commission to make such information available to councils, either through regulations or through information sheets, printed guidelines, and that sort of thing.

Clause passed.

Clause 24 and title passed.

Bill read a third time and passed.

SOUTH EASTERN WATER CONSERVATION AND DRAINAGE BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

Flood damage during recent winters in the rural sector of the South-East has prompted a review of the South Eastern Drainage Act. It was evident that there would be advantages in dealing with the floodwater problems if the legislation provided for overall coordination and control to achieve solutions on a regional basis. Past remedial actions taken in isolation have accentuated the problems downstream and highlighted the need for a catchment wide management approach. Uncoordinated private works have also contributed to the problem by passing floodwater from one property to another along northerly flowing watercourses in an uncontrolled way. This has caused the acceleration and expansion of flooding and soil salinity problems in the Upper South-East.

The Government and the South Eastern Drainage Board responded to calls from public and private sectors for positive action to resolve the floodwater management dilemma. Many public meetings were held to discuss possible solutions and management options for floodwater control. It was recognised that overall management by one independent authority was the first important area for improvement. There was agreement that the South Eastern Drainage Board had achieved effective and efficient floodwater management within its area of operation. Consequently it was logical for the board's role and area to be expanded rather than create a new authority.

The basic proposals of this Bill were debated at a public meeting when all parties concerned with floodwater management in the South-East gave unanimous support for the concepts incorporated in this legislation. Public comment has been sought on the draft Bill and all submissions were carefully considered in formulating this legislation.

It was decided that a new Bill should be drafted rather than amend present legislation because through age and a number of amendments over the years, the Act had become disjointed and outdated.

The Bill covers the whole rural sector of the South-East and includes the area previously administered by the Tatiara Drainage Trust.

Provision has been made for the District Council of Millicent to retain management of its autonomous drainage system under the same conditions and responsibilities as applies to the remainder of the defined area.

The enlarged area has been divided into three electoral zones and a land-holder will be elected to the board from each of these zones. Submissions strongly favoured local government representation on the board and two extra Government appointees have been added (making four in all) to cover its wider responsibilities. An effort has been made to keep board membership to a reasonable number, however, it was found that eight were necessary to meet the diverse conservation and flood protection requirements of the new legislation. Voting franchise for board elections has been extended to all landholdings in excess of 30 hectares where previously voting was restricted to a specific drainage area.

The qualifications for board appointments are left open so that flexibility is retained and the best persons can be appointed to provide expertise and skill during any management phase. The Bill also provides for the establishment of advisory committees to provide input and local knowledge into board management decisions.

In drafting this legislation emphasis has been placed on the board's conservation responsibilities and its wider surface water and groundwater management role. There is a requirement for the board to prepare a management plan and conform with all Government legislation and policies regarding the protection of the environment, and conservation of natural resources. This integration of resource management on a regional basis is consistent with Government objectives. Public involvement is encouraged and will be sought when the board's management plan is being prepared or reviewed.

The Act provides for the board and land-holders to enter into agreements for the joint construction and funding of works. This replaces the involved and complex petition provision of the old Act. These provisions have not been used by land-holders for the past 30 years due to the lengthy and complicated procedure necessary to reach the final outcome. In recent years the board has entered into simple concise agreements for joint works with land-holders, for example, weirs, etc. The proposed legislation formalises agreement procedures presently adopted which has proved satisfactory to the parties concerned.

The main thrust of the Bill is to allow one authority to coordinate and control all private works in the area. This will allow an integrated catchment wide approach to be adopted in finding solutions to flooding and soil salinity problems. Present legislation provides the board with authority to control private works that discharge or effect the flow of water into the Government drainage system. This has proved to be manifestly inadequate in dealing with present day problems and rural water management needs. Support has been given from public and private sectors and the local community for legislation along the lines proposed.

A right of appeal against key board decisions affecting land-holders has been included in the new Bill. Appeals against board decisions will be heard and determined by the Water Resources Appeal Tribunal. This approach will forge links between two water resource related pieces of legislation. Rights of individual land-holders are protected by the appeal process. This avenue of redress is not available under current legislation.

The Government is fully aware of the important contributions made to the State's economy by the highly productive South-East region. It recognises that floodwater management and soil salinity problems have developed in the area in recent years. This legislation which has strong grass roots support provides a sound legislative base for addressing these complex problems on a regional basis. The ultimate outcome will be to enhance agricultural production and the natural environment by implementing compatible strategies.

In summary, this Bill seeks to:

— change the name of the board and the Act to reflect changed rural floodwater management responsibilities.
— provide the board with legislative authority to control and coordinate all private works within the boundaries of the expanded defined area.
— increase board membership to eight, consisting of four local members and four Government appointees.
— increase the proclaimed area under the control of the board to include the Coonalpyn Downs/Tatiara areas and the whole of the Lower South-East.
— update and streamline administrative procedures and provide appeal provisions.
— provide for advisory committees to be appointed by the Minister in strategic areas.
— ensure that a management plan is prepared involving public participation, which will take an integrated approach in managing floodwaters and the natural environment on a regional basis.
— repeal the South Eastern Drainage Act 1931 and the Tatiara Drainage Trust Act 1949.

I commend this Bill to the Council.

The provisions of the Bill are as follows:

Clause 1 is formal.

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

Clause 3 provides necessary definitions. The board's area of jurisdiction is all that part of the South-East that does not fall within the Millicent council's area. For the purposes of this Act, the council's area excludes a small portion of land that has Government drains on it and therefore should fall under the board's jurisdiction The total area of the South-East is defined in a schedule.

Clause 4 empowers the Minister to direct the vesting of private water management works in the board or the council or the vesting of board or council water management works in any person. This power can only be exercised at the request of, or with the approval of, all parties concerned (except in the case of the board, which only need be consulted by the Minister).

Clause 5 makes it clear that this Act does not override other Acts.

Clause 6 gives the Minister a power of delegation to the board, but not in respect of powers under Parts I and II of the Act.

Clause 7 sets out the objects of the Act, which are to prevent flooding, improve the quality and productiveness of rural land and enhance or develop wetlands and the natural environment in general. All persons involved in the administration of the Act are required to act consistently with these objects.

Clause 8 continues the current board in existence but changes its name to the 'South Eastern Water Conservation and Drainage Board'. The board continues to be a body corporate.

Clause 9 gives the board a membership of eight. Four members will be nominated by the Minister, and of these, at least one must be an expert in environmental management. One member will be appointed on the nomination of the Local Government Association. The three remaining members will be persons elected by land-holders from the three electoral zones.

Clause 10 provides that elections of board members will be conducted by the Electoral Commissioner in accordance with rules prepared by the Commissioner and approved by the Minister. The Commissioner can declare a person duly elected where there is no contest and, if there are no nominations for an election, the Governor may fill the vacancy.

Clause 11 sets out the rules for determining who is to vote at board elections. Voters' rolls will be prepared for each electoral zone by the board with the assistance of the Valuer-General. A person or body corporate that owns or occupies more than 30 hectares of land in an electoral zone is entitled to be enrolled. A group of joint owners or occupiers of more than 30 hectares is also entitled to be enrolled. Groups and bodies corporate can nominate the person who will vote on their behalf. In the case of a body corporate, it must be a director, manager or other employee of the body corporate. A voters' roll closes 30 days prior to the election. A person may vote both in his or her own right and also as a nominated agent for a group or a body corporate. Voters' rolls will be made available for inspection by the public.

Clause 12 provides for the appointment of the presiding member, the deputy presiding member and such other deputies of other members of the board as may be appropriate.

Clause 13 provides that a board member will be appointed or elected for a term of four years. Casual vacancies, even for elected members, may be filled by the Governor. If the vacancy occurs in the office of an elected member, the person appointed must be an eligible land-holder from the same electoral zone.

Clause 14 entitles board members to receive allowances.

Clause 15 sets out the standard provisions relating to board procedures.

Clause 16 is the usual provision dealing with conflict of interest.

Clause 17 sets out the functions of the board, which are generally to manage surface water on non-urban land in the South-East, to lower the water table of land, to carry out or promote relevant research and to give advice and assistance to others in the board's field of expertise. The board is required to consult with all relevant Government authorities and adhere to their policies when the board is performing its functions. The board is also required to involve the community in water conservation and management, and must, in administering this Act, always endeavour to do so by negotiation first rather than by enforcement.

Clause 18 requires the board to prepare and update on an annual basis a management plan detailing its, and the council's, proposed activities over the ensuing three years. The South-East community is to be given an opportunity to comment on the plan. The Minister has the final right of approval of the management plan and of any subsequent amendments of it.

Clause 19 sets out the powers of the board to hold and deal with property, enter into any contract, engage consultants, borrow or lend money, and do any other thing incidental to the performance of its functions.

Clause 20 renders the board subject to the Minister's control and direction.

Clause 21 empowers the board to delegate its powers (other than a power delegated by the Minister) to a member or employee of the board or to any of the advisory committees.

Clause 22 sets out that the staff of the board is comprised of Public Service employees assigned to the board and such other persons who the board itself may employ. A person employed by the board is not a Public Service employee.

Clause 23 requires the board to keep proper accounts and requires the Auditor-General to audit those accounts at least once a year.

Clause 24 requires the board to submit an annual report to the Minister. An annual report must include particulars of the progress made by the board and the council in achieving the objectives of the board's management plan during the preceding financial year.

Clause 25 sets out the council's functions under this Act. The council's primary function is to implement the board's approved management plan within the council's area. The council is also required to involve the community in water conservation and management and must seek to administer this Act on the basis of negotiation rather than enforcement.

Clause 26 renders the council subject to the Minister's control and direction in the performance by the council of its functions under this Act.

Clause 27 requires the council to keep a separate fund (from its general revenue) for money received by the council under this Act. The council must keep proper accounts in respect of that fund and those accounts must be audited by the Auditor-General.

Clause 28 provides that the council may delegate its powers under this Act to the board.

Clause 29 establishes the Eight Mile Creek Water Conservation and Drainage Advisory Committee, which will be appointed by the Minister. The board will nominate one person, at least three must be eligible land-holders in the Eight Mile Creek area, and at least one must be from the Government sector. The committee will advise the board on the administration of this Act in the Eight Mile Creek area.

Clause 30 establishes a similar advisory committee for the Upper South-East.

Clause 31 enables the Minister to establish other advisory committees.

Clause 32 sets out the terms and conditions of office for all members of advisory committees. Members of advisory committees are entitled to receive allowances.

Clause 33 sets out standard provisions for advisory committee procedures.

Clause 34 empowers the board to construct water management works or alter or remove any of its water management works. All such work must be work that is contemplated by the board's approved management plan, unless the Minister gives special approval for the work.

Clause 35 empowers the council to do likewise, and the council is similarly constrained by the board's management plan.

Clause 36 continues the present right of the council to discharge township stormwater into the council's water management works under this Act. Costs incurred as a result of the exercise of this power must be paid out of the council's general revenue.

Clause 37 continues the existing provision whereby all water in the board's and the council's water management works is the property of the Crown. The Minister can grant rights to this water to any person.

Clause 38 gives the board and the council power to enter and inspect land and private water management works and may clean out, deepen, shore up, widen or raise or lower the banks of watercourses, lakes, dams, etc. The power to enter land is only exercisable at a reasonable time of the day and on giving reasonable notice (if not less than one day) to the land-holder, except in the case of flood or other emergency.

Clause 39 makes provision for requiring contribution from land-holders for work carried out by the board or the council where the board or council has already reached agreement with some land-holders on the question of funding. The relevant authority may only make such a requirement if it has reached agreement with a number of land-holders who represent between them more than 75 per cent of the land the authority believes will benefit from the proposed work. The authority must make the requirement for contribution no later than three months after completing the work. Payment may be made in instalments if the authority so allows. Such debts are a charge over the land.

Clause 40 empowers the board and the council to fence their water management works. Adjoining land-holders are liable for half the cost of the fencing work, subject to any agreement reached with the relevant authority. If the board or council proposes to enforce this statutory liability, notice must be sent to the adjoining land-holders no later than three months after the completion of the fencing work. Debts under this section are charges over the land in question.

Clause 41 makes it an offence for a person to construct water management works unless he or she has a licence from the relevant authority to do so. It is also an offence to alter or remove water management works (whether constructed before or after the commencement of this Act) without a licence. A licence is only required for the construction, alteration or removal of works if the flow of water onto or from some adjacent land would be affected, or the flow of water into board or council works would be affected.

Clause 42 makes it an offence to construct bridges or culverts over, through or along board or council water management works or drainage reserves.

Clause 43 provides generally for the granting of licences by the board or council.

Clause 44 gives the board and the council the power to direct a person to carry out specified work to remedy certain contraventions of the Act or to counteract the harmful effect private water management works may be having on the proper management or conservation of surface or underground water in the South-East. If a person fails to comply with such a direction, the relevant authority may cause the work specified in the notice to be carried out and the cost recovered from the defaulting land-holder. This power may be exercised in relation to successors in title to the land on which the works in question are situated. Debts arising under this provision are a charge over the land in question.

Clause 45 provides that a person cannot take water from board or council water management works without the permission of the relevant Minister.

Clause 46 creates the offence of interfering with board or council water management works without the permission of the relevant authority.

Clause 47 provides that permission under the two preceding sections may be given subject to such conditions as may be thought fit. It is an offence to breach such a condition.

Clause 48 provides a right of appeal against a decision of the relevant authority that particular land would benefit from proposed works that are to be wholly or jointly funded by land-olders, a decision to refuse a licence for private water management works or a bridge or culvert, a decision to vary or add to the conditions of such a licence or a decision to require a person to carry out certain work pursuant to section 44. Appeals will go before the Water Resources Appeal Tribunal.

Clause 49 enables the relevant authority or the Water Resources Appeal Tribunal to suspend the operation of a decision while an appeal is pending.

Clause 50 gives the board and the council the power to waive or defer payments due by land-holders.

Clause 51 enables the appointment of authorised officers by the board or the council. A board authorised officer may generally only exercise the powers of an authorised officer within the board's area, but the council may give written authority for such

an officer to operate within the council's area. The same provisions apply in relation to the council authorised officers.

Clause 52 sets out the powers of authorised officers. A warrant from a justice is required if force is to be used in entering any land, except where the authorised officer believes urgent action is required.

Clause 53 creates the usual offence of hindering, obstructing or using abusive language against an authorised officer or any other person engaged in administering the Act.

Clause 54 provides that offences against the Act are summary offences.

Clause 55 provides that the director and manager of a body corporate that commits an offence against the Act will also be guilty of the same offence.

Clause 56 provides a general 'no negligence' defence.

Clause 57 provides some evidentiary aids.

Clause 58 gives the usual immunity from personal liability for persons engaged in the administration of the Act (whether as a board member or otherwise).

Clause 59 provides for the making of regulations.

The first schedule defines the area of the South-East.

The second schedule defines the land that is excluded from the area of the council.

The third, fourth and fifth schedules define the areas comprising the three electoral zones under the Act.

The sixth schedule, first, repeals the South-Eastern Drainage Act and the Tatiara Drainage Trust Act and, secondly, provides some necessary transitional provisions. The current board members will vacate their offices to enable fresh appointments and elections to be made. The assets, rights and liabilities of the Tatiara Drainage Trust vest in the District Council of Tatiara. The drains and drainage works of the board or the council under the repealed Act continue to be vested in the relevant authority. The drains and drainage works of the Eight Mile Ceek area that were vested in the Minister under the repealed Act now become the responsibility of the board. The Minister may continue to correct, if necessary, any of the drain vesting plans that were lodged under Part II of the repealed Act.

The Hon. R.J. RITSON secured the adjournment of the debate.

URBAN LAND TRUST (URBAN CONSOLIDATION) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

1. Proposed Amendment

This Bill seeks to amend the Urban Land Trust Act, 1981 to permit the Urban Land Trust to participate in urban consolidation in existing urban areas.

2. Background

The South Australian Urban Land Trust (the Trust) was formed in 1981 following the termination of the South Australian Land Commission which had been established in 1973. As a 'land banker', the principal focus of the Trust has been to ensure an adequate supply of land for residential purposes on the Adelaide fringe so as to promote housing affordability and ensure co-ordinated development.

The Trust has no powers to develop land in its own right and initially had no power to compulsorily acquire land for future urban use.

In 1984, the Act was amended to enable the Trust, with the approval of the Minister, to undertake development on a joint venture basis. In 1985 the Act was amended to enable the Trust to replenish its land bank through compulsory acquisition pursuant to the Land Acquisition Act. However this power was restricted in that the Trust could not compulsorily acquire a principal place of residence or commercial or industrial premises.

The Act currently limits the Trust to purchasing, holding or generally being active in 'new urban areas' which effectively precludes the Trust from involvement in existing urban areas which are the major focus for urban consolidation initiatives.

3. Urban Consolidation Policy

Urban consolidation is a major initiative within the metropolitan planning framework. The objectives of the Government's urban consolidation policy initiated in April 1987 are to promote equity, efficiency and accessibility by:

- — providing a more diversified housing stock in existing areas to cater for changing household needs and preferences.
- — providing housing in locations with better access to work and services than is available on the urban fringe.
- — utilising spare capacity in existing public utilities and services.
- — limiting growth on the urban fringe.
- — revitalising suburbs through the redevelopment of underutilised sites.

Urban consolidation thus means development directed towards the better utilisation of urban land and existing public utilities and services.

4. Support for the Urban Land Trust Role

There is general support for the Trust having a role in urban consolidation because the Trust has:

- — financial capacity in terms of asset backing and cash resources.
- — a proven ability to deliver Government's housing and social policies.
- — an operational structure which ensures that the Board and management take a commercially sound approach.
- — experienced and professional staff.

The private sector has indicated support for the Trust's role being extended to enable participation in urban consolidation. For example, the February 1991 Policy Update of the Urban Development Institute of Australia (SA Division) indicates support for the Trust having a 'packaging' role in urban consolidation projects, to co-ordinate State, Local Government and private interests.

5. Proposed Role of the Urban Land Trust

It is intended that the role of the Trust in urban consolidation will be generally limited to the assembly and disposal of sites for subsequent development by other parties. More specifically this would include:

- (i) project identification and feasibility assessment.
- (ii) site assembly.
- (iii) clean-up if required.
- (iv) establishment of development criteria where appropriate (densities, access, infrastructure provision, human service and public housing requirement etc.) in consultation with State Government, local government, the development industry, local residents and other relevant bodies.
- (v) rezoning if required.
- (vi) land parcelisation if necessary.
- (vii) disposal to private sector developers, possibly subject to some form of development agreement relating to planning, housing and community objectives.

6. Conclusion

I commend this Bill to the Council as it offers a major opportunity to further the implementation of urban consolidation policy.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 amends section 5 of the principal Act which contains definitions of terms used in the Act. The clause inserts a new definition defining the term 'urban consolidation' as development directed towards the better utilisation of urban land and existing public utilities and services.

Clause 3 amends section 14 of the principal Act which sets out the functions of the South Australian Urban Land Trust. Under the section in its present form, the functions of the Trust are to hold land and, as prevailing circumstances require, to make land available for, and otherwise assist in, the orderly establishment and development of new urban areas. The clause amends the section so that the Trust also has the function of holding land and making land available for, and otherwise assisting in, urban consolidation in existing urban areas.

The Hon. J.C. IRWIN secured the adjournment of the debate.

MOTOR VEHICLES (LICENCES AND DEMERIT POINTS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

This Bill deals with two distinct matters: strategies to enforce the principle of 'one person—one licence', which is associated with the introduction of a National Heavy Vehicle Driver Licensing System and the introduction of a uniform set of traffic offences which form the basis of a National Points Demerit Scheme.

These proposals arose from the Road Safety Initiatives Package agreed to by the State and Territory Transport Ministers at the meeting of the Australian Transport Advisory Council (ATAC) in May 1990.

Although Cabinet approved the adoption of the A.T.A.C. endorsed National Points Demerit Scheme, the approval was conditional on maintaining a Points Demerit Scheme in the State which continued to deal with offences not covered by the National Scheme, but which attract demerit points in this State.

The Bill includes some amendments to the South Australian Points Demerit Scheme which seek to correct inconsistencies in the number of demerit points prescribed for certain offences when compared to the National Scheme.

The first part of the Bill deals with issues concerning the licensing of drivers of heavy vehicles. It is generally known that some drivers of heavy vehicles hold a number of licences, issued in different States and Territories. In the event that one driver's licence is cancelled, the driver simply continues to drive on another. In some instances, drivers have been known to obtain driver's licences in false identities for much the same reason.

The Bill proposes that the Registrar of Motor Vehicles be empowered to either cancel the South Australian driver's licence of a person who holds multiple licences, or require the person to surrender all other interstate driver's licences held by the person. In addition, the Bill provides the Registrar with the authority, for the purpose of ensuring that learner's permits or driver's licences are not obtained in false identities, to require applicants to provide proof of identity, age and address, and the authority to refuse the issue of a permit/licence if the applicant declines to do so, or if the Registrar is not satisfied as to the identity and address of the applicant.

This Bill also proposes that it be compulsory for all drivers of heavy vehicles to carry their driver's licence at all times when driving heavy vehicles. This proposal is considered necessary as many drivers of heavy vehicles have avoided prosecution by providing a false name and address to an officer who has reported the driver for a breach of road law. The Bill defines what is meant by a 'heavy vehicle', so that the compulsory carriage requirement only applies whilst the driver is driving heavy vehicles, and does not apply when the driver is driving small trucks/buses, motor cars or motorcycles.

The second part of the Bill deals with the introduction of a uniform National Points Demerit Scheme, together with some amendments to the South Australian Points Demerit Scheme.

This Bill proposes two distinct groups of offences, one of which deals with the national set of offences, and the other dealing with offences not covered under the national scheme, but which attract demerit points in this State.

Under the proposed Points Demerit Scheme, holders of a South Australian driver's licence would incur demerit points if they are convicted, in this State, of any offence for which demerit points are prescribed. They would also incur demerit points if they were convicted, in another State or Territory, of an offence listed in the national set of offences.

Drivers licensed interstate, who are convicted of an offence in this State would also incur demerit points. However, if they are convicted of an offence in the National Scheme, corresponding legislation interstate should in effect result in those points being recorded against them in the State or Territory in which they are licensed.

Although a driver who incurs twelve or more demerit points in a three year period would continue to be liable to disqualification, it is proposed that the Registrar of Motor Vehicles only be required to take action to disqualify those drivers who are either licensed in this State or who are not licensed anywhere, or those drivers who are licensed interstate, but have incurred, in this State, 12 or more of the demerit points not covered by the national offence/schedule.

A demerit point exchange system will be established by the various licensing authorities, whereby demerit points incurred for an offence listed in the national schedule, can be transferred to the relevant licensing authority.

Although all States and Territories have agreed to participate in a National Points Demerit Scheme, the necessary legislation will not be in place in all of the States and Territories until after the proposed commencement date of this Bill.

It is anticipated that South Australia, Victoria, New South Wales and Queensland will commence the exchange of demerit points from 1 January 1992.

It will therefore be necessary to identify participating States in the Regulations under the Motor Vehicles Act. The Regulations can then be amended to include other States and Territories as they have the necessary legislation in place to join the scheme.

A demerit point exchange system will make drivers more accountable for their actions, and hopefully more safety conscious, particularly those who regularly drive across State or Territory borders.

Some of these drivers have incurred a large number of demerit points, but have escaped responsibility for them, where the total of demerit points in any particular State or Territory has not reached twelve or more, and the driver has therefore not become liable to disqualification. Under a national scheme, these drivers will be dealt with by the licensing authority in the State or Territory in which they are licensed.

Although the existing legislation provides for a right of appeal against a disqualification imposed under the points demerit scheme, some amendments are proposed to the existing legislation in order to ensure that the principle of no loss of licence without due process, as proposed in the national scheme, is maintained.

Under the existing provisions, a driver who has incurred twelve or more demerit points, may appeal against the disqualification. On allowing an appeal, the Magistrate is required to order that the number of demerit points which brought about the disqualification be reduced to eleven.

This in effect means that the appellant is no longer liable to disqualification.

However, the national scheme provides that a driver should not again become liable to disqualification until a further two or more demerit points are incurred. Consequently, the Bill provides for the Magistrate to order that the total demerit points be reduced to ten, rather than eleven.

The Bill also provides the Magistrate with the power to include any additional demerit points incurred by the appellant between the time that the appellant became liable to disqualification and the hearing of the appeal. If the appellant had incurred further demerit points, and these were not taken into account by the Magistrate, the appellant would immediately become liable for disqualification and the appeal would have served no useful purpose.

As previously mentioned, the Bill separates offences attracting demerit points into two categories, those within the National Scheme and those peculiar to South Australia.

During the preparation of this Bill it became apparent that there was an inconsistency in the number of demerit points prescribed in the National schedule of offences when compared to the number of demerit points prescribed for certain offences in the South Australian scheme.

The national scheme proposes that six demerit points be prescribed for the offence of exceeding a speed limit by 45 kilometres an hour or more. The offences of reckless or dangerous driving, exceeding .15 blood alcohol concentration, refuse breath test and refuse blood test are regarded to be of at least equal seriousness, and it is proposed that six demerit points be prescribed for these offences.

The Bill also contains a consequential amendment to the Road Traffic Act 1961, transferring the offence of 'failing to give way to emergency vehicles' from the Regulations under the Road Traffic Act, to the Act itself, for the purpose of prescribing demerit points for a breach of this provision.

The provisions of the Bill are as follows:

Clauses 1 and 2 are formal.

Clause 3 amends section 75aa by providing the Registrar of Motor Vehicles with power to require a person who holds both an interstate licence and a South Australian licence or learner's permit to elect to surrender one or the other. The South Australian licence or permit will be cancelled if the person does not voluntarily hand in the interstate licence.

Clause 4 amends section 75a by striking out a reference to section 98b which will be obsolete in view of the new Part IIIB provisions (see clause 8).

Clause 5 amends section 77b by providing the Registrar of Motor Vehicles with power to require an applicant for a licence or learner's permit to provide evidence of identity, age or address and to refuse to issue the licence or learner's permit if not satisfied as to those matters.

Clause 6 amends section 81b. The amendment is consequential to the amendment that recognises interstate demerit points for the purposes of the demerit points scheme.

Clause 7 inserts a new section 98aaa. The new section requires drivers to carry their licences with them at all times while driving a heavy vehicle (namely, a vehicle with a gross vehicle mass over 15 tonnes or a prime mover with an unladen mass over 4 tonnes). A defence is provided where the vehicle was being used on a journey wholly within a radius of 80 kilometres from a farm occupied by the driver and outside Metropolitan Adelaide.

Clause 8 substitutes Part IIIB—the demerit points scheme. The scheme is similar to the current scheme except that it provides for the recognition of demerit points incurred outside the State, adjusts the number of demerit points for various offences and allows a person who is successful in an appeal against disqualification to get a further two demerit points (rather than one) before automatically suffering a disqualification. The new Part clarifies and simplifies various provisions.

The new section 98b provides that demerit points are incurred by a person on conviction or expiation of an offence as set out in the third schedule (the schedule is substituted). It also allows a court to order a reduction of the demerit points incurred by a person in respect of a particular offence if satisfied that the offence is trifling, or that any other proper cause exists.

The new section 98bb provides for the recognition in this State of demerit points incurred in any other State or Territory. This is a provision that is new to the scheme.

The new section 98bc sets out when a person is liable to be disqualified through incurring demerit points. As in the current provisions disqualification occurs on incurring 12 or more demerit points within a three year period. In relation to interstate licence holders, disqualification only occurs if the demerit points are incurred in relation to offences that carry demerit points in this State but not in any other State or Territory. This is a new provision included to take account of the national demerit points scheme. A disqualification resulting from other offences is to be handled by the jurisdiction in which the person holds his or her licence.

The new section 98bd requires the Registrar to send out a notice of disqualification when the relevant number of demerit points have been incurred by a person. It also requires the Registrar of Motor Vehicles to inform a person who is half way to being disqualified under the scheme. The provision states that the Registrar may, but is not required to, give notice to a person who the Registrar is satisfied is not usually resident in this State. A disqualification of a person who does not hold a licence is generally to be handled by the jurisdiction in which the person usually resides.

The new section 98be sets out how a disqualification is to take effect and how demerit points are then to be discounted. A disqualification generally takes effect on service of the notice of disqualification. All demerit points that relate to the offence that pushed the aggregate to 12 or more and all demerit points that relate to offences that were committed before that offence are then discounted. This is the same as in the current scheme.

The new section 98bf provides for an appeal against disqualification. The appeal is similar to that which currently exists except that on a successful appeal the aggregate of the appellant's demerit points is to be reduced to 10 rather than 11. The grounds of appeal are the same—undue hardship or not in the public interest to disqualify. A person is not allowed to appeal if the demerit points on which the person is liable to be disqualified formed part of an aggregate that was reduced by the court on a previous appeal. The court's powers to impose conditions on a licence are clarified. On a successful appeal the section provides that the court is to order a discounting of the appellant's demerit points so that the aggregate of the points is reduced to 10. This includes demerit points in respect of all offences committed before the determination of the appeal including any offence that the appellant may subsequently expiate or be convicted of.

The new section 98bg makes it an offence for a person to contravene any conditions imposed on the person's licence by the court. This offence also carries two demerit points.

The new section 98bh provides that a court is not to take into account demerit points when imposing a penalty on a person.

Clause 9 amends section 142 by providing an evidentiary aid in relation to the new offence of failing to carry a driver's licence while driving a heavy vehicle.

Clause 10 substitutes the third schedule which sets out the number of demerit points carried by offences against the Road Traffic Act. It divides the offences into ones that fall within the national scheme and those that only incur demerit points if they are committed in this State.

Schedule 1 sets out the new third schedule.

Schedule 2 contains transitional provisions. Clause 1 ensures that demerit points incurred by a person before the commencement of the measure continue to be held by the person. Clause 2 provides that any increase in demerit points only applies in relation to offences committed after the commencement of the measure but that any decrease also applies to offences committed before the commencement of the measure if the person expiates or is convicted of the offence after the commencement of the measure.

Schedule 3 contains a consequential amendment to the Road Traffic Act. Demerit points are to be incurred under the new scheme in relation to the offence of failing to give way to an emergency vehicle. This offence is currently included in the regulations. The amendment moves the offence to the Act.

The Hon. J.C. IRWIN secured the adjournment of the debate.

SURVEY BILL

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

ADJOURNMENT

At 5.2 p.m. the Council adjourned until Tuesday 18 February at 2.15 p.m.