LEGISLATIVE COUNCIL

Tuesday 8 September 1992

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

STAMP DUTIES (RATES) AMENDMENT BILL

Her Excellency the Governor, by message, intimated her assent to the Bill.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the Auditor-General's Report for the financial year ended 30 June 1992.

FINANCIAL STATEMENT

The PRESIDENT laid on the table the Treasurer's Financial Statement for the year ended 30 June 1992.

PAPERS TABLED

The following papers were laid on the table:

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

By-Election for Alexandra District, 9 May 1992—Statistical Return of Voting.

By-Election for Kavel District, 9 May 1992—Statistical Return of Voting.

Regulations under the following Acts—

Classification of Films for Public Exhibition Act 1971—Corresponding Laws—Prescribed symbols.

Harbors Act 1936—Speed Limit Exemption—Dragon Boat Festival.

Subordinate Legislation Act 1978—Exemption from Expiry.

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

Housing Improvement Act 1940—Regulations—Standards.

Urban Land Trust Act 1981—Regulations—Modbury Heights Land.

Forestry Act 1950—Proclamation—Penola Forest District—Land ceasing to be Forest Reserve.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Regulations under the following Acts—

Adelaide Festival Centre Trust Act 1971—General.

Planning Act 1982—Additional Third Party Appeal Exemptions.

Waterworks Act 1942—Fire Services—Adelaide. CBD name change.

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

Local Government Act 1934—Regulations—Prescribed Day.

Corporation By-laws—

City of West Torrens—No. 7—Public Conveniences

District Council of Crystal Brook-Redhills—

No. 5—Caravans and Camping.

No. 6—Animals and Birds.

District Council of Warooka—

No. 11—Camping Reserves.

No. 12—Fire Prevention.

District Council of Yorketown—No. 3—Foreshore.

QUESTIONS

STATE BANK

The Hon. R.I. LUCAS: I direct my question to the Attorney-General on the subject of the Auditor-General's inquiry. In view of the litigation before the Full Supreme Court involving former directors of State Bank and the Auditor-General, and in view of the issues apparently being raised in that action and relating to inadequate time within which the former directors could respond to draft findings, does the Government propose granting a further extension to the Auditor-General and, if so, to what date is it proposed to extend?

The Hon. C.J. SUMNER: This matter has not been considered formally yet by the Government but, it will be, obviously. I think that an extension is likely but, at this stage, I cannot take it any further.

The Hon. K.T. GRIFFIN: In the lead-up to the 1989 State election, was the Attorney-General aware of what was effectively a subsidy of $2 million by the Government or its agency SAFA to the State Bank so that it could keep its interest rates down? If he was aware, when did he become aware of it and what were the circumstances in which he became so aware?

The Hon. C.J. SUMNER: This matter has been dealt with by the Premier in statements that he has made and also the former Premier has dealt with the matter in a statement. The former Premier (Mr Bannon) has made it clear that he was involved in discussions relating to the so-called subsidy. The matter was not dealt with by Cabinet.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I intend to say no more about the matter, except that—

Members interjecting:

The PRESIDENT: Order! Honourable members will come to order.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas.

The Hon. C.J. SUMNER: Mr President, I have no recollection of having been advised of the matter prior to its having occurred. It was not considered by Cabinet. Clearly—

The Hon. L.H. Davis: When did you find out?

The PRESIDENT: Order! The Hon. Mr Davis will come to order. He will have his turn to ask a question in due course.

The Hon. C.J. SUMNER: I have answered the question. The former Premier (Mr Bannon) has made a statement about the matter. The new Premier (Mr Arnold) has made a statement about the matter. I have just made—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas will come to order.

The Hon. C.J. SUMNER: Mr President, I have just made a statement about the matter.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas will come to order.

The Hon. C.J. SUMNER: In any event—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! If the honourable member wants to ask another question, he is entitled to do so. The Hon. Mr Lucas will come to order. The honourable Attorney.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas will come to order.

Members interjecting:

The PRESIDENT: Order! The House will come to order. The Attorney-General has the floor. If any other member wishes to ask a question on this matter, he or she is entitled to do so. The honourable Attorney-General.

The Hon. C.J. SUMNER: In any event, Mr President, the situation was dealt with fully, or it is being dealt with fully, as I understand it, by the royal commission. Mr Bannon has given evidence on this topic to the royal commission. The Opposition is represented before the royal commission at great cost to the management. Some half a million dollars has been expended so far on ensuring that the Opposition is represented at the royal commission. If Opposition members want to explore these matters then I am sure—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am sure that, had they wanted to explore these matters at the royal commission through their counsel, they could have.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis.

The Hon. C.J. SUMNER: They could have pursued the matter at the royal commission. It is a matter that is being dealt with there. I have no doubt that—

Members interjecting:

The Hon. C.J. SUMNER: What is this rabble? I have given the answer.

The Hon. R.I. Lucas: No, you haven't.

The Hon. C.J. SUMNER: I certainly have given the answer, Mr President.

Members interjecting:

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

The Hon. C.J. SUMNER: I do not intend to repeat it but, if you check *Hansard* tomorrow, you will see, if your memory does not go back more than three minutes—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas will come to order.

The Hon. C.J. SUMNER: If you check with *Hansard*, you will see that I did answer the question. I have nothing further to say about the matter. It has been dealt with fully.

An honourable member interjecting:

The Hon. C.J. SUMNER: Forget it, go back to sleep. I said that the former Premier Mr Bannon has dealt with it. The new Premier, Mr Arnold, has dealt with the matter. I have answered the questions that were asked and, in any event, there was nothing new about this issue, because it was before the royal commission.

The Hon. K.T. GRIFFIN: As a supplementary question, Mr President, in the light of the Attorney-General's answer, is he able to indicate at what stage he did become aware of the issue of the subsidy?

The Hon. C.J. SUMNER: No.

STATE TRANSPORT AUTHORITY TIMETABLES

The Hon. DIANA LAIDLAW: I seek leave to make a statement before asking the Minister representing the Minister of Transport a question about STA bus control reports.

Leave granted.

The Hon. DIANA LAIDLAW: I have received copies of STA bus control reports, which were forwarded to the Manager of Traffic Services within the STA and to all depot managers on Saturday, 5 September and yesterday, Monday, 7 September. Both reports reveal widespread chaos in the STA, widespread anguish amongst bus operators and widespread anger amongst bus passengers. The report of 5 September states:

> Once again (third Saturday in a row) the Saturday timetable proved to be a joke. Buses running late, buses full, trips missed due to breakdowns and trips missed because operator not even rostered. Please be advised that the service cannot be maintained with the present timetable or manpower levels.
>
> The public are being left standing and no doubt have had a gutful, as have we who cop the abuse. Please find listed the trips missed and the reason why and also the late running buses that we know about, and believe me, there were plenty more. The memo goes on to list the missed and late running trips. There were nine missed trips on Saturday, 5 September, and 42 late trips. Of the 42 trips, one was late by 10 minutes, but the majority were between 15 and 30 minutes late.

I seek leave to have that statistical table incorporated in *Hansard*.

Leave granted.

Missed Trips

Route	Time	From	To	Reason
405	0653	Salis	405	Op not rostered
226	0819	226	City	Breakdown no manpower
118	1422	118	City	Cutout late running
Tram	1403	VS	Bay	Breakdown
258	1340	258	City	Breakdown no manpower
269	1415	City	269	Breakdown no manpower
243	1418	37↑	City	Breakdown no manpower
228	1359	228	City	Late cutout no manpower
226	1533	266	City	Late cutout no manpower

Late Running

Route	Time	From	To	Late
296	0813	296	291	15
266	0908	258	266	15
228	0959	228	City	20
224	1106	VS	224	20
218	0936	218	City	17
191	1041	191	City	26
266	1045	City	266	20
118	1048	City	118	20
179	1057	179	City	10
Goodwood Road, all Buses from 1100-1430 15 late				
224	1106	VS	224	20
258	1115	City	258	20
296	1200	City	296	17
258	1215	City	258	27
179	1230	179	City	15
292	1200	City	292	15
545	1251	43↓	545	15

Late Running

Route	Time	From	To	Late
171	1303	City	171	15
118	1342	City	118	22
258	1240	258	City	19
118	1325	City	118	30
102	1340	City	102	20
233	1349	City	233	23
296	1349	City	296	19
269	1315	City	269	15
218	1326	City	218	18
228	1251	City	228	25
266	1433	266	City	15

The Hon. DIANA LAIDLAW: The memo goes on to say:

Now I know that all of the above will probably be passed off as problems with the Show. But before you do that, look back at the last two Saturdays and in fact most weekdays since the last timetable change. Even by STA standards it is not good. All of the above and the weekday service problems makes the STA advert on TV a joke.

A further memo of yesterday reads:

Please find listed the trips missed by buses from Monday 7 September 1992. As stated previously, the manpower levels are completely insufficient to supply a service to our customers; therefore we are leaving hundreds of disgruntled passengers on the side of the road.

The memo goes on to list the 36 STA bus services that were missed yesterday and the five which were late and which were reported by this writer. The bus services missed were due to no manpower, to breakdown of services or, in one instance, on bus 204, to a St Agnes operator who refused to drive the new MAN buses. I also seek leave to incorporate that statistical table into *Hansard*.

Leave granted.

Missed Trips

Route	Time	From	To	Reason
544	1316	544	M.B.I.	Breakdown
206	1557	206	City	No manpower
450	1502	Eliz	450	No manpower
450	1534	450	Eliz	No manpower
228	1650	VS	228	No manpower
224	1710	City	Salis	No manpower
224	1450	City	224	No manpower
'B' Line 1439-1715				Used to cover other services
Pooraka School Bus 1515:				Breakdown no manpower
Blackfriars School Bus 1535:				Breakdown no manpower
102	1602	City	102	Breakdown no manpower
543	1559	44↓	543	Breakdown no manpower
543	1627	543	City	Breakdown no manpower
172	1549	City	172	Op. sick no manpower
172	1630	172	City	Op. sick no manpower
176	1655	City	176	Op. sick no manpower
177	1745	177	City	Op. sick no manpower
224	1602	224	City	Op. sick no manpower
720	1616	720	City	Depot error
		Late Running		
722	0915	W.B.I.	34↑	21 late
282	1108	P.B.I.	City	25 late
507	1400	City	507	12 late
296	1538	396	4↑	15 late
197	1657	197	B/wood	15 late
203	0609	203	City	No manpower
203	0630	203	City	No manpower
209	0634	City	209	No manpower
207	0655	City	207	No manpower
226	0745	Salis	43↑	No manpower
203	0858	203	City	No manpower
'B' Line 0804-1059:				Used to cover other services
'B' Line 0858-0925:				Used to cover other services
'B' Line 0854-0906:				Used to cover other services

Missed Trips

Route	Time	From	To	Reason
100	0734	Arndale	UnleyPk	Breakdown no manpower
Busway show extra	1159	M.B.I.	City	No manpower
204	1035	VS	204	Breakdown no manpower
204	1107	204	VS	Breakdown no manpower
204	0829	VS	204	St Agnes op refused to drive MAN bus
680	1220	M.S.C.	680B	Breakdown no manpower
680	1307	680B	M.S.C.	Breakdown no manpower

The Hon. DIANA LAIDLAW: The reports reveal that the chaos in the STA is not confined to rail but that it permeates the whole system, yet honourable members may recall that the STA placed a one-third page advertisement in the *Advertiser* of Saturday 29 August, headed 'STA apology', but the apology was limited to train commuters who had been inconvenienced in recent weeks by computer signalling faults and mechanical failures. Therefore, I ask the following question: does the Minister agree with the assessment by the writer of the bus control reports for 5 and 7 September that STA bus services introduced since 16 August cannot be maintained with the present timetable and manpower levels? Secondly, what action does the Minister propose to take immediately to ensure that the STA is able to meet its published bus timetables and to meet its published corporate objective to provide a reliable, modern and efficient service?

The Hon. ANNE LEVY: I will refer those two questions to my colleague in another place and bring back a reply. I strongly suspect that he will discuss staffing levels rather than 'manpower levels'.

MENTAL HEALTH

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about community mental health facilities.

Leave granted.

The Hon. M.J. ELLIOTT: The capital works program document of the 1992-93 State budget allocates $6.16 million for the South Australian Mental Health Service area project. This project involves the work to be undertaken relocating mental health facilities currently at Hillcrest Hospital into the community, general hospitals and Glenside. The money allocated in this budget is a portion of the estimated $17 million cost of the whole exercise, which is due to be completed in 1994. Listed among the work to be undertaken as part of the project are the refurbishment of 20 beds in each of the Lyell McEwin, Queen Elizabeth and Noarlunga Hospitals and the relocation of 40 to 60 beds to Glenside Hospital. Also listed is the provision of 'accommodation for approximately 200 additional staff in community locations throughout the State, but predominantly in the metropolitan area'.

As these community facilities will be the lynch-pin of the new service, there is much interest among service clients and their carers in relation to where they will be located, the staff available in each and when they will be established. There is considerable interest also among staff, too, over when the new services will be ready.

Media reports recently have pointed to Hillcrest closing by degrees, as staff leave for more secure and stable positions. The *Advertiser* of Saturday 5 September indicated that in just 18 months the number of psychiatrists working at Hillcrest has fallen from 36 to 21, leading to a cut in available bed numbers. My questions to the Minister are:

1. What work has been done to determine the location of the planned community-based facilities?

2. What locations have been identified and how many staff will be accommodated at each location?

3. What establishment work is planned for the 1992-93 financial year?

4. Most importantly, can the Minister assure clients and staff that services or beds at Hillcrest will not be further cut until the replacement community facilities and other hospital wards are completed?

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

STATE GOVERNMENT INSURANCE COMMISSION

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question on the State Government Insurance Commission.

Leave granted.

The Hon. L.H. DAVIS: In the 1990-91 financial year, the State Government Insurance Commission reported a massive $81.4 million loss before tax. In the 1991-92 financial year the operating profit before income tax of $69 million masked a $350 million bail-out by the South Australian Financing Authority. Some $36 million of this $350 million package was compensation for the compulsory third party fund which suffered from illegal interfund transactions. The balance of $314 million was debt forgiveness.

SGIC in 1991-92 in effect had a massive loss much greater than the $81.4 million loss of the preceding year. However, in 1990-91, Mr Denis Gerschwitz, the General Manager of SGIC received a 35.3 per cent hike in his salary which went from $170 000 to $230 000 per annum. This was just 18 months before his retirement date.

As a result of this massive pay increase in a year in which SGIC reported an $81 million loss, Mr Gerschwitz received an enormous boost to his superannuation benefit. His annual pension was increased by around $18 000 from $51 000 to about $69 000. Alternatively, Mr Gerschwitz could elect to receive on retirement a lump sum of $350 000 and an annual pension of $33 000 which is what people might describe as a super increase on the previous figure before the pay rise of $260 000 lump sum and $24 000 pension.

I understand that State Government departments closely scrutinise salary hikes and promotions so close to retirement date for the obvious reason that significant increases in salary flow through to big benefits in superannuation on an ongoing basis. Mr Gerschwitz is shortly to retire from SGIC and his successor has already been named. My questions are:

1. In view of the widespread criticism of the 35 per cent increase in salary to Mr Gerschwitz just 18 months before his retirement, with the flow-on benefits in superannuation, has the Government issued guidelines for increases in salary for people in senior positions close to retirement?

2. Has there been any review of the Gerschwitz case?

3. What is the salary of the new General Manager at SGIC?

The Hon. C.J. SUMNER: I will seek that information and bring back a reply.

ELECTRICITY TRUST

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Mines and Energy, a question about ETSA.

Leave granted.

The Hon. J.F. STEFANI: Earlier this year ETSA sold its Greenhill Road head office for a reported $5 million and purchased a new building, which is situated at No. 1 Anzac Highway, for around $14.5 million. The transaction was part of a property swap deal between ETSA and United Landholdings Proprietary. Ltd. My questions are:

1. Did ETSA check the new building in terms of the requirements of the Occupational Health, Safety and Welfare Act before it signed the purchase contract?

2. Will ETSA arrange for an inspector from the Department of Labour to visit the property and prepare a report on the property and its air-conditioning system as it affects ETSA's employees in terms of the Occupational Health, Safety and Welfare Act?

The Hon. BARBARA WIESE: The honourable member addressed his question to the Attorney-General but I represent the Minister of Mines and Energy in this place, so I undertake to refer the matter to the Minister in another place and bring back a reply.

ROYAL ADELAIDE HOSPITAL

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Health a question about the internal audit of the Royal Adelaide Hospital.

Leave granted.

The Hon. I. GILFILLAN: On 30 April this year the member for Hayward in another place asked the Minister of Health a question concerning allegations of pilfering of building materials and theft of hospital furniture from the Royal Adelaide Hospital. He also raised concern about security at the hospital and indicated that he had been told that the police Anti-Corruption Squad was continuing to make investigations and said that he understood that hospital security was being studied as a result of widespread theft.

The Minister indicated that he recalled getting a verbal briefing but did not recall actually seeing a written report, and he undertook to check the matter with the Chairman of the commission and report to the honourable member in the other place. I am advised that there has been no

information from the Minister yet to the member for Hayward or to the shadow minister for Health, Dr Armitage, who has taken a personal interest in the matter. Members will recall that in fact I asked a question relating to allegations of large-scale theft of property at the Royal Adelaide Hospital spread over some years.

It seems from the answer of the Minister that there is an attempt to assess the situation in the hospital. As there are indications that an internal audit was completed some months ago, I ask whether the Minister of Health now has a written report on the situation of alleged theft at the Royal Adelaide Hospital? Has he seen an internal audit? If not, when can he indicate that such an audit will be completed? Will he please explain why there has been what appears to be an inordinate delay in the provision of either a report or an internal audit? Finally, will he make available, as soon as possible, the internal audit and/or the report to both Houses of Parliament?

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

OIL SPILL

The Hon. PETER DUNN: I seek leave to make an explanation before asking the Minister representing the Minister of Marine a question about the berthing of the tanker at Port Bonython?

Leave granted.

The Hon. PETER DUNN: On Sunday 30 August, a tanker berthing at Port Bonython was punctured by the tug helping it to berth and there was a large spill. I happened to be travelling home that day and the weather certainly was very foul. In fact, I have never seen larger seas in Spencer Gulf than that day. It was low cloud so I was forced to fly at relatively low altitude across the gulf and witnessed these very large seas. Because of those seas I suspect there was a problem with the berthing. My questions are:

1. What is the criteria for berthing of such tankers in South Australian waters, particularly at Port Bonython; and

2. Who is responsible for determining the criteria for berthing: the captain of the tanker, the captain of the tug, the company or someone else? Is it the South Australian Department of Marine and Harbors?

The Hon. C.J. SUMNER: I will refer that question to the appropriate Minister and bring back a reply.

FAIR TRADING ACT

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about offences under the Fair Trading Act.

Leave granted.

The Hon. J.C. BURDETT: There have recently been some prosecutions and investigations under the Fair Trading Act for making a misleading representation with respect to the price of goods. The alleged misleading representations have been contained in advertisements. The areas in question include jewellery and sun blinds and there are doubtless many other areas. The relevant section of the Fair Trading Act, section 58 *(g)*, provides:

> A person shall not in trade or commerce in connection with the supply or possible supply of goods or services or in connection with a promotion by any means of the supply or use of goods and services make a false or misleading representation with respect to the price of the goods or services.

My constituents have approached me and say that they find this wording fairly open-ended and do not know its precise meaning. I would point out that there is no judicial interpretation in South Australia as to the meaning of the section. My constituents say that they have certainly not seen any guidelines on the subject from the Office of Fair Trading. The subject is such advertisements as 50 per cent off discounts, and the problem has been: what is the correct starting point before deducting the discount and at which point in time is the starting point established. My questions are:

1. Are guidelines established by the Office of Fair Trading on these subjects?

2. If so, what are the guidelines?

3. What action has been taken to disseminate the guidelines, if any, to the traders?

The Hon. BARBARA WIESE: I will seek a report from the Commissioner for Consumer Affairs to fully brief the honourable member as to the procedures adopted by officers in the Office of Fair Trading when they are assessing the relevant section of the Act and when they are dealing with traders in the area of misleading advertising with respect to the price of goods. I believe that would be the best way of going about the provision of the information that the honourable member seeks. I am aware that in the past there have been a number of cases where officers of the Office of Fair Trading have found that traders have misled the public by inflating the price of goods and then offering discounts.

Where those cases occur, obviously, that is not in the interests of consumers and requires action of some kind, whether it be in the form of assurances that such practices will not happen again or, in certain circumstances, prosecutions, where there is good reason for officers to take action on behalf of consumers in order to ensure that their interests are protected. To be sure that I cover all issues that are taken into account by officers when they make these assessments, I will refer this question to the Commissioner for Consumer Affairs and obtain an up-to-date briefing on all the issues that are taken into consideration.

PARKING INFRINGEMENTS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Local Government Relations a question about parking signs.

Leave granted.

The Hon. J.C. IRWIN: As my question ranges over three portfolio areas, local government, police and transport, I seek the indulgence of the Minister in obtaining an answer from the various areas. On 12 July 1991 the Department of Road Transport erected signs on Goodwood Road between the Grange Road/Edward Street intersection and the Springbank Road junction to extend clearways. At the very same time that the signs were up

declaring a clearway, 27 'half hour parking at all times' signs were still in place.

Mitcham council had not been advised of the extension and had not taken any steps to legally change the parking controls before the clearway signs were erected. In fact, after a number of mistakes, it was some months before the council erected new signs. Not all the original parking signs were removed then—and this may be illegal, as the council did not pass the necessary resolution until 22 August. The police started enforcing the clearway extension at 7.30 a.m. on 15 July, despite the conflicting signs. I ask the following questions regarding the issue of infringement notices for breaches of the clearway, which is yet another example of the public being misled and ripped off:

1. How many infringement notices were issued by the police before the council signs were removed and how many of these infringement notices were withdrawn?

2. If expiation fees had been paid, were all the notices cancelled and refunds made?

3. Of the infringement notices that were not cancelled, what happened in respect of the alleged offences?

4. It is my understanding that further clearway extensions in this area are imminent. Will steps be taken to ensure that such conflict does not occur again?

The Hon. ANNE LEVY: I am not able to answer those questions off the cuff and will need to refer them to my colleagues the Minister of Emergency Services and the Minister of Transport in another place and ask them to provide the required information.

MEASLES

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about measles immunisation.

Leave granted.

The Hon. BERNICE PFITZNER: It has been recently reported that there is an increase in the incidence of measles in this State. In 1990 there were 43 cases and last year there were 151. This year 57 cases have been reported by different doctors, and there have been many unofficial reports from primary schools. In particular, there were five cases at Allenby Gardens Primary School, and the Woodville council is said to be preparing to conduct an emergency immunisation program. The Health Commission has said that it has a 96 per cent uptake in the immunisation rate. My questions are:

1. If there is a 96 per cent uptake in the immunisation rate, why is there such an increase—nearly four-fold or five-fold—in the incidence of measles?

2. What is the basis on which the Health Commission has made the statement that there is a 96 per cent uptake?

3. What measures has the Health Commission in train to ensure that there is a program that will cover the whole State for measles immunisation?

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

LABOR COALITION

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in the Council, a question about a coalition Labor Government.

Leave granted.

The Hon. R.I. LUCAS: This morning's *Advertiser* newspaper reports that the Premier wants to form a coalition Government by offering ministries to two Labor Independents, Mr Martyn Evans and Mr Terry Groom. The paper states:

> In a test of his leadership Mr Arnold has put the Deputy Premier, Mr Blevins, and the Attorney-General, Mr Sumner, in charge of a secret operation to negotiate with the two Independents.

I do not know how secret it is now that it is on the front page of the *Advertiser*! My questions to the Attorney are:

1. Will he confirm that he has been asked by the Premier to consult with Independent Labor members about the possibility of their becoming Ministers in the Arnold Government, and will he say what issues would need to be explored before such a possibility could occur?

2. What discussions, if any, has he had with Independent Labor members about this matter?

3. Does the Attorney-General agree with Mr Arnold's view that, notwithstanding the transparent ministerial aspirations of Labor members such as the member for Walsh, the talent in Caucus is so scarce that desperate overtures had to be made to the Independents?

The Hon. C.J. SUMNER: Clearly, we were not involved in any secret operation in relation to this matter.

An honourable member: Where's your trenchcoat?

The Hon. C.J. SUMNER: Yes, that's right, as the *Advertiser* has clearly demonstrated the lack of secrecy in the matters to which the honourable member has referred. However, my answers to the questions are:

1. No.

2. It is not a matter that I intend to discuss in this Chamber or with the honourable member.

The Hon. R.I. Lucas: You have had some?

The Hon. C.J. SUMNER: I am always having discussions with the Independents; it is a common occurrence. I see them in the bar. I have discussed large numbers of matters with Mr Evans: the Committee system of Parliament; freedom of information, and so on. We are in constant contact over a number of issues. I think the answer to the final question, if I heard it correctly, is 'No'. The fact of the matter is that there is considerable talent on the back bench in the Labor Party. There are a number of people who would quite adequately fill any ministerial position that is vacant.

CREDIT CARDS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question on the subject of uniform credit legislation.

Leave granted.

The Hon. K.T. GRIFFIN: In February 1992 the Victorian and New South Wales Ministers announced that they had decided to scrap a draft uniform credit Bill and

start again. They expected to have a new draft by May, but that was not achieved. In May I asked the Minister questions about the Bill and the issue of credit card fees up-front in return for reductions in credit card interest rates. I notice from a report about two weeks ago that this latter issue is now being actively considered by the Prices Surveillance Authority before the issue is resolved by the Standing Committee of Consumer Affairs Ministers (SCOCAM).

Putting that issue to one side, a report of the meeting of Consumer Affairs Ministers in August, I think it was, states that the Ministers failed to agree on key elements of the uniform credit Bill, including the issue of penalties for banks which charge too much for credit. I recollect that the penalties being discussed included one of $10 million, some 'pie in the sky' figure. In addition to that, I have received some communication from the Insurance Council of Australia which, in addressing issues on the Bill, complains about one provision. It says that it is totally inappropriate to seek to regulate the insurance industry, which is already covered by comprehensive Federal legislation, through additional State-based legislation which places the onus for compliance on a party who is neither the principal nor the agent for the purpose of the insurance transaction. It refers also to the insurance industry's legitimate concerns about the level of insurance cap proposed for consumer credit insurance, saying that that issue has not been addressed adequately.

It seems that, in the light of the reports, the somewhat bold boast of the Victorian and New South Wales Ministers back in February that this issue would be resolved by May was not well founded. My questions to the Minister are:

1. Has the position now been reached where, after a number of years where there has been an inability to reach a consensus on a uniform Bill, the whole issue now ought to be dumped?

2. What important issues remain outstanding? In answering that question, will the Minister indicate what is the position of the Consumer Affairs Ministers in relation to those matters complained about by the Insurance Council?

The Hon. BARBARA WIESE: In answer to the first question, that is, should the issue now be dumped by Consumer Affairs Ministers after a number of years of deliberation without success, at this stage, I would say 'No'. It is too soon to make such a decision although I feel extraordinarily frustrated in the process in which I have been involved for a short time compared with others who have been working on this issue over many years. I have been involved now for only two and a half years and, during that time, I have found it extremely frustrating attending SCOCAM meetings where for a short time one feels that considerable progress has been made and issues are about to be resolved only to find for some reason or another that the ground has shifted and new issues of disagreement or concern have been raised. However, I think that we must keep the process in some perspective.

Whilst a small number of issues are outstanding, albeit quite important issues, considerable progress has been made during the past couple of years in reaching substantial agreement on the terms of a uniform Bill. I believe that it is possible to reach agreement on the outstanding points that were discussed at the last SCOCAM meeting, which was held in Adelaide. There was substantial agreement amongst Ministers on some of those issues, but some Ministers felt that they needed the backing of their respective Governments in order to commit themselves to a policy decision and that further work was required on some points. For that reason, the Ministers agreed to pursue the further work that was required with a view to holding another meeting or at least communicating with each other at some stage during the second half of this year with the hope that we could have an agreement on all points in place by the end of the year.

One new factor has emerged since that time, which I think will delay the process somewhat, and that is that elections will be held in Victoria and Queensland. The work that was being done in those States will be held up until the election results are known and Governments can get back to the business of government. Therefore, I expect that the timetable will be stretched out somewhat and that it will take a little longer for us to get together and resolve the questions outstanding.

One of those outstanding issues concerns credit card fees and, as the honourable member indicated, the Prices Surveillance Authority has established an inquiry into that matter. One of the decisions that was taken by SCOCAM in August was that we should seek to have expanded the terms of reference of the PSA inquiry to cover some of the matters which are of concern to SCOCAM Ministers and which would provide useful information upon which Ministers would be able to make decisions relating to the question of fees on credit cards. We have taken that action since our meeting and have requested that the terms of reference be expanded in that way.

I will shortly be writing to the Chairman of the PSA to add to that request by posing a series of more specific questions in the hope that he will be able to provide very full information for SCOCAM. In view of the fact that that inquiry is under way and will not report to the Federal Government until October, it is probably not too serious a matter that the timetable for future SCOCAM meetings will be delayed as well. I hope that, by the end of the year, Governments will be in place that will be in a position to deliberate on these policy matters, that we will have further information from the Prices Surveillance Authority and that we can reach some agreement on these final matters.

DISTINGUISHED VISITORS

The PRESIDENT: I notice in the gallery that we have some distinguished visitors from the United Kingdom Parliament and on behalf of this Parliament I extend to them a very warm welcome to South Australia. I ask the Attorney-General and the Leader of the Opposition to escort Mr Alan Howarth, CBE, MP, leader of the delegation, to a seat on the floor of the Council.

Mr Howarth was escorted by the Hon. C.J. Sumner and the Hon. R.I. Lucas to a seat on the floor of the Council.

NATIONAL PARKS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister for Environment and Planning, a question relating to national parks.

Leave granted.

The Hon. M.J. ELLIOTT: Last Friday I had a telephone call from a rather distressed representative of the Conservation Council in South Australia. They told me that they had been informed that the Government is about to introduce into this Parliament amendments to the national parks legislation which will have the effect of expanding the multiple land use in South Australian parks and reserve systems. In particular, they are concerned that that expansion will include much greater rights to mine within national parks, such rights being extremely limited at this stage. I have a letter which was sent to the Minister and which was co-signed by representatives of the Conservation Council, the Wilderness Society, the Conservation Foundation and the Nature Conservation Society, all of whom make quite plain that they oppose the further expansion of multiple land use in our parks and reserves.

I ask two questions of the Minister: first, is it accurate that the Government does, indeed, intend to expand the multiple land use of our parks and reserves? Secondly, if that is the case why, during the consultation process that has been going on recently, was that not raised with conservation groups?

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

STATE TRANSPORT AUTHORITY

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question about an STA apology.

Leave granted.

The Hon. DIANA LAIDLAW: On Saturday 29 August, the State Transport Authority spent over $3 000 to place a one-third page advertisement in the *Advertiser* apologising to train commuters for the inconvenience that they had experienced in recent weeks because of computer signalling faults and mechanical failures. The advertisement confirmed claims by passengers and employees that breakdowns, delays and missed connections on trains had reached unprecedented levels since the STA introduced new timetables and so-called express services three weeks ago. Yet the advertisement offers little reassurance that trains will run on time for some time. It states:

> The STA and its contractors are working hard to remedy the situation . . . and will continue to do so until the problems are fixed.

I ask the Minister:

1. For how much longer will passengers have to endure inconvenience before the technical and mechanical problems are fixed?

2. Since the STA paid over $15 million, I think, for the new signalling system, what are the faults in the system, and how much will it cost to repair the faults?

3. As the STA formerly took charge of the signalling system from Westinghouse about six weeks ago, is the STA responsible for the costs associated with fixing the faults?

4. What mechanical failures are being experienced in relation to the new 3000 series railcars, which are costing tens of millions of dollars, since the STA took delivery of the first two railcars some 10 weeks ago?

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

MEMBER'S COMMENTS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about the public comments of the Hon. Terry Roberts.

Leave granted.

The Hon. L.H. DAVIS: In the *Age* of 2 September (on page 15) the following article appears:

> Mr Terry Roberts, a member of the State's Legislative Council and convenor of the Party's Left faction, believes the Bannon resignation stems from the greed of the 1980s and the Premier's refusal to listen to those who urged caution when deciding on the type of development best suited for South Australia.
>
> Mr Roberts says the Premier surrounded himself with people who said the things he wanted to hear, 'He didn't listen to those who said anything else. He never listened to the Left,' said Mr Roberts.
>
> 'He also embraced and entrusted the wrong people. He trusted the bureaucrats too much and he believed those who told him that building construction was the answer to the State's future rather than promoting industrial development. There is no doubt he was part of the greed of the '80s but to some extent he was also a victim of the economic climate of the time. Like a lot of others, he didn't understand it'.

There is on public record a fairly lengthy statement from one of the Hon. Mr Sumner's colleagues in the Legislative Council. My question to the Attorney-General is a simple one: does he agree with the Hon. Terry Roberts' comments and, if not, why not?

The Hon. C.J. SUMNER: I have no comment in relation to that matter.

REPLIES TO QUESTIONS

GOVERNMENT TENDERS

In reply to **Hon. K.T. GRIFFIN** (25 August 1992).

The Hon. ANNE LEVY: The State Supply Board, which awarded the contract for 1 000 trousers at a cost of about $300 000 to a British company on the recommendation of the MFS, did so with the greatest integrity.

The call for tenders for the supply of superior safety clothing for South Australian fire fighters originated from a ship fire about three years ago which caused serious injury to an MFS fireman.

Following a number of years of investigation the MFS, in the absence of any existing Australian Standard, adopted in 1991 an ISO/CEN draft European Standard as being the most appropriate available standard to set test the performance of fire trousers and jackets.

As result, a requirement was placed on potential suppliers to submit a completed garment and test certification verifying that the material and the garment have passed the ISO/CEN Standard.

Clause 9 of the Specification specifically requests independent verification of testing by an independent laboratory, with test certificates being submitted with the tender document.

On March 26 this year, the MFS requested State Supply to call for Registrations of Interest for the supply of fire fighting protective clothing to the MFS specification.

The call closed on 21 April, allowing three weeks for registrants to respond.

The MFS recommended five companies be asked to tender—three Australian manufacturers, and two European. Companies were given four weeks to respond. The tender closed on 15 June.

An additional Australian company which has previously registered its interest was later added to the list of companies invited to tender, meaning four Australian manufacturers were eventually considered.

It was stated clearly to all tenderers that samples of the finished product complete with test certificates in accordance with the specification were to be included in the response.

At the close of tenders, five companies had responded. However, only two companies had provided samples and the appropriate test certificates. Both companies offered products of overseas origin.

The Australian companies asked for more time, and an extension was granted to July 24—almost six weeks after the tender had closed.

Samples were provided by the Australian companies, but no test certificates.

The MFS reassessed the tenders and recommended that a British company be awarded the contract as initially proposed.

The Australian companies had failed to establish to the satisfaction of the MFS that their garment fully complied with the mandatory requirements of the specification.

State Supply supported the MFS recommendation because of the very important Occupational Health and Safety issue involved.

Considerable efforts were made to assist Australian suppliers to win the contract, and such efforts are continuing for future contracts.

On Monday, 14 September, State Supply is meeting with the MFS, the Industrial Supplies Office and potential suppliers in Adelaide to ensure they fully understand the MFS specification requirements in future.

This will hopefully ensure that Australian companies will be successful in future tender calls for the bulk of the $2 million clothing requirement.

STATE TRANSPORT AUTHORITY TIMETABLES

In reply to **Hon. DIANA LAIDLAW** (20 August 1992).

The Hon. ANNE LEVY: The Minister of Transport has provided the following response:

1. Delays to the introduction of a new computerised Public Enquiry Timetable System have been brought about by the complexities of translating mapping data needed for the software program.

2. The STA believed it had sufficient telephone lines and operators to handle the extra demand resulting from the change in routes and timetables.

3. The STA supplied 500 000 new timetables to its customers in the two weeks prior to the change, through the city Customer Service Centre, the Adelaide Railway Station and depots. Timetable advice was also available through many of the 619 licensed ticket vendors. The STA believes this dissemination of timetable information through recognised outlets is sufficient.

The STA has nearly 900 vehicles and 67 different timetables. Most vehicles provide services on more than one route, and often three or more routes in the course of a day. Therefore, the logistics of providing the appropriate timetables on each vehicle, is not practical, particularly as the nature of public transport is such that each vehicle normally undertakes different work on each day of the week.

BUS SERVICES

In reply to **Hon. DIANA LAIDLAW** (18 August 1992).

The Hon. ANNE LEVY: The Minister of Transport has provided the following response:

1. Public transport services have been reduced at the poorly patronised times of nights and Sundays in order to release resources so that the STA can maintain and extend the better patronised weekday services.

Any alternative service provided to serve passengers now left unserved would be so poorly patronised that it could not be operated viably without either charging higher fares or providing some form of subsidy, as is the case at Hallett Cove. Services with higher fares are already available in the form of ordinary taxis, while any form of subsidy paid to an alternative metropolitan wide service would have reduced the savings made by the STA. These savings could then not have been put towards the higher priority well patronised weekday services.

2. The Transit Taxi concept introduced recently at Hallett Cove could, if successful, be extended in the future to other parts of Adelaide. It was originally proposed for introduction some time ago but was delayed by the eventual failure of months of negotiations with the local council. The changes to STA night and Sunday services could not be delayed until the Transit Taxi experiment is complete owing to the greater priority for the release of resources to enable the upgrading of weekday public transport services.

FILM FUNDING

In reply to **Hon. DIANA LAIDLAW** (19 August 1992).

The Hon. ANNE LEVY: Further to the information provided to the Honourable Member on 19 August 1992 concerning Filmsouth's investment in 'The Battlers', and whether or not the investment complied with Filmsouth's funding guidelines, I provide the following additional information.

The policy outlined in the Film Development Program guidelines released last year for production investment, is aimed at developmental low budget feature films. The policy covers films which would use the 'top up' investment from Filmsouth to lever the remaining funds from programs such as the Australian Film Commission's Special Production Fund.

Following Filmsouth's policy review in July 1992 and a request from me to address the low level of production in South Australia, Filmsouth made a recommendation to invest in the production of two medium size budget films, the South Australian Film Corporation's 'The Battlers' and an independently produced film 'Ebb-Tide'. Both of these films had commercial presales. The filmsouth investment resulted in both of these films receiving the required investment from the Australian Film Finance Corporation to go into production.

While the program was not originally directed at films that could attract pre-sales, Filmsouth has always stated that it would be flexible with its policy in regard to levering production.

There has been an un-written principle to disqualify the Film Corporation from applying for funds from Filmsouth. In this instance Filmsouth believed that circumstances warranted a relaxing of this principle due to the lack of production opportunities in South Australia. Filmsouth was also concerned that if this opportunity had not been taken up, significant employment and revenue would have been lost to the State.

'The Battlers' and 'Ebb-Tide' will bring $4.2 million and $2.6 million into the State, respectively. A recent study commissioned by the Film Industry Working Party has identified that the output multiplier for the film industry is 1.7. In comparison, this is greater than Agriculture and Mining at 1.5.

A condition of the investment was that this would not be seen as setting a precedent for future funding. Independent producers have not been disadvantaged by this decision as there are still funds available for further investments.

The Film Corporation complied with the current procedures in applying to Filmsouth for a production investment.

BUS SERVICES

In reply to **Hon. DIANA LAIDLAW** (14 April 1992).

The Hon. ANNE LEVY: The Minister of Transport has provided the following response:

The changes to the public transport services in August this year have been made after careful assessment of the use being made by people of the previous services. The Honourable Member will be aware that since she asked her question the Government has decided to continue those State Transport Authority (STA) services in the Hills and other fringe rural areas

from which it had considered withdrawing. There are now no situations where private operators are involved in replacing any STA services.

The changes which have been made are to rationalise night and weekend services after 10.00 p.m. Fridays, after 7.00 p.m. on all other days, and all day on Sundays and public holidays. This has involved:

- discontinuing a number of very poorly patronised services at these times. In areas which would have had no adjacent alternative services, new night and Sunday routes have been introduced. These are combinations of the discontinued routes, some being one-way loops, or are feeders to other services;
- adjusting the time tables to provide the same level of services at these times on all routes, that is an hourly frequency. This has meant no change to the level of service on a large number of routes which already had this frequency and has, in fact, introduced night and Sunday services to some routes which had one; and
- introduction of, or improvement to, Saturday afternoon services on some routes to bring them to a uniform level and to better accommodate Saturday trading.

Thus there has been an equalisation between areas rather than a 'discrimination'. The resources saved by the rationalisation have been used by the STA to extend daytime services in growing suburbs and to introduce two new Transit Link bus services and express train services in order to better meet the needs of the majority of its customers.

The subsidies for private school bus services relate to the Student Pass Concession Scheme. The Scheme provides students, travelling on licensed private route buses, a monthly pass, the cost of which is considerably less than the scheduled fare. The private bus companies are then reimbursed for lost revenue.

In 1982, the scheme was revised to provide an increased reimbursement to the bus companies which effectively introduced a subsidy element into the scheme.

Following significant increases in the cost of the scheme, an independent Review was conducted during 1991 which found that the reasons for introducing a subsidy element in 1982 no longer existed and should be discontinued. As a consequence two major changes were made to the scheme:

- The private bus companies would, in future only be reimbursed for actual fares with the subsidy element being removed. This change is being phased-in during the last three terms of 1992 and will become fully effective from the first term of 1993.
- The method of calculating the cost of the Student Pass was altered to provide a more equitable sharing of costs between parents and the Government.

Participation in the Student Pass Concession Scheme is open to all private bus companies which are licensed to conduct route operations, providing of course, they carry school children to and from school as a normal part of their operation. The companies participating in the scheme operate throughout the suburban fringe areas and as far away as the Barossa Valley and Murray Bridge.

The Transit Taxi which has commenced in the Sheidow Park-Trott Park area is an experiment which is unrelated to the other service changes but for convenience has been introduced concurrently with the new timetabling. The Government's aim is to encourage innovation in the provision of public transport services complementary to the STA's services. As a 'feeder', it supports STA services rather than competing with or providing an alternative to them. The trial is for six months with a possible extension for another six months. The service is contracted and should it be successful its continuation will be considered as will the possibility of establishing similarly contracted, subsidised, complementary services elsewhere.

AUSTRALIAN NATIONAL

In reply to **Hon. DIANA LAIDLAW** (19 August 1992).

The Hon. ANNE LEVY: The Minister of Transport has advised that some of Australian National's assets are subject to the Railway Transfer Agreement. The Prime Minister has given an assurance that the Commonwealth Government will honour the Agreement.

Other AN assets are not subject to the Agreement. This includes such items as locomotives and rolling stock and plant and equipment. Some items are leased, some purchased from borrowings, some owned by Australian National and some were previously owned by Commonwealth Railways.

Under the terms of the NRC Agreement, National Rail will take over all interstate freight operations, though the State Government is endeavouring to ensure that the Broken Hill concentrates traffic remains with Australian National. The loss of AN's profitable operations will reduce AN's ability to service the financial commitments it has incurred. accordingly, the Commonwealth Government is to assume the responsibility for these debts.

The Commonwealth Minister for Land Transport has been asked to provide details of the debt estimates.

KINGS RESERVE

In reply to **Hon. J.C. IRWIN** (27 August 1992).

The Hon. ANNE LEVY:

1. State Government Public Park funding, on a subsidy basis, was made available for some of the area of land known as Kings Reserve. In such cases it is automatically declared to be Pubic Park and can be used by the Council in accordance with the provisions of the Local Government Act relating to Parklands, under Part XXII of the Act.

If the Council wishes to dispose of the land the consent of Her Excellency the Governor must be obtained in accordance with Section 7a (3) of the Public Parks Act. However it is interesting to note the following statement in the *Thebarton Times* for August 1992 which sets out clearly the Council's community consultation process.

'Council is on the public record as stating the land will not be sold off for private development under any circumstances and will remain a major social, recreational and leisure resource for the local community'.

2. The options for development of Kings Reserve will depend on the results of the consultancy presently in progress and the community consultation process which will proceed when recommendations by the Consultants have been received and considered by the Council. It is only when the whole process has been completed that final decisions can be reached on land usage which may include some commercial development. The legal implications, if any, of such a decision would then have to be addressed.

3. The Statement by the Honourable Member in part 3 of the Question is not accurate, in fact the reverse situation applies. The Council's brief to the Consultants has always been as open as possible to allow the Consultants maximum flexibility in defining the most appropriate future uses for the whole area under review, which includes Kings Reserve. At a meeting of the Council held on 21 July 1992 a resolution was moved by a Councillor to restrict the Consultant's considerations to open space uses only for Kings Reserve. The resolution was lost on a division of the Council members and the brief to the Consultants was therefore not varied.

LOCAL GOVERNMENT GRANTS

In reply to **Hon. J.C. IRWIN** (25 August 1992).

The Hon. ANNE LEVY: The total amount of money available for local government financial assistance grants is estimated near the beginning of each financial year in accordance with the Act under which the funds are made available, namely the Commonwealth Local Government (Financial Assistance) Act 1986.

In accordance with the Act, this amount is tied to the estimated Consumer Price Index for the ensuing year, and the final calculation of entitlements for that year cannot be made until after the actual March quarter CPI figure is published.

In years when the Commonwealth underestimates CPI, there is a positive adjustment to the grants for that year. Conversely where CPI is overestimated the grants are adjusted negatively for the year.

In 1991-92, the amount available for South Australia was initially estimated to be $79 894 480 ($61 938 434 for normal funding and $17 956 046 for identified local roads). Following

adjustment for CPI after the March quarter, the entitlement was reduced to $78 915 929 ($61 179 809 for normal funding and $17 736 120 for identified local road grants).

The estimated entitlements for 1992-93 of $62 486 995 for normal funding and $18 252 241 for local roads represent increases of 2.14 per cent and 2.91 per cent respectively over the 1991-92 entitlements, as stated in my letter.

TUNA FARMS

In reply to **Hon. PETER DUNN** (6 May 1992).

The Hon. BARBARA WIESE: Tourism South Australia does not object to all the tuna farm developments in South Australia. It was opposed to the proposed development at Memory Cove due to the high amenity value of the cove both for residents of Port Lincoln and for visitors to the region.

Tourism South Australia are consulted by the SA Planning Commission whenever an aquaculture development application is considered and each application is considered on its merits, taking into account the tourist potential of the area.

SMALL BUSINESS CONTRACTS

In reply to **Hon. PETER DUNN** (1 May 1992).

The Hon. BARBARA WIESE: The Minister of Mines and Energy has provided the following comments in response to the honourable Member's question.

Tenders were evaluated on the basis of estimated time to complete the work, technical expertise, local knowledge, cost and risk. In any evaluation, consideration is given to the need to support local businesses but not to the exclusion of normal commercial considerations. In this instance, commercial and other factors outweighed the factor of providing support to local businesses.

As previously stated, PASA is aware that the Department of Marine and Harbors is not prevented from competing with the private sector and is indeed encouraged to act as a business unit.

With regard to the stated PASA estimated cost of $30 000 and Sea Coatings tenders of $16 488, PASA advise that this contract was a Schedule of Rates contract. That is, tenderers were asked to quote a schedule of prices for eight items of the work. They were also asked to provide their Estimated Maximum Price to complete the whole job based on PASA's estimate of time of three days to complete the job plus allowance for mobilisation, etc. However, the actual final costs would depend on the actual time taken. In the case of the Sea Coatings tender, their Estimated Maximum Price (as assessed by them) was stated in their tender as $30 000. This was subsequently reassessed at $16 000 (approximately) during the tender evaluation stage in consultation with Sea Coatings.

The Sea Coatings reassessed tender value was the third cheapest out of the four tenders received.

CONTROLLED SUBSTANCES (CLASSIFICATION OF OFFENCES) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Controlled Substances Act 1984. Read a first time.

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

That this Bill be now read a second time.

In 1991, the Parliament legislated a very complex and detailed package of Bills which restructured the civil and criminal courts. The undertaking was a major one, and was the subject of extensive consultation and debate. One of the main reasons for the introduction of the package was to redistribute the business of the criminal courts.

One of the more significant contributors to the workload of the District Court was, and is, drug offences. The package proposed to remove some of the more minor cannabis and other drug offences from the District Court into the Magistrates Court. The Statutes Amendment and Repeal (Courts) Act 1991 amended the Controlled Substances Act to achieve this.

One of the changes related to drugs other than cannabis. The change was an attempt to transfer minor non-cannabis trafficking offences from the category of a major indictable offence carrying a maximum of 25 years and/or a fine of $500 000 to the category of a minor indictable offence carrying a maximum of five years and/or fine of $25 000. This was proposed to be done within the existing sentencing structure of the Controlled Substances Act by reference to the amount of the drug involved in the offence.

The point of this part of the courts restructuring package was to change the court of trial for these offences—that is, the court in which the offences would be tried. It was most definitely not to change the effective penalties imposed for these offences. It now appears that, in this area, the objective may have miscarried.

On the advice now available to the Government, it appears that it is possible that any attempt to reallocate trials in this way may have the effect of lowering the effective penalties applicable to these offences. That was not the purpose of the legislation, nor is it the policy of the Government. It is therefore imperative that the matter should be put beyond doubt. That is the purpose of this Bill. It simply repeals the attempt. The repeal must be made retrospective. That is simply because the original change was also made retrospective by section 22 (2) *(a)* of the Statutes Amendment and Repeal (Courts) Act 1991 in accordance with the provisions of the International Covenant on Civil and Political Rights.

I have been advised by the Director of Public Prosecutions that, while he understands and agrees with the intent of the original provision, there is no simple way to achieve its purpose without also affecting in some way the penalties actually applicable in these cases. He is of the opinion that what the current Bill seeks to do is an appropriate response to the problem that he has highlighted. While it is not possible to determine at this stage whether the passage of this Bill will affect the rights of any person to whom the original provision may have applied, he can say that he does not know of any sentence passed since the original provision came into operation with which he would be at all concerned.

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

Leave granted

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides that this Act will be taken to have commenced on 6 July 1992.

Clause 3 amends section 32 (5) B *(b)* of the principal Act—

- by inserting 'or' between subparagraphs (i) and (ii);
- by striking out 'but one-fifth or more of that amount' from subparagraph (ii) (a phrase made irrelevant by these amendments); and
- by striking out subparagraph (iii).

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

CRIMINAL LAW CONSOLIDATION (APPLICATION OF CRIMINAL LAW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 August. Page 31.)

The Hon. K.T. GRIFFIN: This is a complex Bill which deals with aspects of the criminal law, and I hope honourable members will forgive me if I unsuccessfully deal with the complexities of it. It relates to the issues of jurisdiction. Also, although it is claimed in the second reading explanation that the Bill seeks to address a technical issue with respect to the criminal law, it does have significant consequences, and those consequences are in some respects applied retrospectively. In any prosecution in which the jurisdiction for a court to try an offence is in issue, the second reading explanation of the Attorney-General claims that the prosecution must prove beyond reasonable doubt that the court actually has jurisdiction to try the case, and it is based upon the principle that at common law all crime is local and the legislative and judicial power of the State, for example, is constrained by the territory under its control.

I pause here because, certainly in one of the recent High Court cases, *Thompson v the Queen*, in 1988, at least one of the High Court judges takes the view that it is sufficient to have that issue of jurisdiction proved on the balance of probabilities. It was my understanding of the consequences of that decision, although all the judges did not agree, that it was more likely that the proof must be on the balance of probabilities—which is the civil onus of proof rather than the criminal onus of proof, namely, proof beyond reasonable doubt.

The general question of law was raised in 1984, and in the case which occurred then the prosecution could not prove where the crime of murder had taken place. The body could not be found and it could not be determined with any probability, let alone certainty, that, if the accused had killed the victim, where he had done so. The issue was then referred to the Standing Committee of Attorneys-General, which referred it to the Special Committee of Solicitors-General, and the issue came to a head in 1988 and 1989 in the case of Thompson, where there was sufficient evidence for a jury to conclude that the accused had killed four people, but it could not be established whether this was done on the ACT side or on the New South Wales side of the border—or at least that was the assertion in the second reading explanation.

I suspect that an error has crept into the drafting of that because, as I understand *Thomson v the Queen*, in the High Court, it had already been established that the accused had been convicted of murdering four people, but there were subsequent proved murders of children of the same family, where it could not be established whether the murder had occurred in the Australian Capital Territory or in New South Wales. A car was found abandoned after having crashed into a tree on a road in New South Wales—I think it was the Monaro Highway. Two bodies were found in the car. They had been incinerated. Although it had not been investigated with any degree of thoroughness at the time, later, after the accused person had been convicted of four murders in the Australian Capital Territory, of other members of the family, the bodies of the two in the car were exhumed and further forensic tests were conducted. As a result it was established that they had been murdered and that a fire had been set in the vehicle in an attempt to hide the crime. The accused claimed that he had been driving the vehicle, that he had swerved off the road as a result of an oncoming vehicle having caused him to diverge from the roadway, that the vehicle had crashed into a tree and caught alight. However, subsequent investigation indicated that that was not how it occurred at all.

All the ingredients of the crime of murder were able to be established, but it was not able to be established where the murder had actually occurred, because the two victims had not died as a result of the fire, had not died as a result of the accident, and it could not be established where they had actually been killed. The place of the accident, where the car hit the tree, was some 45 metres, as I recollect it, away from the border of New South Wales and the Australian Capital Territory, on the New South Wales side of the border, so it was quite possible that the murders could have occurred in the Australian Capital Territory rather than in New South Wales, where the bodies were found. But those facts could not be established beyond reasonable doubt. The matter went to the High Court and, as a result of the decision of the High Court, the Standing Committee of Attorneys and, later, the Committee of Solicitors-General and the Committee of Parliamentary Counsel came up with this Bill, which is being introduced in all the States and Territories, as I understand it, as a uniform Bill, and it is recommended that the Bill be enacted in each Australian criminal jurisdiction.

The essential proposition of the Bill is that an offence against the law of the State is committed if all elements necessary to constitute the offence exist and the territorial nexus exists between the State and at least one element of the offence. That territorial nexus exists if an element of the offence is or includes an event occurring in the State or the element is or includes an event that occurs outside the State but while the person alleged to have committed the offence is in the State.

The Bill has retrospective application because it does not apply to an offence where a charge has been laid before the commencement of the Bill. If a charge has not been laid the law applies even though at the time the offence was committed an accused person had a right to assert that the jurisdiction could not be established. There are other technical matters that I want to raise in the course of my observations on this Bill.

I shall address several of the matters that are referred to in the High Court case of *Thompson v The Queen*. The judgment of Justice Mason and Justice Dawson dealt with this issue of jurisdiction and stated:

> It was common ground that the jurisdiction of the Supreme Court of the Australian Capital Territory to try the applicant depended upon the occurrence within the geographical limits of the Australian Capital Territory of either the deaths of the two girls or the act or acts causing their deaths . . . The trial judge directed the jury that, amongst other things, they could not convict the applicant unless they were satisfied beyond reasonable doubt that the deaths of the deceased took place in the Australian Capital Territory . . . The submission that the evidence could not satisfy the jury beyond reasonable doubt that the deaths occurred within the jurisdiction has rather more force. No bullets, cartridges or firearm were found at the scene of the collision between the car and the tree. Furthermore, a person who intended to kill the deceased might select a more secluded

venue rather than run the risk of being observed by travellers on the Monaro Highway, which is the main road between Canberra and Cooma . . . On the other hand there is no evidence which connects the deaths of the deceased with New South Wales . . . In these circumstances [referring to other matters as well] we, for our part, have summed up that the evidence does establish beyond reasonable doubt that the deaths of the deceased occurred in the Australian Capital Territory . . . The issue of guilt is necessarily determined within a particular jurisdiction. But the issue cannot be determined unless the prosecution establishes the authority of the jurisdiction to enter judgment. This issue, namely, whether the offence was committed within the jurisdiction, is distinct from that of guilt, namely, whether the elements of the offence are made out. Proof of jurisdiction is a prerequisite of guilt but otherwise it is not an element in proof of the commission of an offence except in those cases in which the offence is so defined that commission of it in a place or locality is made an element of the offence charged. Proof of the commission of the offence must be demonstrated beyond reasonable doubt, but this does not mean that proof of the existence of jurisdiction must first be established beyond reasonable doubt.

It is my understanding that they decided that proof on the basis of the balance of probabilities was adequate. They say:

Accordingly, we conclude that the standard of proof applicable to the establishment of the jurisdiction of a criminal court is the civil standard, that is, upon the balance of probabilities. On this footing we are satisfied that the jurisdiction of the Supreme Court of the Australian Capital Territory to enter judgment in the present case has been demonstrated.

They then referred to a special verdict upon the issue of jurisdiction being desirable to be sought when the matter is before the court.

I understand that Justice Brennan (unless I misread the judgment in the limited time that I have had to consider it) also held that the prosecution's onus of proving locality is generally proof on the balance of probabilities. Justice Deane also refers to proof on the balance of probabilities in respect of jurisdiction. What I would like clarified is the basis upon which, until now, the law has required that proof. I notice that the Bill specifically refers to that proof now being on the balance of probability.

There are several issues on the Bill in addition to that, and I want to draw attention to the issue of retrospectivity. Subsection (4) of new section 5b seeks to provide that the jury is to make the decision about jurisdiction, and provides:

If a person charged with an offence disputes the existence of the necessary territorial nexus, the court will proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of a jury trial, the jury is satisfied, on the balance of probabilities, that the necessary territorial nexus does not exist, it must, subject to subsection (5), make or return a finding to that effect and the charge will be dismissed.

Subsection (5) provides:

If the court, or, in the case of a jury trial, the jury, would, disregarding territorial considerations find the person not guilty of the offence (but not on the ground of insanity), the court or jury must make or return a finding of not guilty.

The difficulty I have with that is that there is a problem where an accused person might be arrested and is required, under this provision, to wait until the trial for the issue of jurisdiction to be resolved. As I understand the law, if a court does not have jurisdiction, it cannot try the person, and a person who claims that a court does not have jurisdiction is entitled to apply to the court at a very early stage, not waiting necessarily until the trial, to assert that the court does not have jurisdiction.

In those circumstances the court has the power to determine whether or not it has jurisdiction and, if it does not, to release the accused person. I suppose, if put in another way, if there is no jurisdiction to try the accused then there is no jurisdiction to arrest the accused in the first place and the accused is entitled, as I think the law generally provides, to take immediate steps to recover his or her liberty.

If one looks back historically one could frame it in terms that no free man or woman in a free society should ever be deprived of that right, but it appears that this subsection compromises that general principle of the law and requires that decision to be taken by the jury, if there is to be a jury trial, rather than by the court at an earlier stage. That suggests to me a compromise of the rights of an individual.

It also raises, I suppose, the question that, if there is to be a committal proceeding, if the court does not have jurisdiction, there is no jurisdiction to bring the accused before the magistrate, and although if that is being asserted by the accused then the accused must surely have the right to be brought before the magistrate forthwith to challenge the magistrate's jurisdiction to commit the accused for trial. Again, subsection (4) suggests to me a compromise of those basic principles which I understand exist in the criminal law. So, to provide in the Bill for the jury to make that decision in the case of a jury trial tends to limit the rights of an accused person. I suppose also one could say that to put a person in jeopardy of a verdict of 'guilty' and equally to put a person to the cost of two trials where there is no jurisdiction to try the accused is really subversive of the whole fabric of the criminal law.

The other issue which is related to that is whether it really is a question for the jury. I would have thought that the question of jurisdiction really ought to be for the judge and not for the jury, and at least Justice Brennan in that High Court case of *Thompson* propounds that view. He says:

The arbiter of jurisdiction is the judge, not the jury. There can be no hearing and determination of the charge by the jury, unless the court has jurisdiction to do so. Of course, the judge has jurisdiction to inquire into any facts that are necessary to determine the court's jurisdiction to hear and determine the charge, but in this country I do not think that jurisdiction to hear and determine a charge depends upon the fact as distinct from the allegation that the crime occurred within a particular territory.

I therefore raise the question whether the issue of jurisdiction is an issue of fact or rather an issue of law or, at worst, a question of mixed law and fact. If it is not an issue of fact, it cannot be an issue for the jury. If it is an issue of law, it must be an issue for the judge. If it is an issue of mixed law and fact, I would suggest also that it is an issue for the judge and not for the jury. I raise it in the context that the whole issue of jurisdiction is very difficult, and one has to wonder whether, because of its complexity, it is in any event an issue for the jury. In conjunction with those issues is subsection (7) of new section 5b, which provides that a power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in this State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist, whether or not that person

suspects or has any ground to suspect that the necessary territorial nexus with the State exists.

I suggest that this opens up a very important issue of the liberty of the individual. I suppose that it does not and cannot override the right of arrest in those circumstances where the offence occurred in another jurisdiction but where there is a warrant for arrest issued in the State in which the accused is currently residing or otherwise located. But I do raise some questions about the desirability of subsection (7) in the context of the reference to a suspicion. I should have thought that it was not so much a suspicion on reasonable grounds that the elements necessary to constitute the offence exist, but a reasonable belief that that was the position. So, two matters really arise under subsection (7).

I have already referred to the issue of retrospectivity. In subsection (8) the new provision is to apply to offences committed before or after its commencement, but it does not apply to an offence in certain circumstances. The one that is relevant is that a charge had been laid before the commencement of this section. On the general issue of principle, I should have thought that, if this legislation is to be enacted or to be across Australia in this or some amended form, it ought not to apply prior to the date when it comes into operation as an Act of Parliament.

That means that all persons who, prior to the date of its commencement, might argue lack of jurisdiction will continue to be entitled to do so. I suppose that it is relevant not so much in relation to crimes of violence but, perhaps, to allegations of fraud. I do not seek to protect those people from the due process of the law, but one must have a level playing field in respect of the application of this legislation.

There are two other matters on which I want to raise questions. In subclause (10) is the definition of 'the State', which includes the territorial sea adjacent to the State—and there is no difficulty with that. It also includes the sea on the landward side of the territorial sea but not within the limits of the State. Presumably, that refers to the sea that intervenes between an island and the mainland, where the island is part of the State but more than the requisite distance between the island and the mainland. It means that there are some international waters intervening. I am not sure whether that applies in South Australia's case, and doubt whether it does, but that could be clarified during the Attorney-General's reply.

Subsection (11) provides that, where a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person will, for the purposes of this section, be taken to be charged with each offence. I have difficulty in comprehending what is intended to be covered by that subsection. It may be that I have not explored it in enough depth, but it would be helpful if the Attorney-General were to explore that issue in reply.

As I said at the outset, I recognise that this is intended to be a uniform piece of legislation. Quite obviously, if it is not, it will create some difficulties as between the States, not in terms of their relationship but in terms of the application of their respective criminal laws. I do have serious concerns about the provision. It may be that all the issues I have raised have been considered by the Solicitors-General and Parliamentary Counsel as well as by the Standing Committee of Attorneys-General but, at this stage, I remain unconvinced that what is being proposed in this Bill adequately addresses the issue.

Although we will allow the Bill to pass through its second reading, we want to explore amendments during the Committee stage. Because it is proposed to be uniform legislation, that may create difficulties, but we as a sovereign Parliament do have the right to propose amendments and to deliberate upon them, and even to pass amendments, if we believe that the principles enshrined in the Bill are inadequate to deal with the issue or deal with it in a way that either creates injustice, or does not deal with it sufficiently clearly to ensure that there is no injustice.

In the context of those remarks, I indicate that the Opposition will support the second reading of the Bill to enable the issue to be further addressed but will reserve our position at the final stage of consideration of the Bill.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his contribution and seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ACTS INTERPRETATION (AUSTRALIA ACTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 August. Page 32.)

The Hon. K.T. GRIFFIN: This Bill is as complex if not more complex than the previous Bill dealing with the criminal law. This Bill, too, has very extensive retrospective application and that will be one of the issues that I address during its consideration. I sent the Bill to a number of people for comment: several were in university law schools here and interstate. Unfortunately, I have not yet received their responses. It may be that, during the Committee stage, I will seek the indulgence of the Chamber to ensure that I can relate the advice that I receive in relation to the Bill.

In 1985, all States requested the Commonwealth Parliament to enact the Australia Act, which was enacted by the Commonwealth and the United Kingdom Parliaments in 1986. In South Australia, it was the Australia Acts Request Act of 1985, which included in a schedule the Act which this State and other States requested the Commonwealth and the United Kingdom Parliaments to enact. That Act dealt with a wide range of issues affecting the status of the legislatures of the States and of the legislation enacted or sought to be enacted by those legislatures. Among other things, the legislative package of 1985 and 1986 was designed to remove Australia's dependence upon United Kingdom law for its validity and also to remove any legal and constitutional impediments to the States' legislative power.

The Bill seeks to overcome a concern expressed by someone—and it is not clear by whom—that legislation passed by the States before the Australia Act might still be held to be invalid, either because the States did not have legislative power to make laws having extra-territorial operation or they were repugnant to United

Kingdom law. I pause there to request that, in his reply, the Attorney-General might indicate who prompted the consideration of this issue and its subsequent presentation in this Bill.

The Bill has retrospective application. What it seeks to do is validate all legislation passed by this State before 1986 back to 1857, removing any challenge to the validity of those laws because of inadequate power in the State Parliament. I suggest that it has some effect prior to 1857, but I will deal with that later. The argument of the Attorney-General is that the Bill is basically of a precautionary nature. He says that no cases have yet arisen where it has been demonstrated that there is any inadequacy in the law. He argues that it will 'remove the risk of unwarranted technical objections to laws passed prior to 1986 which have been considered to be valid and have operated and been in force accordingly.'

That may be the judgment of the Attorney-General and the Government but I suggest that it is a superficial assessment of some of the cases that have been argued from time to time where the validity of legislation passed by South Australia has been challenged, and sometimes successfully. Those cases sometimes relate to issues such as fishing laws in offshore waters and other legislation passed by the State.

The issue of retrospectivity is of major concern. There is no indication by the Government as to how it will affect any individual. It may be that a citizen has been advised on his or her rights on the basis of the law as it is, taking advantage of what might be a problem with the legislative power of the State prior to 1986, and that person may have acted upon that advice. It may be that, in the criminal area, there is an issue relating to territorial jurisdiction in addition to the one that I have already addressed. I think that one can assert that, at least on some assessment, this is a piece of heavy-handed bureaucratic intervention which makes some judgments, perhaps moral judgments, about the validity of the law. However, what the Bill does not address is the likely areas where this blanket provision is to have some effect.

Of course, if the law is defective, that is, law passed prior to 1986, we ought to identify what the defect is and bring it up in specific legislation to correct it, if it is felt desirable from a public policy point of view to do so, but not to act retrospectively. One area of advice that I have received is important enough to develop in the course of this debate. One of the persons to whom I referred the Bill has responded that the effect of the new provision is debatable. That person says:

> On the one hand, the amendment may be construed as having very little practical significance. On the other hand, the new section has a capacity to be given an operation which will have a significant impact on the construction of legislation. The narrow view will be that Australia had already become a nation by the time the Australia Acts were passed and the powers of the States to legislate extraterritorially had become well established—so long as a relevant nexus existed between the subject matter and the State. The position is reviewed in *Port McDonnell Professional Fishermen v South Australia* in 168 CLR 340 at pages 370 to 373. It is necessary to demonstrate a real and substantial connection with the State so that the law may be described as being a law for the peace, order and good government of the State.
>
> Gibbs J. [as he then was] in *Pearce v. Florenca* 135 CLR at page 518 said, 'A relevant connection between the persons or circumstances on which the legislation operates and the State . . . should be liberally applied, and that legislation should be held valid if there is any real connection—even a remote or general connection—between the subject matter of the legislation and the State.'
>
> On this view, the report on the Bill which has been introduced is not literally correct when it says:
>
> 'Before the commencement of the Australia Acts the legislative powers of the State were limited in at least three ways:
>
> 1. The State Parliament had no power to pass laws having extraterritorial effect.
>
> 2. . . .
>
> 3. . . .'
>
> It is arguable that the Australia Acts in this limited respect reinforced by new section 22b are merely confirmatory of the position as it has already evolved under the general law as explained by the High Court. However, the author of the parliamentary report upon the Bill apparently takes a different view. (The Bill undoubtedly does address the repugnancy question in relation to imperial law and in this limited respect may deal with residual arguments which might exist as regards inconsistency between old imperial laws and old South Australian laws. However, it is the extraterritorial question rather than the repugnancy question which this memorandum seeks to address.)
>
> 3. *(a)* The wider view of the Bill is that combined with the Australia Acts (1986), section 2, and the Acts Interpretation Act section 22b, will effectively broaden the construction and ambit of the Acts of South Australia introduced before 1986; this comment must be read subject, of course, to the over-riding effect of the Australian Constitution. The question will arise as to whether the Australia Acts are only declaratory of the existing position or whether they 'confer a capacity' on the States which did not previously exist.
>
> Australia Act (1986) Commonwealth, section 2, reads as follows:
>
> > 2. (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.
> >
> > (2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.
>
> *(b)* Upon the view (expressed in the parliamentary report) [that is, the second reading report] that the Australia Acts 'removed the residual colonial fetters on State legislative powers by providing that State legislative powers include the power to make laws having extra-territorial operation . . . ' then section 22b of the Acts Interpretation Act may operate quite dramatically.
>
> There would appear to be no reason why a law of a State should not operate so as to affect conduct and transactions in other States (or in nearby waters) if there is some nexus with the legislating State. Upon this view there may then be questions as to whether the apparently conflicting laws of two States must be reconciled. Such a situation will arise when the policies (and resultant legislation) of two State Governments are dramatically opposed. Therefore, in the field of termination of employment, for example, there could well be questions as to which State has the right to regulate a transaction where an employee is working outside his or her home State. Likewise in the offshore waters, to States may well have inconsistent policies for the regulation of activity.
>
> The manner of resolving such a conflict was alluded to by Zelling J. in *Hodge v. Club Motor Insurance* (1974) 7 SASR at page 102, when he said:
>
> > . . . In this state of conflict of authority I state my own view with much trepidation but it is this: that provided there is no conflict between the law in South Australia and the law in Queensland, and here there is not, the combined effect of subsections 118 and 51 (xxv) of the Constitution and section 18 of the State and Territorial Laws and Records Recognition Act is to provide a substantive right in the cases to which it applies and that this is one such case. If there was such a conflict, one would have to go on and consider the effect of section 118 on conflicting 'sister-State' statutes, a matter which has caused much judicial debate in the

United States. But it is fortunately not necessary to do so here.

The debate was developed in the argument of the Solicitor-General for New South Wales (Mr K. Mason, Q.C.) in the case of Port MacDonnell professional fishermen and South Australia, who which I have already referred. At pages 352-3, he says:

> 'The waters in the wedge-shaped area are adjacent to South Australia, even though they are also adjacent to Victoria. If a conflict occurs between the laws of two or more States purporting to regulate the same conduct, it will be resolved according to the rules of private international law and, where necessary, section 118 of the Constitution. The law with the predominant territorial nexus will prevail: *Breavington v. Godleman.* [He referred to *Alaska Packers Association v. Industrial Accident Commission of California*; *State Farm Mutual Automobile Insurance Co. v. Duel*; *Hughes v. Fetter*; *Allstate Insurance Co. v. Hague*; *Phillips Petroleum Co. v. Shutts.*] Sections 5 (6) *(c)* and 14 of the Fisheries Act (S.A.) are valid as laws for the peace, welfare and good government of the State. The South Australian Parliament has power to make laws which operate extraterritorially so long as there is some connexion, even a remote and general one, between the subject matter of the legislation and the State.

One must compare the remarks of the Solicitor-General with the terms of the Parliamentary report.

Section 22b is drawn in a circuitous fashion in the form of a deeming provision. It is not possible for the South Australian Parliament to alter the effect of the Australia Acts. However, the South Australian Parliament may deem all local Acts to take effect as if they had been passed after the Australia Acts of 1986.

It seems to me that section 22b operates to give all Acts passed before 1986 a new and potentially wider effect. That effect will be dependent upon whether or not section 2 of the Australia Act does widen the powers of the States. If the Australia Act confers additional power (as opposed to confirming existing power), then section 22b must extend the ambit of operation of some State laws. However, that ambit may be restricted by the framework of the Australian Constitution, section 118

When section 22b says that an Act 'is as valid and has the same effect', does the section speak only for the future or does the section give to 'old' South Australian laws a different and wider operation between 1986 and 1992 than would otherwise be the case? The possibility of retrospective operation should be recognised, although alternatively section 22b could be construed so as only to operate prospectively.

As I said at the outset, one of the problems is that we do not know what the effects of this Bill will be, however much the Solicitors-General assure us that it is technical and desirable. Let me give honourable members some other examples. I suppose there is a point that there should be some saving of rights which have accrued to anyone prior to the coming into force of the Australia Act 1986. Many rights were made or obtained under imperial laws applying here, or by imperial or gubernatorial grants—for example, glebes and many land grants would not stand with our later legislation, say, under the Crown Lands Act, and there are many other examples. If this legislation is passed, which gives our earlier Crown Lands Acts the force which the Bill seeks to give to them, it is then a question whether that will have the effect of overriding some of these land grants and glebes retrospectively.

One other issue was raised with me about the Bill, a suggestion that, provided it did not operate retrospectively, it was desirable, but it does not address the issue of the future status of imperial Acts of Parliament, and there are still several hundreds of those, as far as I am aware. They applied in South Australia not by inheritance but by paramount force, and the tests are different. In the first case, the test is whether the Act is a public general Act, capable of being applied here on 28 December 1836, and in the second case the rationale is: was it thought necessary for imperial unity to apply the Act here or was it a validating Act for something done or not done in this State? Which test is to be used hereafter to decide the applicability of all imperial laws, inherited or otherwise? That is an important area of concern which appears not to have been addressed in the development of this legislation.

The inclination of the Liberal Party is to oppose the Bill. We are far from convinced that this blanket provision is desirable or necessary. If there are problems with particular specific items of legislation, then it is our view that they ought to be specifically addressed, and not dealt with by this broad sweep of legislation, where the effect is unknown and, in the context of the advice I have already quoted for the benefit of honourable members, depends very much on the interpretation of the scope of the Australia Act 1986. It is in those circumstances, therefore, that, although inclined to oppose the Bill, we will at this stage allow the Bill to pass the second reading but are likely, in the absence of any convincing argument for the Bill, to oppose it at the third reading and to suggest that there ought to be a more detailed investigation of the issues, consulting widely within the community about the consequences. If there are specific issues that need to be addressed by legislation, then let us do that, rather than the blanket provision.

Because it is such an unknown quantity and there is likely to be disagreement between lawyers and constitutional experts on the application of this law, I think it is unwise to hastily proceed with it. The response of the Government may well be, 'Well, Solicitors-General have worked through it and Parliamentary Counsel has worked through it.' I would suggest that, even though that may be the case, there are still problems with it, and one has to be very cautious before moving on something so dramatic as this piece of legislation. It may only be technical, but more than likely it is going to have substantive effects which have not been identified in the second reading explanation and which do need to be addressed before this Council proceeds further with the Bill.

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

SUMMARY PROCEDURE (SUMMARY PROTECTION ORDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 August. Page 246.)

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contribution to this Bill. The Hon. Mr Griffin has raised a number of issues and I shall deal with these in turn. Prior to doing that it is important to clarify one aspect of the Act's operation, as it involves hearings which confirm interim restraint orders. The Hon. Mr Griffin stated:

> An order can be made by the court in the absence of the defendant if the defendant was summoned but failed to appear or even in the case where the defendant is not summoned to appear. In that latter case the defendant is required to be summoned to

appear before the court to show cause why the order should not be confirmed. The order is not effective after the conclusion of the hearing to which the defendant is summoned, unless the defendant does not appear at that hearing in obedience to the summons and the court confirms the order.

This implies that an interim restraint order only becomes 'confirmed' if the defendant fails to appear. In fact, the interim order may be confirmed after a hearing of evidence from both the victim and the defendant. The defendant must show cause why the order should not be confirmed. An interim order is not effective after the hearing unless either the defendant has not attended or the court, having considered the defendant's evidence, confirms the order. It is important to bear in mind that an interim order is only confirmed and becomes permanent after the defendant has been given an opportunity to give his/her side of the story in open court.

The Hon. Mr Griffin expresses concern about making orders of this nature by telephone, and refers to the making of orders relating to telephone interception and the making of an order for an issue of a warrant by telephone. Applications for orders equivalent to section 99 restraint orders have been able to be made by telephone in Queensland since 1989, and in the Northern Territory also. No abuse of the process has been noted in either State or Territory.

The Hon. Mr Griffin has misgivings about the procedure and suggests that audio recordings should be made of the telephone conversation between the magistrate and the complainant and any other witnesses to whom the magistrate speaks. The order to be made by the magistrate is an interim order only, and is subject to confirmation in the way I have just described. Thus, the defendant will have an opportunity to argue the merits of the case in open court. In any event, the Bill envisages that the magistrate will be able to speak to or at least to communicate with the defendant before making an order. In that sense, the defendant will be in a better position than he or she would be in where an application for an interim order is made in open court, but in the defendant's absence.

The Hon. Mr Griffin states that it seems wrong to be able to detain a person indefinitely and goes on to suggest that a one hour time limit would be appropriate. The Bill already provides that the person cannot be detained indefinitely. The person must be released on the happening of the first of the following:

(a) when an order has been dealt with (that is, the application has failed)

(b) when the order has been served (that is, the application has been successful)

or

(c) four hours after being detained (that is, the application has not been finalised).

Four hours is seen to be an acceptable upper limit within which to enable an application to be processed by telephone.

The Hon. Mr Griffin queries the need for a confirmatory hearing as the Bill is drafted. However, proposed subsection 2a *(c)* makes it clear that the only type of order which can be obtained by a telephone application is an order under section 99 (4)—namely, an order which is subject to a confirmatory hearing and states that the document filled out by the member of the police constitutes an order and a summons to the defendant under subsection 99 (4). The summons referred to is the summons which requires the defendant to attend at court to show cause why the interim order should not be confirmed.

The Hon. Mr Griffin also suggested that the 'confirmatory' hearing should be held within seven days of the making of the interim order. Interim orders are currently listed for hearing promptly after the making of the interim order. Delays between the making of interim orders and the actual confirmatory hearings do occur. However, these result from the fact that the interim orders have not been duly served on the defendant before the date allocated for hearing of the confirmation proceedings. Hence, those proceedings are unable, in many cases, to proceed on the first allocated date. If the honourable member proposes to move an amendment providing a legislative requirement that the confirmatory hearing must be listed for hearing within seven days of the making of a telephone order, I would be prepared to give the amendment favourable consideration, although that may need to be subject to some qualifications to overcome the problem that I have outlined.

In relation to the Hon. Mr Griffin's concern about the use of emergency radio, it is envisaged that virtually all applications will involve the magistrate and the person making the complaint communicating verbally with each other. The inclusion of the police emergency radio system within the definition of 'telephone' is designed to add much more flexibility to the ways in which applications can be made. There may well be occasions where, instead of using the telephone, it will be much more convenient to utilise police radio links. For instance, it may be preferable in some instances to have the police retire to the relative peace and quiet of the patrol car to radio through an application.

Police communications capabilities are such that police radios in the metropolitan area can be connected via the Police Communications Centre into the public telecommunications network. This means that a member of the police would be able to talk into the police radio, while the magistrate uses a normal telephone. The wide meaning assigned to the word 'telephone' is designed to enable the flexibility of modern technology to be fully utilised.

The honourable member's concerns about making an application by fascimile seem to be overcome when one notes that the court satisfy itself:

1. that the complaint is genuine; and
2. that the complaint is so urgent that the court is justified in making the telephone order.

While a complaint may be laid by fascimile, it is unlikely that a magistrate would be satisified on either of these grounds without speaking to available witnesses. As it seems improbable that a normal telephone would not be available for use if a facsimile machine is, I think the likelihood of an application being dealt with purely via facsimile transmissions would be slight, and the likelihood of such an application being successful would be even more remote. Further, I re-emphasise that this is an interim order only and that the defendant will have an opportunity to address the court fully at the subsequent confirmatory hearing.

The Hon. Mr Griffin refers to the question of increased penalties for offences of breaching restraint orders. As I

indicated in the second reading explanation, I am currently examining this issue, particularly in view of concerns expressed about the leniency with which breaches of restraint orders are dealt with by the courts. The review involves the consideration of penalties for second or subsequent breaches of an order by the same offender. That review will be completed after the reasons of the Full Court in the Traeger case are fully assessed. Those reasons were in fact handed down on 25 August, and I would envisage dealing with those matters in the Committee stage.

The final point raised by the Hon. Mr Griffin is in relation to firearms. The honourable member would like to see the court's discretion concerning the making of orders about firearms and firearms licences reinforced. The Bill has been drafted with the recommendations of the National Committee against Violence in mind. Those recommendations make it quite clear that firearms should be removed from all situations in which violence occurs. The provision has been drafted so that the court does retain a discretion about making an order, while at the same time evincing a clear intention that it is only in exceptional circumstances, where the court assesses that there is not any risk that the defendant will utilise a firearm as an instrument of violence, that an order removing a firearm or a firearms licence should not be made.

The provision has been drafted in this way in order to achieve a balance between the need to remove firearms from situations where violence occurs and the need to ensure that courts retain appropriate levels of flexibility in sentencing options. However, that is obviously a matter about which there can be further consideration if necessary during the Committee stage.

The Hon. Ms Laidlaw raised several related queries about the way in which the South Australian Police Force handle domestic violence incidents. Police are directed to treat reports of domestic violence incidents seriously and promptly, and they are required to undertake investigations to ascertain whether criminal offences, such as assault, have occurred. South Australian police are committed to the promotion of the unacceptability of violence in the home.

Members of the police are directed to initiate applications for restraint orders in cases where there is sufficient evidence to do so and where the victim is prepared to provide a signed statement and to attend court. If the member has any doubt as to the adequacy of the evidence, the member must initiate the application, and the prosecution section of the force determines whether to proceed. Where more than one of the parties to a dispute indicate that they wish to apply for a restraint order, the members at the scene are unable to act as complainant for either party, and advise the parties to take their own civil action.

The answers to the questions placed on notice by the Hon. Ms Laidlaw bear out the proactive role played by police in this State in the area of application for restraint orders. I inform the Council that 96.1 per cent of applications for restraint orders in 1991 were initiated by police. Since 1984 the figures show that more than 90 per cent of applications in each year have been taken out by police. As these figures include all applications for restraint orders and not only applications in domestic violence situations, I think it is fair to assume that the proportion of applications for restrain orders made by police in domestic violence situations is even higher.

Bill read a second time.

SOUTH AUSTRALIAN COUNTRY ARTS TRUST BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. DIANA LAIDLAW: I am keen to know the Minister's proposal for the commencement of this Act. I would also like to know what arrangements she proposes will be undertaken with respect to local councils the in various proclaimed areas. The review itself laboured the point, through a number of recommendations, that it was desirable that there be local council involvement in the provision of office accommodation, assistance with accounts and the like. The councils to which I have spoken have received no formal approaches from any quarter suggesting some involvement, notwithstanding the release of this report in March, and I have received advice from two councils that they have reservations about being involved in extra activity at this time of any sort when they are concerned about the gaining of rates and the expenditure of rates for any further purpose.

I have also received advice from the Corporation of the Town of Renmark, which has discussed this matter at a council meeting, as follows:

> This matter was considered at the recent meeting of council and as a result I advise the council is opposed to any placement of responsibilities on to local government without committed matching funding from the Government on an ongoing basis. Any such arrangement must be on a negotiated contract basis between the State Government and local government on terms and conditions as agreed by local government. Accordingly, your support in achieving that objective would certainly be appreciated.

It is quite apparent from that letter that Renmark council for one has not been involved in negotiations in this case, and I wonder how the Minister proposes that this whole operation will be established and how the cost savings will be effected without substantial support and cooperation from respective councils.

The Hon. ANNE LEVY: With regard to those two questions, I will answer the second point first. With regard to the negotiations with local councils, there have been discussions with a number of the councils regarding provision of accommodation and, as I indicated in reply to the second reading debate, there have been offers from a number of councils to provide accommodation, particularly for the regional arts development officers, and such arrangements are in place in some council areas and others have offered.

However, with regard to the other matter of councils undertaking some of the payroll functions, perhaps, it was made very clear in the review that this would be on a fee-for-service basis. There is no question of asking local government to undertake such services for arts activities without remuneration. So, the fears of the council in this regard are misplaced: it has always been understood that any such arrangement would be on a fee-for-service basis. In terms of negotiation on this matter, we have had

numerous discussions with the Local Government Association (LGA), which has undertaken to negotiate with the councils, as it is the peak body that deals with local councils.

On several occasions I have spoken to the President of the LGA about this, and I understand that a meeting to explore this in depth with the relevant councils will be taking place next week. It is not a matter that has been forgotten or ignored, but the timing of these discussions has been within the province of the LGA which, as I say, will be continuing those discussions next week. It still leaves 3½ months before it would become operative, so it is not as if the agreement must be signed, sealed and delivered within a very short time. I stress that the review suggested that things such as payroll functions would be undertaken, hopefully, by local councils on a fee-for-service basis.

With regard to the honourable member's first question, it is proposed to proclaim the Act in sections: first, to proclaim section 21, so that the country arts boards can proceed to be established. Before the trust can be fully established, there will need to be nominations from the five country arts boards. Other nominations to the trust can be made earlier, but 50 per cent of the members of the trust will be nominated by the country arts boards, so that the trust cannot be established until the country arts boards are established.

Clause 21 deals with the establishment of the country arts boards, so the first matter to be attended to on passing the legislation will be the proclamation of those sections of the Act dealing with the country arts boards, in particular, section 21, which will then enable procedures to be followed to have the country arts boards established. Once the five of them are established, it will be possible for the trust to come into operation through the nomination of their members to the trust. We still very much hope that the trust will become operative on 1 January but, as I am sure members would appreciate, this is a pretty tight timetable, particularly as another place will not be able to debate this legislation for several weeks.

Consequently, proclamation of any part of it cannot occur until later. I can assure the Council that, as soon as the Bill has passed, we will proceed with the utmost speed and have things ready so that the establishment of the country arts boards can proceed as rapidly as possible—hoping still to meet the target of 1 January.

The Hon. DIANA LAIDLAW: I suspect that the budgets for this year for the new trust and for each new country arts board have been framed with that 1 January deadline in mind. If it is not possible to implement these measures by that deadline, has the Minister some contingency for additional funding to cover the existing arrangements, which are, I understand, more expensive in administrative terms than are the new arrangements?.

The Hon. ANNE LEVY: I am sure that the honourable member will have seen from the budget papers that there is an allocation for the Country Arts Trust, predicated on that trust's coming into existence on 1 January. The existing cultural trusts have been allocated resources sufficient to carry them to 31 December. If the Country Arts Trust is not able to come into existence on 1 January, contingency arrangements will need to be made, obviously, to enable the existing cultural trusts to meet their salary bills.

Equally, I presume, those resources would need ultimately to come from what has been predicated for the Country Arts Trust. However, we hope that that will not happen and that the trust will come into operation on 1 January.

Clause passed.

Clause 3 passed.

Clause 4—'Establishment of trust'.

The Hon. DIANA LAIDLAW: Clause 4 (2) provides that the trust is a body corporate with full juristic capacity. Is that a deliberate change in respect of this Bill alone or a change we will see in terms of wording for all Bills establishing statutory authorities? It is the first time that I have seen this expression.

The Hon. ANNE LEVY: I am afraid I am unable to answer that. The Bill was drafted by Parliamentary Counsel. I am happy to consult with Parliamentary Counsel to see whether this is a new form of words it intends using from now on.

The Hon. DIANA LAIDLAW: If the Minister is seeking advice, will she also check whether there is a change in emphasis from the traditional words to which we are accustomed in this place in respect of statutory authorities?

The Hon. ANNE LEVY: I am happy to do so.

Clause passed.

Clause 5—'Membership of trust.'

The Hon. DIANA LAIDLAW: I have a question with respect to subclause (1). Will the Minister advise the reason for the change in respect of the appointment of members to the trust? Currently, the appointment of members to the Cultural Trust is by the Governor. Under this provision, the goal is that they be appointed by the Minister. In summing up the debate, the Minister said that appointment by the Minister would involve submissions to Cabinet. Is this part of deregulation or is there some other reason for changing from the standard practice of appointment by the Governor?

The Hon. ANNE LEVY: It is not a matter of enormous moment. It is a question of simplifying the procedures of Executive Council. With a view to deregulation, there is a desire that the Governor and the full procedures of Executive Council should not be required for a number of appointments unless absolutely necessary. There is a trend to try to simplify this in terms of procedures. My indication that they would be appointed ministerially did not mean that they would not be approved by Cabinet.

The Hon. Diana Laidlaw: Will the names be printed in the *Gazette*?

The Hon. ANNE LEVY: Not necessarily. Any appointment by Executive Council has to go in the *Gazette* but I imagine that, having obtained Cabinet approval, there would be a public announcement of the members of the trust. It is something that would warrant public announcement. Information would be provided to the media in Adelaide and to all the country outlets to ensure a far wider knowledge of the members of the trust than there would be by publishing their names in the *Gazette*. It is not on the best-seller list, I understand.

The Hon. DIANA LAIDLAW: The *Gazette* may not be on the best-seller list but people such as I read it so that we can keep an eye on what the Minister is doing in respect of various appointments. Neither the Minister nor I can rely on the fact that her public statements are published in the press.

The Hon. ANNE LEVY: I will make sure that the honourable member gets a copy.

The Hon. DIANA LAIDLAW: I am happy with that. I move:

Page 2, lines 17 to 26—Leave out 'selected from a panel of two such members' wherever occurring.

I am concerned about the manner in which the Minister aims to appoint the trustees to this very important Country Arts Trust. Subclause (1) *(b)* records that one of the 10 trustees will be a person nominated by the Local Government Association of South Australia. However, when it comes to the five proclaimed regions and the five Country Arts Boards, they have to submit to the Minister the names of two people, and the Minister selects one to be a trustee. I believe that there is a basic inconsistency in that. I do not see why we can entrust one nomination to the Local Government Association, which the Minister is obliged to accept, but not to the Country Arts Boards, given that the Minister herself makes nominations to those boards. It seems to me to be a slight on the capacity of country arts people and the country community in general.

I know that, in respect of the Regional Cultural Trust, which is not a statutory authority but is in place at present as a coordinating body, there is a provision that two people are nominated from whom the Minister selects one. I do not see that that precedent is necessary when moving across to the new trust. This trust is a totally new organisation. It is almost all-powerful in terms of future country arts activities, and in various public statements the Minister has made known her view that the Country Arts Boards will be subservient to the Country Arts Trust. Therefore, as we are taking away the statutory powers of the Regional Cultural Trust, the very least we can do is ensure that country representation from the Country Arts Boards is made on the nomination of those Country Arts Boards and is accepted by the Minister.

The Hon. ANNE LEVY: I oppose the amendment but in doing so I insist that it is not a reflection on the Country Arts Boards or their membership, given that they comprise local residents and people who are interested in the arts in country regions. I also insist that we are not weakening the Country Arts Boards. Their function will be different from that of the Regional Cultural Trusts and they will have much greater autonomy than do those cultural trusts. It is generally agreed that this change is welcomed by the arts community in the regional areas as providing them with greater local autonomy and greater responsibility for the development of the arts in their region.

My reason for opposing the amendment ties up with an amendment that I will move to insert a new subclause (3). My amendment proposes that each Country Arts Board puts forward two names, one of whom will become a trustee and the other of whom will become the trustee's proxy. During the second reading debate, there was some discussion about proxies and I agreed wholeheartedly with the honourable member that there should be provision for proxies. However, I will oppose her amendment regarding proxies, which seeks to provide that the person selected as a proxy is chosen purely by the trustee, need not be a member of the board, need not have any relationship whatsoever to the board and could be a different person at every meeting. That would provide far less stability than is desirable for an important body such as the trust. One would not want half the membership being completely new at every trust meeting, which could occur if the honourable member's amendment, which will be moved later, were successful. What I am suggesting is that the Minister would have the responsibility of choosing which of the two people nominated by each board will be the trustee and which will be the proxy to that trustee. So, there would be a fixed proxy who would presumably become as conversant with the business of the trust and consequentially be as able to contribute to the work of the trust as the trustee to whom they are proxy.

The reason for retaining flexibility with the Minister is that the Minister will need to see that there is a balanced composition of the trust. If the first nomination from each board was someone interested in the performing arts and the second was someone interested in the visual arts and if that applied for all five boards, one would have a very unbalanced board. It is surely desirable that the board have a balance of interests. It should have some people with interests in performing and visual arts, and crafts, people with business abilities and qualifications, and there should be a balance of men and women. It is important that the composition of the Country Arts Trust have a broad representation of the arts community and those interested in the arts in regional areas. For balance it is desirable to keep the final choice from the two who are nominated from each board to the Minister to enable a really balanced trust to be achieved. But my amendment relates to the second person automatically becoming the proxy. That second person obviously has the trust of the board which puts their name forward and can, therefore, act as a proxy and, as I have said, become as involved and knowledgeable about the affairs of the Country Arts Trust as the trustee originally appointed. I oppose the amendment and foreshadow my amendment after line 29 to make clear my reason for opposing the amendment.

The Hon. DIANA LAIDLAW: I receive with enthusiasm the advice that the Minister agrees with the Liberal Party that provision for proxies is important. I note not only that she agreed with enthusiasm but that she has amendments to that effect on file. Instructions were given for my amendments before I had spoken in this second reading debate and before I received advice that the Minister found this proposal acceptable. Therefore, I will not push this issue to the degree I first intended. Nevertheless, I remain of the view that we should have one nomination from the Country Arts Boards, and I still believe there is an inconsistency between that provision for Country Arts Boards and what the Minister is prepared to accept with respect to the Local Government Association nomination, that is, one single nomination compared to two nominations from the boards. I note on the record that it was never my intention that a proxy, as a representative of the trust, would be represented by anyone else but another member

of the board to the trust and, because that was not my intention, I did not read my amendment in any other but that light. So, I see that my amendment is flawed in terms of my intentions, and I will move that in an amended form at the appropriate time.

The Hon. I. GILFILLAN: I find the Minister's argument more persuasive than that which supported the Hon. Diana Laidlaw's amendment. If the proxy factor is useful for the boards, why does that same argument not apply for the Local Government Association?

The Hon. ANNE LEVY: I suppose it does. In my experience, the Local Government Association has nominated people to arts bodies, and they are represented on many arts bodies. The people it has nominated have been extremely dedicated, enthusiastic—

The Hon. I. Gilfillan: Would that just be as far as the proxy goes? If it is useful to have two for the proxy, why not have two so that the LGA can have a proxy that is named?

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: I would not want to suggest that people would not want to be dedicated and enthusiastic. But, as the honourable member discussed previously, people who come a long way can have difficulties in coming to Adelaide for meetings, whether or not they are farmers. In concert, that was very much behind my reasoning for accepting enthusiastically the notion for proxies. I agree with the honourable member, and I would be happy to undertake to move the appropriate amendment in another place to ensure that, likewise, there is a proxy from the Local Government Association.

The Hon. J.C. IRWIN: I support the amendment moved by my colleague the Hon. Diana Laidlaw, and I express some disappointment at the fact that the Hon. Mr Gilfillan has not seen fit to support the amendment at this stage. I would have thought that the principle in the amendment was that the board would best know who should represent them. I do not think that they would want to put forward two, three or four—or in this case two—names for someone else to make that decision. The principle is that the board, with its regional autonomy, would want to put forward the person it thought best represented it. That is the way I would want to go.

If a name were put forward, it would be on the understanding that that person had the respect and support of the board. Not two names, but one name should be put forward so that there is autonomy, where the trust is making some of the major decisions. It should not matter from what discipline that person came, whether the board member appointed to go forward to the trust was a farmer, a housewife, a person in a shop or from one of the arts disciplines. We are looking for the best people. I do not think it is good enough for the Minister in the end to judge and juggle those five names that will come forward, throw them all up in the air to see whether the Minister can find that balance. As soon as one of those people cannot go and a proxy comes in, the balance is gone anyway. It may not suit the Minister's judgment of balance. I am saying not political balance but her advice as to the best trust. I use that argument to support the principle of the amendment, which is to give the board the right to put the best person forward. I do not disagree with the foreshadowed amendments of the proxy also coming from that board. That should be as set out in the Hon. Diana Laidlaw's amendment, as it is printed. That will now be amended to make sure that that proxy comes from the board itself and it will not just be automatically that second name, if this amendment is not accepted. I urge this Committee to accept the amendment.

The Hon. DIANA LAIDLAW: I am interested in the way in which this debate has revolved, I suppose one could say, because the Minister indicated that the reason that she was not going to support my amendment that there be one person nominated from each of the Country Arts Boards, and that she would be required to support that nomination, was on the basis that she had a further amendment about proxies. Now she says that, in respect of the Local Government Association, she is prepared to move, in the other place, for a proxy. If she is prepared to do that, is she also, in terms of consistency, going to say now that one should be a member nominated by the Local Government Association, selected from a panel of two such members nominated by the association? That would be the only consistent way that she could fairly argue this without showing any sense of discrimination between what she is prepared to apply as a standard to the LGA and what she is prepared to provide as a standard to the Country Arts Boards.

The Hon. ANNE LEVY: I will certainly give consideration to that. However, during the time before the Bill is debated in the other place I will obviously have to have discussions with the Local Government Association on this matter. As the honourable member knows, the new relationship between the State Government and local government means that discussions always take place with the Local Government Association.

The Hon. Diana Laidlaw: Well, they didn't with the miscellaneous provisions Bill.

The CHAIRMAN: Order!

The Hon. ANNE LEVY: I can think of examples where honourable members opposite moved amendments without having consulted with the Local Government Association, on numerous occasions.

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis can enter the debate in a proper manner.

The Hon. ANNE LEVY: Mr Chairman, I point out that the Hon. Mr Davis is not only interjecting but he is not even in his place, and he should remain completely silent when not in his designated seat in the Chamber. As I said, I will certainly have discussions with the Local Government Association on this matter and I would be quite happy for the honourable member to do likewise. As I say, I will certainly see that an amendment is brought into the other place.

The Hon. DIANA LAIDLAW: There is no need for me to consult with the Local Government Association on this matter because it was never my intention to move that there be proxy situations there and it was never my intention to move away from one person being nominated by the LGA, because I know that is what it wants. But what they want they have got, and that is what makes me so cross with this situation, namely, that the Minister is prepared to distinguish between a standard that she deems to be appropriate for the Local Government Association

nomination but to apply different standards to the Country Arts Boards. As I indicated earlier, I was not going to push this, but now that the Minister is prepared to accept a proxy situation for the Local Government Association, but still only accept one person nominated by the Local Government Association, and not accept my amendment, I indicate that I intend to divide on this amendment.

The Committee divided on the amendment:

Ayes (7)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, J.C. Irwin, Diana Laidlaw (teller), R.J. Ritson and J.F. Stefani.

Noes (8)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy (teller), R.R. Roberts, C.J. Sumner and Barbara Wiese.

Pairs—Ayes—The Hons K.T. Griffin, R.I. Lucas and Bernice Pfitzner. Noes—The Hons Carolyn Pickles, T.G. Roberts and G. Weatherill.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. ANNE LEVY: I move:

Page 2, after line 29—Insert new subclause as follows:

(3) Each trustee who is a member of a Country Arts Board will, until his or her office becomes vacant, have as his or her proxy the other member of the board comprising the panel nominated by the board under subsection (1).

I do not think it is necessary to discuss this further, as the matter was discussed in relation to the last amendment.

Amendment carried; clause as amended passed.

Clause 6—'Terms and conditions of office.'

The Hon. J.C. IRWIN: I refer to subclause (3), which concerns the entitlement of trustees to such allowances and expenses as the Minister may determine, and I think the same provision applies in clause 22 (3), which provides that a member of a Country Arts Board is entitled to such allowances and expenses as the Minister may determine. How will that be determined? Will something be laid down in regulations? Further, if a person who is appointed to preside over the trust is a public servant will that person be entitled to expenses as well or will that be covered by the remuneration that they receive as a member of the public service?

The Hon. ANNE LEVY: This would follow exactly the same practice as applies to every other board and trust that is established under legislation. The Commissioner for Public Employment advises on the appropriate level of remuneration, and I may say that for most arts bodies it is a fairly low level of remuneration—a sessional fee—which does not do much more than cover expenses. Likewise, the chair would have any remuneration as recommended by the Commissioner for Public Employment, and normal Government procedures would apply that no public servant receives remuneration for serving on any trust or board. That would apply not only to the chair but to any other member who might be nominated by a Country Arts Board, that remuneration would not be paid.

The Hon. J.C. IRWIN: That is usually written in, but will trust members who come from regional arts areas be entitled to travel expenses that are paid by the trust or is that likely to be paid by the board?

The Hon. ANNE LEVY: It would be paid by the trust: that is the normal procedure, that the body to which members belong, when taking part in the meetings of that body, have their travel expenses met by that body.

The Hon. DIANA LAIDLAW: I will not move this amendment as it appears on file because I lost an earlier amendment with respect to the appointment of a specific person nominated to the Minister and subsequently to the trust. However, I believe that one aspect of my amendment is relevant and that there is a deficiency in the Bill. My amendment refers to the office of a trustee becoming vacant if the trustee dies, if the trustee completes a term of office and is not reappointed, if the trustee resigns by written notice addressed to the Minister, or, if the trustee is removed from office by the Minister under subsection (4). I believe it is important that there should be a further defined provision where the trustee ceases to be a member of the board, and that is already part of my amendment. Therefore, I move:

Page 3, after line 8—Insert new paragraph as follows:

(ca) being a trustee appointed on the nomination of a Country Arts Board the trustee ceases to be a member of the board.

The Hon. ANNE LEVY: I am very happy to accept the amendment.

Amendment carried; clause as amended passed.

Clause 7—'Procedures of trust.'

The Hon. ANNE LEVY: I move:

Page 3, line 18—After 'trust' insert 'or proxies of trustees, or both,'.

This and the following two amendments to this clause are consequential on accepting the principle that proxies should be available as trustees of the trust.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 3, line 22—After 'trust' insert 'whether personally or by proxy'.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 3, line 25—After 'voting' insert '(whether personally or by proxy)'.

Amendment carried; clause as amended passed.

Clause 8—'Conflict of interest.'

The Hon. ANNE LEVY: I move:

Page 3, line 35—After 'matter' insert 'whether personally or by proxy'.

Amendment carried; clause as amended passed.

Clause 9—'Functions and powers of trust.'

The Hon. ANNE LEVY: I move:

Page 4, line 21—Before 'enter' insert 'subject to this Act,'.

This is a technical amendment in the clause that determines the functions and powers of the trust and provides that it can enter into contracts and acquire, hold, deal with, or sell or dispose of real or personal property, and so on. It is being inserted subject to this Act, in that there are in later amendments proposals both from Ms Laidlaw and me, although we differ in their form, that will, in some ways, limit the trust's powers to enter into contracts, or to acquire, hold, deal in, sell, or dispose of real or personal property, and so on. So, these are consequential amendments on what is to come, but it would be necessary regardless of which amendment was accepted later.

The Hon. DIANA LAIDLAW: I am happy to accept the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: Under clause 9 (1) *(b)*, one of the functions and powers of the trust is to act as an advocate for country arts. How does the Minister envisage that this will work when the trust itself, under clause 10, is subject to the general direction and control of the Minister? From my experience in Parliament and earlier working with Ministers, I have not seen any trust work effectively as an advocate for any body that it is meant to be representing when it is actually subject to the general direction and control of the Minister because the two, in my experience, are at odds. I note that clause 10, which provides that the trust will be subject to the direction and control of the Minister, certainly was not a provision in the earlier Cultural Trusts Act.

The Hon. ANNE LEVY: I can recall numerous Committee discussions on Bills in this Chamber where there has been discussion as to what is meant by 'general direction and control'. It certainly does not mean that the Minister has the power to direct down to the finest details or to say, 'Thou shalt' or 'Thou shalt not' on detailed policies or decisions which the trust can make. However, the direction and control is inserted as a general guiding of the trust by the Minister that if the trust is doing a State Bank and is not undertaking—

The Hon. Diana Laidlaw: It's lucky there are any funds for country arts after the State Bank.

The Hon. ANNE LEVY: In response to that irrelevant interjection, I can say that there will be more funds for country arts than there were in the past, as I have stated on numerous occasions.

As to the question that was asked, the 'general direction and control of the Minister' is inserted to ensure that, if the trust should go off the rails, running up enormous debts there will be no chance whatsoever of its ever being able to meet, the power is there for the Minister to indicate the broad general direction that the trust should take. In no way do I see this as being opposed to acting as an advocate for country arts. Advocacy can be in many quarters: it can be advocacy to Government but also can be advocacy in country communities. It can be advocacy to local government or to the local Chamber of Commerce in a particular area.

One can advocate the cause of country arts in many different circles, and I can assure the honourable member that, although she and I may share a great enthusiasm for arts in the regional parts of South Australia, that enthusiasm is not shared by everyone in the population. I hope that the Country Arts Trust will be able to advocate the cause, desirability, necessity and value of the arts through regional South Australia in many different quarters, and join the honourable member and me in our laudable aims of trying to stress the importance of the arts in regional areas of South Australia.

The Hon. DIANA LAIDLAW: I have a further question, which relates to clause 9 (2) *(c)*. The clause provides 'engaged in any business or activity that promotes country arts'. What is actually meant by 'business'? Does it mean entrepreneurial production or does it mean engaged in selling product such as T-shirts, cards, and so on?

The Hon. ANNE LEVY: Obviously, 'business' covers anything that is entrepreneurial, and this is an entrepreneurial activity that promotes country arts.

The Hon. Diana Laidlaw: So, they could be setting up small businesses and competing with the private sector, or those sorts of things?

The Hon. ANNE LEVY: I would take it to cover the type of activity the honourable member has suggested. They could produce tee-shirts with the emblem of their country arts board or with 'Country Arts Trust' emblazoned across them, which would be part of the promotion of country arts. Commissioning the production of such tee-shirts and then selling them would be a business promoting country arts. I do not imagine that many members of the trust or their staff will actually do the screen printing; they are much more likely to commission it from somewhere.

As part of their promotion of country arts, they would be endeavouring to have these tee-shirts worn by as many people as possible throughout South Australia. That would constitute a business within the terms of the Act.

The Hon. DIANA LAIDLAW: The review spoke about the need for a common ticketing service between the various cultural trusts (now to be called country arts boards), in particular in theatres. Clause 9 (2) *(e)* refers to providing ticketing services for productions. Has the budget this year for the Cultural Arts Trust and the Country Arts Trust provided funds for this computer ticketing approach for productions in future?

The Hon. ANNE LEVY: There is no provision in the budget for the existing cultural trusts, which we expect to terminate on 31 December, to undertake common ticketing. There has been some discussion among the various cultural trusts, but it has never gone very far. Certainly, the new Country Arts Trust will do what it considers best for it, but there have been suggestions that it might look at a BASS system or the equivalent, which could operate in the regional theatres.

I am sure that this would be of advantage to many country people who, if they wish to attend a performance at one of the regional theatres, must either attend personally at the box office or send a cheque, and cannot book seats nearly as easily as we in the city can by means of BASS. Clause 9 (2) *(e)* is an enabling provision: it does not mean that the Country Arts Trust must organise a BASS or its equivalent, but it will be enabled to do so and, if it considers it worthwhile, I presume, will follow up its feasibility.

The appropriate budget allocations would then need to be made. There is no allocation for this financial year, but it is most unlikely that the Country Arts Trust would reach the stage of requiring resources for this purpose before 30 June next year, since it comes into existence only on 1 January.

Clause as amended passed.

Clauses 10 to 12 passed.

Clause 13—'Staff.'

The Hon. DIANA LAIDLAW: I have a number of concerns in relation to staff. As the Minister indicated, there is to be more money for regional arts. That is not correct in the sense that there will be a cut in the budget to regional arts activities of $500 000, and those funds will be deployed for other purposes. Part of that funding cut will arise from the fact that there is a cut in staffing numbers by about 11.5 full-time equivalents. There is considerable agitation within the cultural trust staff at

present as to who will be given this limited number of jobs.

As I said during my second reading contribution, there is particular concern amongst those trusts that obliged the Minister and department some time ago and put officers on contract. Now they are being penalised for having done so and, having met the instructions of the department, now find that those people are vulnerable, since the department has issued instructions that it is those with permanent employment who will be given preference. Will the Minister advise whether she is prepared to reconsider that situation because she is penalising those trusts who have honoured the requests of the department in terms of putting people on contract?

The Hon. ANNE LEVY: I am not sure what the honourable member is asking. I understand that nobody who had a permanent position was forced to go on contract: that it was up to the individual to decide whether he or she accepted an offer of going on contract or remaining as a permanent employee. The difference is fairly obvious but there were other compensations for being on contract compared with being permanent employees. I stress that no-one was forced to cease being a permanent employee and become a contract employee.

With regard to future arrangements, the review recommended a reduction in the overall number of staff members, mainly in the area of administration. Routine administration and bureaucracy are being reduced by the establishment of the Country Arts Trust and a large part of the savings that will be made in consequence will go back to actual arts product in regional areas. Reductions in staff are affecting not only the country regions but also the metropolitan area. Quite a number of these positions are already vacant so the number by which the overall staffing will be reduced is a lot less than the 11 which the honourable member mentioned.

There is continuing discussion between management, staff and unions regarding the principles to be adopted in appointing staff for the Country Arts Trust and the procedures that will be followed. A set of draft principles has been drawn up. I do not think it has been agreed to finally but I will be surprised if the final principles differ from the draft principles. These principles will be followed and, as for any Public Service department or related organisation, the staffing arrangements will follow the accepted procedures, which are well known to anyone with any association with Government.

The Hon. DIANA LAIDLAW: I did not suggest, as the Minister intimated, that anyone was forced to go on contract, and I would not accept those circumstances, anyway. I would like the Minister to be fully aware that there is difficulty and considerable concern in this area. I would like her to know that a number of people in some trusts are on contract. I am advised that:

> Following the introduction three or four years ago of the trusts' industrial agreement, each trust undertook to negotiate with senior staff to place those employees in contracted positions. Those staff employed by trusts which have carried out this agreement have now been placed in an extremely disadvantaged position in relation to similar staff employed by trusts which had not completed the process before the implications of the Regional Arts Review became known and the implementation of the contract process ceased completely.

The trusts believe collectively that, under these circumstances, there is a clear moral obligation to treat those staff members adversely affected in applying for positions in the new structure in the same manner as those staff who should have been contracted by now but are not. There is tension in that area and I hope that the Minister will handle that situation with more care than was indicated in her answer today.

I am also interested in the Minister's intentions in terms of the Director of the new Country Arts Trust. She would know that there is extreme interest in what is happening in the Arts Department and the farming out of arts personnel to various arts organisations around the State. Basil Arty made reference to this in his column on Saturday, as follows:

> BistroMole notes that while unemployment might be rife, it's jobs, not problems, for Departsch folk. Ken Lloyd to the Art Gallery, Denzil O'Brien to Carrick Hill, Rick's brother Jim Schoff to the indigenous peoples' festival and Lithe Lenny Amadio to Chris Hunt's Scratchies one.

I think that means that he is assistant to Christopher Hunt at the Festival of Arts. There is considerable concern that the Minister or the Chief Executive Officer will seek to off-load another person from either the cultural promotions unit or the corporate services section as Director of the Country Arts Trust. I would like her reassurance about the manner in which the position is to be advertised, if it is to be advertised in the Arts Department internally or amongst officers on the redeployment list or more widely in the general community. There are considerable rumours that a Mr John Mitchell has his eye on this job and that the job has been set up for him. On behalf of people who are interested in country arts activities and arts generally, I would like to learn what the Minister's approach will be to this important position of Director of the Country Arts Trust.

The Hon. ANNE LEVY: It is quite unnecessary for the honourable member to start mentioning names, although I accept that Basil Arty can be named and I will comment on those remarks first. The honourable member would know, I am sure, as Basil Arty obviously does not, that the Art Gallery and Carrick Hill are part of the Department for the Arts and Cultural Heritage. It is not jobs for the boys or girls if someone moves from one division of the department to another division. That person remains with exactly the same employer, with exactly the same CEO, with exactly the same Minister and with exactly the same terms and conditions of employment. It seems to me no more relevant than if a typist moved from one office to another office within the same department. I assure the honourable member that Carrick Hill and the Art Gallery are part—very important parts—of the Department for the Arts and Cultural Heritage. The department does not consist solely of the officers in the Capita building. They are a very small minority of the members of the Department for the Arts and Cultural Heritage.

Having said that, I indicate that all contracts will be honoured, and I am sorry if I did not make this clear in my previous response regarding the employees of the cultural trusts. There is no suggestion that contracts will not be honoured. The only substantive part of the honourable member's question relates to the position of Director for the new Country Arts Trust. Of course, this is not part of the department: it is a separate statutory body. However, it is a Government body, and it would be possible to call for interest at the first instance solely

within the Public Service. That certainly would be possible. However, discussions have been held with the Commissioner of Public Employment, who has agreed that this position will, from the outset, be advertised publicly—and internally. Of course, this does not mean that public servants will not be eligible to apply; indeed, they will. It will be an open advertisement for which anyone can put in an application.

Clause passed.

The CHAIRMAN: I point out to the Committee that clause 14, being a money clause, is in erased type. Standing Order 298 provides that no questions shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clause 15 passed.

The CHAIRMAN: I point out to the Committee that clause 16, being a money clause, is in erased type. Standing Order 298 provides that no questions shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clause 17—'Budget.'

The Hon. DIANA LAIDLAW: I was interested to know whether the trust would be able to receive tax deductable donations, as the cultural trusts are now able to receive tax deductable donations, and whether she envisaged that the Country Arts Boards will also be able to receive tax deductable donations.

The Hon. ANNE LEVY: Of course, that is a matter which is decided by the Federal Government. I would certainly expect the Country Arts Trust to apply for tax deductable status, and I would be very surprised if it were not granted that tax deductable status, purely on the analogy of other arts bodies which have applied and received tax deductable status. But it will be a matter for the Country Arts Trust to apply and a matter for the Federal Government to determine whether such status is granted.

Clause passed.

Clauses 18 to 20 passed.

Clause 21—'Membership of Country Arts Boards.'

The Hon. DIANA LAIDLAW: I move:

Page 7, line 33—Leave out 'approved by the Minister' and substitute 'prescribed by the regulations'.

This clause refers to the membership of country arts boards, and it is proposed that six of the eight members appointed by the Minister will be persons nominated by local residents and persons of a prescribed class in accordance with procedures approved by the Minister.

I note that in the Cultural Trusts Act subscribers are elected to cultural trust boards by regulation, and I believe that standard should apply in this instance as well. I heard the Hon. Mr Gilfillan interject, 'A good idea,' so I assume that that is an acceptance for my amendment.

The Hon. ANNE LEVY: I do not think it makes much difference one way or the other. If the procedures are in regulations, it can be harder to change them. For example, if it is found that the election procedure is not a very good one, if there is to be an election or if the procedures in terms of forms or something need to be changed, it is harder to change a regulation. I do not see that it matters very much. However, this is certainly one of the clauses that would be proclaimed as soon as possible after the Act passes Parliament. I would certainly be signing a certificate to say that the regulations which would govern the nomination of local residents and persons of a prescribed class needed to come into operation immediately and not wait four months before they became operative, as that would be a completely untenable situation, which would make it impossible to get the Country Arts Trust off the ground by 1 January.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

[Sitting suspended from 6 to 8.15 p.m.]

SOUTH AUSTRALIAN COUNTRY ARTS TRUST BILL

Adjourned debate in Committee (resumed on motion).

Clause 22—'Terms and conditions of office.'

The Hon. DIANA LAIDLAW: I move:

Page 8, lines 15 to 21—Leave out subclause (5) and substitute new subclause as follows:

(5) The office of a member of a Country Arts Board becomes vacant if—

(a) the member dies;

(b) the member completes a term of office and is not reappointed;

(c) the member ceases to be a local resident;

(d) the member resigns by written notice addressed to the Minister;

(e) being a member appointed on the joint nomination of councils—the councils, by notice in writing to the Minister, jointly revoke the nomination;

or

(f) the member is removed from office by the Minister under subsection (4).

The amendment aims to provide for the office of a member of the Country Arts Board to become vacant if, being a member appointed on the joint nomination of councils, the councils jointly revoke the nomination. This is similar to an amendment that was accepted earlier in Committee when we were discussing the Country Arts Trust, and the Minister agreed at that time that it was acceptable that, if the nominating association revoked the nomination, that member would then cease to be a member of the trust. This applies the same principle to the Country Arts Board. It may be that the Minister may want to accept this as a paragraph *(da)*. Paragraph *(e)* is the new part; but the Minister may wish to accept it as a paragraph *(da)*, as she did last time, or accept the whole thing in full.

The Hon. ANNE LEVY: I oppose the amendment. This is making a difference between the local government representative and the other members of the Country Arts Board. If we compare the proposed new subclause (5) with the existing provision, we can see that all parts are identical except for paragraph *(e)*. All the other parts are the same, in that, for example, obviously a member ceases to be a member if the member dies, the office becomes vacant if the member completes a term of office and is not reappointed, if the member ceases to be a local resident, if the member resigns by written notice, or if the member is removed from office by the Minister under subsection (4). The new part is that which relates to a

member who is appointed on the joint nomination of councils and where the councils can revoke the nomination. This I would oppose. It seems to me that if someone is appointed by the councils for a two-year term, unless that person ceases to be a local resident or wishes to resign, that person should be able to continue as a member without being recalled by the group, by the councils which have nominated the person. I believe there should not be this power for the councils to cancel the nomination of the person they have put forward, that if they have put forward the name of someone in good faith to be a member of the Country Arts Board, and that person is a member of the board and so appointed for a two-year term, that person should be able to fulfil that term without fear of suddenly being recalled halfway through their term. This would be quite unprecedented.

The Hon. Diana Laidlaw: It is in the current Cultural Trusts Act—how can the Minister say it is unprecedented?

The Hon. ANNE LEVY: Well, it has certainly never been used. It may be that in the current Act people are appointed for indefinite terms, not for specified terms, and obviously if people are appointed for an indefinite term the appointing body must be able to change its membership at some time if it so wishes. But in this case people will be appointed for two-year terms, and the Chair can be appointed for a three-year term. I feel that, if the local councils of the area nominate someone for a two-year term and they are appointed for a two-year term, provided they do not become incapable of fulfilling the obligations of the office, they should have the right to complete that term, and not be recalled at some stage in their term. If their activities on the board do not meet with the approval of the joint councils they have a remedy in their own hands not to reappoint that person at the end of the two years, because obviously the councils would be asked for another nomination at that time and it would be up to them. I feel that if someone has been appointed to a board, in good faith, they should have the opportunity to act as they think fit, in the interests of the board, for that two-year term for which they have been appointed.

The Hon. I. GILFILLAN: I agree with the Minister's assessment of the situation. If the Chair is appointed for a three-year term, are we to presume that that person will automatically be reappointed by the appointing council? What is the background to that?

The Hon. ANNE LEVY: I take it that at the time of appointment the presiding officer can be appointed for three years—although it need not be; it could be a two-year term—and any other member can be appointed for a two-year term. So, if the local government nominee was chosen as the presiding officer of the board then that could be a three-year term and it would not be until the three years was up that the council group would be asked for another nomination.

The Hon. I. Gilfillan: That would apply also to local boards, would it?

The Hon. ANNE LEVY: Yes, it would apply for whatever term people were appointed. The nominating body or individual would run their term, and then whatever procedure was used to make them members of the board would be followed through in the same way: they could either be reappointed or a change could be made.

The Hon. DIANA LAIDLAW: Perhaps I can more adequately answer the Hon. Mr Gilfillan's questions. Clause 22 (2) provides:

> A member of the Country Arts Board is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as a member of the board for more than six consecutive years. So, to be the presiding officer they could have two terms of three years or, for a general member, three terms of two years. But, there is a limit of six consecutive years in all instances.

I was a little surprised to hear the Minister's reasons for opposing this amendment. It is hardly an unprecedented provision because it is already in the Cultural Trusts Act, and if the Minister was familiar with that Act she would realise that there are time limits on the terms of office: for instance, a trustee is to hold an office for a term not exceeding three years. Therefore, I think that the Minister has been ill-advised or ill-informed in the arguments that she has presented against this amendment, but I appreciate that I do not have the numbers.

Amendment negatived; clause passed.

Clauses 23 and 24 passed.

Clause 25—'Functions and powers of boards.'

The Hon. ANNE LEVY: I move:

> Page 9, after line 20—Insert new subclause as follows:
> (3) Where a Country Arts Board acquires works of art under this Act, the Board will not be subject to any control or direction by the trust concerning the disposal or care, control or management of such property.

This amendment relates to subsequent amendments to the schedule, to which the Hon. Ms Laidlaw also has amendments on file. Perhaps I could discuss them all together, as I think that they form a package of which this amendment is only a part.

The current situation is that all the property of the cultural trusts belongs to the Crown, and likewise with the new Country Arts Trust all the property of the trust will belong to the Crown—so there is basically no change in that regard. However, there is fear in some of the regions that the arts collections that are held by the regional cultural trusts will have their residence and ownership in some way threatened.

I am sure that everyone will agree that that is not what is intended, and there have been consultations and discussions as to how best to achieve the aim—the aim being to ensure that the arts collections are held and managed for the benefit of the communities in which they are located—and there is no argument about that aim.

One could use as an example the Riddoch art collection which is currently held by the South-East Cultural Trust at the Riddoch Art Gallery in Mount Gambier. I use that as an example because it is the largest art collection that is held by a cultural trust, and the other three cultural trusts hold a more limited collection of art works. Under the terms of the Bill the ownership of these art collections will pass to the Country Arts Trust, which is part of the Crown, as are the cultural trusts to which they presently belong.

What is at issue is how to ensure, in a legislative manner, that these art collections remain in the regions for the benefit of those communities. There is a strong sense of ownership and identification with these collections in the various regional communities.

The group of amendments that I am putting forward, most of which are in the schedule, will, if passed, result in ownership passing from the regional cultural trust to the Country Arts Trust, but not only will the Country Arts Board in the region where these art collections are located have the complete care, control and management of these art collections but also they cannot be directed by the trust regarding that care, control and management. I think that this is important to ensure that local people feel that they have the control of those art collections. That is what is wanted and that is what we aim to achieve.

Furthermore, there is a provision that the works in the collection cannot be sold without the written approval of the local country arts board, so the Country Arts Board will have the complete care, control and management of these works of art without having the financial hassles of ensuring that they are adequately conserved and curated; that will of course remain the responsibility of the Country Arts Trust. But their disposal, their care, their control and their management will remain with the local body. In this respect my amendments do differ from the amendment of the Hon. Ms Laidlaw.

Furthermore, my amendments go further in that they deal not only with the current works of art in that collection, but also with any future works of art which the collection may acquire. Many of the works of art in these collections have been donated by local residents, and obviously this sense of local identity and identification is likely to result in more works of art being donated or otherwise acquired for these collections.

My series of amendments makes sure that any further works of art which these collections may have added to them would be under the care, control and management of the local board, and the trust could not give any directions regarding these works of art which are acquired after the passing of the Act, nor could the trust in any way cause them to be sold or disposed of in any way contrary to the wishes of the local board. This whole collection of amendments achieves the aim of ensuring that these local art collections will remain in their local areas under the care, control and management of the local board, and hence their identification with their local area will be maintained as exists at the moment.

I should perhaps indicate to the Committee that this series of amendments has been discussed with the regional cultural trusts. I met with a fairly large proportion of the South-East Cultural Trust only last Friday and discussed them in detail. I was told there was agreement of all members present with the series of amendments that I was putting forward. This was confirmed by telephone calls as late as this morning. So, the amendments I am putting forward do have the agreement of the cultural arts trusts around South Australia as adequately protecting their interests in keeping local art collections under local control, local management and consequently retaining their local identity which is what everyone wishes and no-one is in any way suggesting should not occur.

The particular amendment before us deals not with the current collections but with works of art which may be acquired in the future by the collections. It is part of the whole package and consequently I have discussed them together as they all hang together as a whole.

The Hon. DIANA LAIDLAW: I find myself in a bit of a dilemma with respect to this amendment. I have no objection to its wording. I have particular objection to the full explanation that the Minister gave in respect to this amendment for her later amendments to the schedule.

I believe that future works of art collected or acquired by country arts boards should not be under the control of the trust. In part, I feel inclined to accept this amendment, although I would have to register my very firm objection or any wish to be associated with the explanation that the Minister gave for this amendment. Perhaps I should speak to the amendments and give my full explanation of that when we come to the schedule. I am happy to accept the amendment at this time.

The Hon. I. GILFILLAN: This discussion appears to be expanding to take in the whole issue of ownership of works of art. I should like to indicate that I am sympathetic to there being local ownership, although I understand from an explanation that was kindly given to me this afternoon that it is really a nicety of wording and presentation rather than reality: that the ownership of the objects will firmly rest with the trust. Unless I am persuaded otherwise, that is my understanding.

However, having spent much of my life in a relatively remote rural area, I believe that there is a psychological factor that carries some weight in assessing the best way to deal with this. It is very hard not to realise that there is more sense of ownership and pride in material that is ostensibly owned by the community in which the work of art or enterprise exists.

I agree with the Hon. Ms Laidlaw that, as it reads, this subclause does not appear to do any harm and seems benign enough. However, it seems also that it is linked to the amendments to the schedule. That is where this question of nominal ownership will be determined.

The Hon. Anne Levy: The Crown will have ownership.

The Hon. I. GILFILLAN: In essence, it does, but unless the Hon. Ms Laidlaw's foreshadowed amendments are complete nonsense, there is some credibility in her formula in place giving the local rural community a sense of more 'ownership' than if it were quite clearly and blatantly stated, 'All those things are there; you can look after them, determine whether they are sold and what happens to them but, in essence, they belong to the trust.'

That is what I see as a significant dividing line in the debate, and I indicate that, with my sensitivity to the rural community and the sense of pride it will have, the Hon. Ms Laidlaw's foreshadowed amendment appeals to me more.

However, it does seem to exclude any works of art that come into the fold after this date. It may be something that the Hon. Ms Laidlaw will want to ponder, with some help from Parliamentary Counsel. Unless there is some overriding argument, I am inclined to support her amendment to the schedule in preference to that of the Minister. I cannot see what damage this will do if it is passed.

The Hon. Diana Laidlaw: It does stand alone.

The Hon. I. GILFILLAN: I believe it does, and I would be quite happy to support it. In fairness to the debate, I ought to indicate the way I feel about the scheduled amendments.

Amendment carried; clause as amended passed.

Clauses 26 to 30 passed.

Schedule.

Clause 1 passed.

Clause 2—'Transfer of property, etc., of cultural trusts, etc., to Country Arts Trust.'

The Hon. ANNE LEVY: I move:

Leave out subclause (1) and substitute new subclause as follows:

(1) Subject to subclause (2), on the repeal of the Cultural Trusts Act 1976, all real and personal property and rights and liabilities of the bodies specified in column 2 of the table below are transferred to and vested in the trust.

Under either set of amendments, the works of art are owned by the Crown; they are State property. The question is whether they are vested in the trust or in the arts board. In both cases their care, control and management are put into local hands, and there would be complete local control of the assets; hence the identification with the local community.

The arguments against vesting the ownership of the works of art with the country arts boards relate to the basic trust of this Bill. Under the Bill it is intended that all the assets should be owned by the trust. The advantages of the trust's having formal ownership of all the assets is that the administration and management of them is vested in one central body. In this way, the overheads and administrative costs will be considerably reduced, because all the general management of assets will be done centrally.

The whole thrust of this legislation is to reduce overall administrative costs so that more money is released for regional arts development. There will be more arts product locally.

Furthermore, as the country arts boards will have no responsibility for managing assets, their energies and efforts will be freed up to concentrate on their prime task of regional arts development. They will not have to worry about managing assets; that is not their concern. If this concept is changed, it will compromise the relative roles of the trust and the boards and tend to blur the distinction that currently is clearly within the Bill.

Also, the amendments that the Hon. Ms Laidlaw is proposing, vesting ownership with the boards, will require further significant amendments to the Bill, particularly in relation to the powers and functions of country arts boards.

Their powers and functions as set out in clause 25 do not contemplate that they will have ownership of and, therefore, responsibility for assets. The situation could also arise where the Country Arts Board might own a work of art but it would be housed in premises that are owned and controlled by the trust. This could be a fairly complicated arrangement. There is no suggestion that any buildings will be owned by the local board: they will be owned and administered by the Country Arts Trust.

Difficulties may well arise if the works of art are housed in a building that is owned by the trust. The amendments that I have moved achieve local control of the works of art: there is no doubt about that. In terms of ownership, it will be no different from what it is at the moment where they all belong to the Crown. However, local control and management of these works of art will be achieved to the satisfaction of all the existing cultural trusts without in any way compromising the intended relationship between the Country Arts Boards and the Country Arts Trust, which is set out elsewhere in the legislation.

The Hon. DIANA LAIDLAW: The Minister really does lose the plot on occasions, and tonight she has done so again. I move:

(1) Subject to this clause, on the repeal of the Cultural Trusts Act 1976, all real and personal property and rights and liabilities of the bodies specified in column 2 of the table below are transferred to and vested in the trust.

The Hon. Anne Levy: There is no need to get bitchy, Di. We are discussing this seriously.

The Hon. DIANA LAIDLAW: I am discussing it seriously. I am very serious.

The Hon. Anne Levy: There is no need to get bitchy about it.

The Hon. DIANA LAIDLAW: I am sorry about the Minister's sensitivity, but I am equally sensitive about this issue. I have spent many hours, as I know the Minister has, in trying to address this matter to the satisfaction of the local arts communities.

Members interjecting:

The ACTING CHAIRMAN (Hon. M.S. Feleppa): Order!

The Hon. DIANA LAIDLAW: I feel equally sensitive about the subject and I believe that my sensitivity was reflected in the statements made by the Hon. Mr Gilfillan. I am very keen to see that country people are satisfied in this matter. They feel very strongly about the issue of ownership, and their view is—

The Hon. Anne Levy: They are happy with my amendments.

The Hon. DIANA LAIDLAW: Minister, you spoke to four of the eight board members, all of whom were appointed by you, and I suspect that they may feel under some obligation to you because of that role and any future role that they may have on that board. Of more interest than the opinion of half the board—not the majority, as the Minister said—to whom she spoke the other day are the very strong feelings expressed by the Riddoch Art Gallery Society, which is a strong supporter of the art collection based in the South-East. At its recent annual general meeting, the society passed the following resolution:

The Riddoch Art Gallery Society, which has contributed in a major way to the Riddoch Art Gallery collection, expresses its serious concern that ownership might pass out of the South-East and the society moves that the South-East Cultural Trust does all in its power to retain ownership and control of the collection in the South-East.

I strongly support those sentiments. That group has the closest association with the gallery and the collection.

The Hon. Anne Levy: They were represented at the meeting I had.

The Hon. DIANA LAIDLAW: By one person. That one person did not reflect the sentiments expressed at the annual general meeting, and I understand that some difficulty arises from that matter. The Minister has to appreciate, and, in turn, I appreciate that the Hon. Mr Gilfillan understands this point, that this collection, over which the Crown is now seeking to reinforce its hold, was inherited by the local council.

The Hon. Anne Levy: Some of it.

The Hon. DIANA LAIDLAW: The vast majority of the collection has always been in local ownership. It was

inherited by the local council, which entrusted it to the cultural trust for safekeeping and display on behalf of the citizens of Mount Gambier when that trust was established 11 years ago (in 1981). I think that the local people were more satisfied with the situation over the past 11 years when they knew that they had a statutory authority with very strong powers of influence and status. Those powers have been removed by this Bill, and I can understand their sensitivities about the collection.

It has been amazing to witness that this issue, which arose with the release of the review report in March, has required hours of work from the Minister's office, from me and from others over the past few weeks, and I register my disquiet that it has been debated in this heated and intense atmosphere at the latest hour. I am pleased to hear that the Hon. Mr Gilfillan endorses my concern that this matter of local collections must be addressed in the future as local ownership, not merely care and control.

The Hon. I. GILFILLAN: I am perfectly satisfied that the debate is basically one of semantics. The amendment that the Committee passed to clause 25, as I read it, gives the local board virtually total control as far as disposal, care or management of works of art is concerned. The vesting or naming of how the actual ownership is phrased—

The Hon. Anne Levy: That is the future ones. Clause 25 refers to those that will be acquired in the future. We are talking here about those that exist now.

The Hon. I. GILFILLAN: The Minister rightly interjects to point out that this amendment applies to the future but it clarifies what is the approach in the Bill, which will eventually be an Act, to these works of art. If it is acceptable for that to be the procedure in the future, I cannot see that there is any great objection to its applying to the works of art that are embraced in the present. As I indicated earlier, it is my intention to support the amendment moved by the Hon. Diana Laidlaw. The question as to what was to happen with works of art that came into the legislation later on have been clarified. The amendment that we have passed deals with it, so I feel reasonably assured that, by passing the Hon. Ms Laidlaw's amendment, the situation will be the best that we can offer the regional boards, and we will not be threatening the long-term preservation and security of those works of art.

The Hon. DIANA LAIDLAW: I would like to respond to the Minister's whispered comments across the Chamber. It was put to me earlier—and I will not name the officers in the Minister's office with whom I spoke—

The Hon. Anne Levy: You don't usually mind naming people.

The Hon. DIANA LAIDLAW: All right, I don't mind saying it was the Minister's so-called adviser on this matter, Ms Boswell. She indicated to me that one of the reasons why the Government would not be prepared to accept the amendment I was moving or the sentiments expressed by the local communities at that time was that it was likely that the trust would not deny the funds to the boards for the maintenance of this collection. If that is so, there will be not only local outrage but also outrage in this Parliament.

I warn the Minister of that at this time. In terms of country arts activities it has always been understood that there is a responsibility not only to the performing arts but to the visual arts from this State to the local level. That suggestion by the Minister's adviser and the whispered suggestion across this Chamber tonight is also contrary to what happens in every other State, and particulary our neighbouring State of Victoria which has the strongest and most enviable record of regional art gallery activities and art collection activities, built up during earlier years. They are owned by local government at the local level and they are also owned by—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: They do not. I have spoken to the Victorian arts officers on this subject to clarify the situation—they are very heavily supported by the State Government. They have been amazed by the trends in this State to centralisation, whereas in Victoria, which has an enviable record for regional arts collection, the trend is not only strong State support for those collections but I have been advised that they are developing a policy which gives more power to the local councils and to other local bodies for those collections.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, so it is a matter of ownership. It is interesting to see that, where local arts flourish in regional areas, it is local ownership that has been responsible for that state of affairs.

The Hon. ANNE LEVY: I must respond to those last comments of the Hon. Ms Laidlaw. It is a complete distortion of the facts.

The Hon. L.H. Davis: You are not being bitchy, are you?

The Hon. ANNE LEVY: I am not criticising the Hon. Ms Laidlaw as a person: I am criticising her arguments. There is a considerable difference. In South Australia, the nucleus of the Riddoch art collection was originally owned by local government. It was the local government that found it did not have the resources to look after it; it did not have the resources to curate it; it did not have the resources to undertake the proper conservation measures which the collection required. It was because local government was not able to undertake this responsibility that it welcomed the setting up of the South-East Cultural Trust and passed the collection to the Crown so that the Crown could adequately manage the collection, could give it the conservation and curation that it needed. It has flourished as a collection since it ceased being in local government ownership. Those are facts, whatever the Hon. Ms Laidlaw may say.

To suggest that if local government only had control everything would be lovely indicates that she has not consulted the Local Government Association on that aspect. I am equally sure that local government would not want that responsibility and welcomes the setting up of the trust which will take on that responsibility of curation, conservation and management of very worthwhile art collections.

The Hon. Anne Levy's amendment negatived; the Hon. Diana Laidlaw's amendent carried; clause as amended passed.

The Hon. ANNE LEVY: I move:

After subclause (4) insert new subclause as follows:

(5) A body specified in column 1 of the table below (a 'new body') has the care, control and management of all works of art owned by the old body specified opposite in column 2

immediately before the repeal of the Cultural Trusts Act 1976 and—

(a) the new body will not be subject to any control or direction by the Trust concerning the care, control or management of such property;

(b) the Trust must not sell or otherwise dispose of such property without the prior written consent of the new body.

Amendment negatived.

Clause 3—'Transfer of staff.'

The Hon. ANNE LEVY: I move:

Leave out 'clause 2 (1)' and substitute 'column 2 of the table below'.

The Hon. DIANA LAIDLAW: I accept the Minister's amendment. It is identical to the one I have on file.

Amendment carried; clause as amended passed.

Insertion of table.

The Hon. ANNE LEVY: I move:

After clause 3 insert the following table:

TABLE

Column 1 New Body	*Column 2 Old Body*
Central Region Country Arts Board	Central Region Cultural Authority Incorporated
Central Region Country Arts Boards	Regional Cultural Council Incorporated
Eyre Peninsula Country Arts Board	Eyre Peninsula Cultural Trust
Northern Country Arts Board	Northern Cultural Trust
Riverland Country Arts Board	Riverland Cultural Trust
South-East Country Arts Board	South-East Cultural Trust

Table inserted; schedule as amended passed.

Title passed.

Bill recommitted.

Clause 21—'Membership of Country Arts Boards'—reconsidered.

The Hon. ANNE LEVY: I move:

Page 7, line 34—Leave out subclause (2).

This is consequential upon the amendment that was passed earlier. If this subclause were not removed it would make a nonsense of that amendment.

Amendment carried; clause as further amended passed.

Bill read a third time and passed.

SUPPLY BILL (No. 2)

Adjourned debate on second reading.

(Continued from 26 August. Page 217.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the second reading of the Supply Bill (No. 2). As members will know this is one of the two normal Supply Bills that the Parliament debates each year. The first Bill is dealt with in the autumn session and generally that provides funds for the Public Service for the first two months of the forthcoming financial year, July and August. This Supply Bill that we are dealing with at present provides funding for the normal function of the Public Service until the Appropriation Bill is assented to, which is generally in early November. This Bill needs to be passed in this week of the parliamentary sittings to ensure the proper functioning of the Public Service over the coming two months or so.

This Bill provides a sum of $1 000 million for the proper functioning of the Public Service. It is some $200 million less than the sum provided for in the comparable Bill last year. It is interesting to note that part of the reason for that reduced sum of $200 million relates to a change in accounting and budgeting procedure that has been adopted by the State Government for the 1992-93 financial year. I quote from the second reading explanation of the Bill:

This reduction has come about as a result of important changes which the Government has introduced in the way funds are made available to departments. The changes involve the transfer of departments which previously operated through the Consolidated Account to their own special deposit accounts, created under the provisions of the Public Finance and Audit Act. Departments are now able to retain certain receipts which previously were paid to Consolidated Account and apply these funds towards financing their activities. The amount of appropriation required from Consolidated Account is reduced accordingly.

When asked to further explain the accounting and budgetary changes implicit in that second reading explanation, the Minister of Finance, in another place, said:

The expenditure implications of the deposit accounts have been ignored by the member for Mitcham. The deposit accounts provide incentives for departments to save in anticipation of future plans. Previously, any unspent funds remaining at 30 June were returned to Treasury, which acted, as we all know, to encourage a spend up prior to 30 June. Under the deposit account arrangements any remaining funds as at 30 June will be retained by the department, encouraging longer-term planning and providing the departments with future benefits for responsible financial management.

Most members would be familiar with that annual pre 30 June spend-up in those Government departments. Certainly, within the Education Department I am well aware of a number of quite blatant examples where, upon leading towards 30 June the department, and then various cost units within the department, right down to the local school level, decided that they needed to spend their funds prior to the end of that financial year in case Treasury decided that, if they had funds left over at the end of the year then, clearly, they did not have any long-term need to hold on to that level of funding and their budgetary allocation for the following year would be reduced accordingly.

There was a particularly grotesque example of that in the Education Department near to the last State election, in 1989, when many millions of dollars were left in the bikkie barrel prior to 30 June. The department knew that it wanted to spend a lot of money on computers in schools but it had not decided what sort of computer and, in particular, what sort of software ought to be provided to schools and so it channelled all the money out to schools and told them to hold on to it pending further advice. Many months later, I think after the election but certainly after the end of that financial year, schools were still holding on to the many thousands of dollars that had been generously given to them before the close of the previous financial year waiting for advice from the Education Department as to what software packages they ought to be spending their finances on.

That is only one example; there have been many other examples within the Education Department, and there would literally be dozens of other examples in other Government departments all over South Australia. It is nothing surprising. I hope that this change works, but I think that in theory it is superficially attractive to give departments some sort of long-term benefit for not

necessarily wasting money just prior to 30 June but thinking about long-term expenditure and, if they can in the long term justify the expenditure that they have been allocated by Treasury and the taxpayers, they ought to be able in a sensible, rational and planned fashion to spend that money within the department.

That does not mean that if, on a continuing basis, there are moneys left over that that cannot be spent in a rational fashion or that Treasury, under whatever Government might happen to be in power at the time, might not rip some of that funding out of the departments and make better use of it. On the surface of it and in theory I support the motion: it is an innovation, a change to the financing and budgeting technique by Government that I support, and I hope that it will prove a successful innovation.

In considering the Supply debate I want to address some brief comments about the rather parlous state of the economy in South Australia, and in doing so I want to draw on some comments that have been made by Professor Cliff Walsh, who is now the head of the South Australian Centre for Economic Studies and who has just returned from the Australian National University to head up that esteemed institution here in South Australia. Professor Cliff Walsh was quoted in the *Advertiser* on 1 August this year as follows:

> If the 1992 budget wasn't tough it isn't right for South Australia's future prospects.

Professor Walsh's analysis of the economic background to this budget and this Supply Bill highlighted South Australia's woes in the following way. First, inflation in Adelaide and South Australia was above the average of the eight capital cities in the most recent March quarter. Secondly, unemployment had increased for the past eight quarters (or two years) and that the retail spending in South Australia was now trending downwards. Thirdly, in his judgment the State Government needed to cut spending and taxes and start a warts-and-all review of the State's public sector if it was to back up its initial response to the Arthur D. Little report. Fourthly, South Australia's standards of education and training needed to be further improved so that the State could set new and higher standards of skills and productivity for the nation. To quote Professor Walsh:

> If South Australia is to lower costs and improve productivity, quality and competitiveness, productivity-based enterprise bargaining has to become the norm.

I do not intend to go through all Professor Walsh's lucid analysis of the economic background in the Supply Bill debate, but what he is saying is that the economy is in pretty bad shape and what we need to see in this Government's handling of the budget debate and the Supply Bill debate are two or three pretty important things: a significant cut in public sector spending; a significant cut in State taxation and charges; further emphasis on skills and quality in education training institutions; and, importantly, in our industrial relations system a move to productivity-based enterprise bargaining. Of course, the latter will be a debate for other days and not a debate, at least in any length, for the Supply Bill this evening.

That is a very broad word picture of the economic background to the Supply Bill debate. In analysing the problems for Supply and the budget problems in South Australia, I want to refer to the three broad areas that build on the analysis that Professor Walsh has made. First, very briefly I want to look at the relationship of the Commonwealth Government's outlays and the South Australian Government; secondly, I want to look in broad terms at the problems we have with State indebtedness in South Australia; and, thirdly, I want to look in a bit more detail at the size of the public sector in South Australia and some of the comments that the consultants to the Arthur D. Little report made in relation to that, and build on that with some specific comments in relation to the education portfolio.

The recent Commonwealth and State budget papers indicate that Commonwealth general grants to South Australia increased from $1 517 million in 1991-92 to $1 579 in 1992-93, an increase of some 4.1 per cent which is also an increase in real terms. The total Commonwealth payments to the State Government between those two years is an increase of some 10 per cent. So whatever measure one uses of the amounts of money being channelled from the Commonwealth Government to South Australia one can see that it is increasing in absolute terms and also in real terms. So, it is not accurate for the former Premier or the current Premier to argue that part of the State budget problem is as a result of continuing cuts in Commonwealth funding to the States.

It is interesting to note that the former Treasurer in some of his public comments on our budgetary problems at the moment has given up on making any analysis or seeking to rebut those particular figures about funds that have come from the Commonwealth in the most recent budgets but instead goes back to a period in 1984-85 and argues in some obscure way that there has been a reduction since then of some $400 million to South Australia from the Commonwealth.

As I said, there is no detail provided as to how that calculation has been made by the former Treasurer and Premier—no backup at all. Certainly, whether it be in the Supply Bill debate or in the Appropriation debate, perhaps more appropriately later this year, I will seek from the Leader of the Government in this Chamber some detail as to how the former Treasurer, and I presume the current Treasurer, argue that there has been this $400 million reduction since 1984-85.

If one looks at the figures (and the shadow Treasurer Mr Steven Baker has done the analysis and has put the figures up for public debate and discussion in another place), and the comparison with Commonwealth funding to the State between 1982-83 and the current financial year of 1992-93, that 10-year period, which exactly corresponds with the period of the Bannon Government, quite clearly shows that in real terms there has been increased funding from the Commonwealth to the State.

Again, I seek from the current Treasurer, through the Leader of the Government in the Council, some comment on the figures produced by the shadow Treasurer in the 10 year period of the Bannon Government.

The Hon. C.J. Sumner: Where are they?

The Hon. R.I. LUCAS: They are in one of his speeches which I cannot find but I will find it and hand it over to you. The Attorney quite properly asks me for the exact figures. I will turn them up and provide them to the Attorney before the conclusion of this debate tomorrow afternoon.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I am not expecting a response by tomorrow afternoon. We can talk about it further in the appropriation Bill debate. Those figures produced by the shadow Treasurer do indicate in that 10 year period an increase in real terms from the Commonwealth to the State of South Australia.

The second issue that I want to address is the level of State indebtedness which is evident in the Supply Bill and more appropriately in the appropriation Bill and the budget paper that have been released recently. Those figures show that as at 30 June 1992 the State debt was estimated to be some $7.268 million or $4 975 for every man, woman and child in the State, representing some 25.7 per cent of the gross State product. However, by the end of this year, just six months on, it is expected that that State debt will have grown to $7.985 million, or almost $8 billion, with the corresponding figure of $5 703 per head. That indebtedness has increased alarmingly, as we all know, in the past two years, and the increase has been almost $3 billion in just two years.

Those estimates of State debt are understated because they do not include the $850 million extra financial help announced for the State Bank, nor the projected $317 million deficit projected for this financial year 1992-93. In addition to this notion of State debt we can also look at State indebtedness or public sector liabilities, and there has been correspondingly an explosion of the order of almost $2 billion in State public sector liabilities, to a stage where we in South Australia now have $13 billion in public sector liabilities. In other words, the much publicised State debt figure that we are talking about of just under $8 billion explains only part of the deterioration in State Government finances.

The components of the increase in State public sector liabilities from 30 June 1991 to 30 June 1992 are as follows: net indebtedness, as I have talked about, has increased to $7.3 billion, which is an increase of some $531 million, accrued superannuation has increased from $3.184 million to $3.487 million, a $303 million increase; long service leave liabilities have increased from $470 million to $560 million, an increase of $90 million; Government workers compensation is now $150 million; and accounts payable has increased from $609 million to $1 547 million, an increase of $938 million, compared with accounts receivable of $610 million. This last item includes the $450 million indemnity for the 1991-92 State Bank losses which the Government intends to deduct from its $664 million of capital in the bank.

So, in pretty stark terms, although there are a lot of statistics there, we are looking at a massive explosion in the State debt of about $8 million, but in addition to that, if we are talking about State public sector liabilities, long service, superannuation and a range of other measures like that, as I have indicated, we are talking about public sector indebtedness of some $13 billion here in South Australia.

The Hon. L.H. Davis: It is a 65 per cent increase in State public sector debt over the past two years.

The Hon. R.I. LUCAS: As my colleague says, it is a 65 per cent increase in State public sector debt in two years. These are pretty stark figures when one considers the whole debate about supply and appropriation and what Governments should or should not be doing in confronting those problems.

I want to turn now to the third area I wish to address, that is, the notion of the size and cost of the public sector in South Australia, plus some comment about my education portfolio. One of the more interesting documents to come out of the Arthur D. Little study—which I think cost from $500 000 to $1 million—with all the consultancies added to it, was a consultancy undertaken by Ernst and Young in association with the Centre for South Australian Economic Studies and Mark Coleman and Associates. That consultancy was on the role of the South Australian public sector.

For all members, it is a very interesting read, although a bit dry and economic, on the size of the public sector in South Australia and some of the aggregate economic problems and budgetary problems we are confronted with here, whether we be the current or the alternative Government. As I understand it, we are still not allowed to incorporate graphs in *Hansard*. There is a very interesting and important graph on page 3 of the document produced by those three consultants that looks at the growing expenditure/revenue gap in State Government finances.

That looks at the period from the mid 1980s through to the current period and over coming years. It is quite stark and indicates the growing gap between future expenditure commitments and the declining revenue base we have here in South Australia, for a variety of reasons, part of them being the economic background to which I referred earlier. On page 2 of that report, the consultants state:

> The South Australian public sector represents a greater proportion of the State's gross State product (GSP) than most other States in Australia. In terms of service delivery, the interstate comparisons of total State Government outlays with respect to GSP in 1990 is:

And here I seek leave to have incorporated in *Hansard* a table, which is purely statistical.

Leave granted.

	Per Cent
Northern Territory	32.8
Tasmania	27.3
South Australia	22.5
Western Australia	19.4
Queensland	17.7
New South Wales	17.3
Australian Capital Territory	16.7
Victoria	16.6
National Average	18.1

The Hon. R.I. LUCAS: If one excludes the Northern Territory, this table shows that the proportion of gross State product devoted to the public sector in South Australia is the highest of all the mainland States. Tasmania has a figure of 27.3 per cent; of the mainland States, South Australia has 22.5 per cent; Western Australia has 19.4 per cent; Queensland has 17.7 per cent; New South Wales has 17.3 per cent; and Victoria has 16.6 per cent, the national average being some 18.1 per cent.

When one looks at that, one sees that the percentage of the gross State product in South Australia being devoted to the public sector is significantly higher than the national average figure. The consultants go on to say:

> There are a number of forces at work which suggest that the overall underlying trend of State revenue is downwards, with that

of expenditure upwards. The potentially growing gap between State Government expenditure and revenue must be addressed, particularly when the community is expecting and demanding increased levels and diversity of services in a period of significant financial difficulty for the State. This gap cannot be addressed only by focusing on the revenue side of the equation.

I interpose there that my criticism of the Supply Bill debate in part, and, more appropriately, my criticism of the whole budget strategy of this Government, is that it is only focusing on the revenue side of the equation. It keeps trying to milk extra expenditure from businesses and from the South Australian community without considering the other side, the expenditure side, of the equation. The consultants go on:

The South Australian public sector uses a greater proportion of the resources available through overall income generation within the State compared with that of the national average. This is in part due to South Australia's lower overall income per capita and, in part, due to a higher level and cost of service delivery in this State. Based on information and assessments produced by the Grants Commission:

In 1990-91 it cost 5 per cent more to deliver the same amount of public sector services per individual in South Australia than on average in Australia. At this time the South Australian Government was also spending 5 per cent more per head overall when compared with the national average, that is, it cost 10 per cent more per capita to provide services to South Australians.

To return the State to a national 'standard' level of service outlays per head of population, State Government recurrent outlays would have to be reduced by about $150 million per annum (using 1991-92 figures), assuming the current equalisation process effected by the Grants Commission.

Given that the Grants Commission equalisation process is being questioned in some quarters, it can be noted that a 'worst case' outcome, should an entirely unweighted approach to Federal grants be adopted, would be a gap on State Government total outlays of approximately 3.6 per cent of GSP in 1991-92.

At page 26, the report states:

The current tendency towards pressure on the whole concept of fiscal equalisation (either through new federalism or agitation from Victoria or New South Wales) means that the question must be asked as to how South Australia would be affected. If we were not compensated for revenue and cost differences, then grants per capita would be reduced by 25 per cent. In that case, if the South Australian Government chooses to spend a higher proportion of GDP on public outlays than other States, this imposes a direct cost impost on the ability of South Australian business to compete. This can only result in negative pressures on economic development aspirations. From table 1, the gap on State Government current outlays is in the order of 3.6 per cent of GDP in 1991-92. The gap for total outlays amounts to some $950 million per annum.

It reflects the direct reduction in Commonwealth grants (about $640 million) and the need to bring South Australia's financed outlays back into line with other States (an additional $300 million).

It is not merely a question as to whether the equalisation process will simply be stopped. There is some indication it will be reduced, but complete removal, at least in the shorter term, could be considered to be unlikely because of the dislocation it would cause. In considering the implications of this from an economic development perspective, one problem is that of the image this level of subsidy induces. Those making investment decisions in the State are aware of these seemingly 'welfare' oriented subsidies, and this must have some influence on their perspective of South Australia as a place to do business. The more we decline relatively, the more we will be 'propped up' (until now at least: this assumes the continuation of the current rules of the Grants Commission). We believe that this mind set needs to be broken if South Australia is to maintain and develop the economic base it requires.

The consultants go on to talk about the fact that it is very difficult to measure the quality and quantity of public service in South Australia and state that one of the weaknesses that we and other States, perhaps, have, is that we do not have good measures of the quality of service that we deliver. The only measures that we have and the only measures that they have been able to look at are aggregate financial measures as to the amount of dollars that we put in. That is one of the criticisms I have about what the Government is doing in education at the moment.

We, the Institute of Teachers and many others tend to judge what is going on in education only by the amount of money that is being poured into our schools and into the Education Department. The sooner we develop quality criteria or measures of effectiveness that relate to inputs and, more particularly, outputs in key spending areas such as education, the better. The output measures could relate to the number of kids who are suffering literacy and numeracy problems or the number of kids who are doing well over the broad areas of curriculum, and we could look at them in addition to the measures that relate to how much money is spent in schools and what are the teacher:pupil ratios. If we were to do that, we would be better able to make judgments about the effectiveness or otherwise of the large amounts of money that we spend in the key portfolios such as education and health.

The consultants are saying exactly that: we do not have measures of quality and therefore they have been able to look only at the overall measures of how much we devote to public services in South Australia. The consultants have made the broad assumption that, in the broad range, our public services are not much different from the national average; yet we appear to spend many hundreds of millions of dollars more in delivering those same services and, with their assumption, the same quality of service to the South Australian community.

The consultants argue that, in the worst case scenario, which they do not think is likely—that is, if we lost fiscal equalisation—South Australia would be looking for a cut of $1 000 million in public sector expenditure. I am sure that no-one in the Government or the alternative Government would contemplate a cut of that size in the State's public sector. The sort of challenge that the consultants to Arthur D. Little have raised with the Government and with the alternative Government is a cut from the public sector of the order of magnitude of between $150 million to $300 million per annum to help reduce taxes but at the same time hopefully deliver roughly the same quality of service or an improved service.

I am the first to say that there is no easy, overnight solution to this dilemma, this yawning expenditure revenue gap in the State budget and future State budgets over the next decade but, if this State is to survive economically, if it is to generate wealth and jobs, this basic conundrum that the consultants to Arthur D. Little have raised has to be solved. As Professor Walsh indicated in his analysis of the State budget and the economic situation, which I quoted earlier, as a Government and as an alternative Government we have to tackle the amount of money that we are spending on public services in South Australia, and we cannot rely for ever on the revenue side of the budget. We cannot rely on another 50c or 60c on a packet of cigarettes every budget or on doubling the bank debits tax or trebling other taxes. Sooner or later the community will call out that enough is enough, and I suspect that we have

reached that stage, and we will get to a level where we cannot go any further. What Walsh and the Arthur D. Little consultants are saying is that we cannot rely just on the revenue side of the budget. We have to tackle the expenditure side, too.

In looking at the size of the public sector, I want to refer briefly to the Education Department. About 12 months ago, boldly trumpeted on the front page of the morning Murdoch, the *Advertiser*, was an announcement by the Minister of Education and the Director-General of Education that they intended to go boldly where no previous Education Minister or Director-General had gone before and slash the Education Department bureaucracy by 25 per cent. It was a great story and, if true, justified the front page of the *Advertiser* and the banner headlines that it attracted. I will quote from a press release from the Minister of Education dated 27 August 1991 as follows:

> The move will result in a reduction for 1992 of the total number of staff employed outside schools from approximately 1 200 to 900 with total annual savings of $14.7 million. None of these positions will come from schools.

The banner headline was, 'Three hundred education staff to go'. That was on the front page of the *Advertiser*. It was a very bold move and a great story, and the Liberal Party indicated in broad terms that it would not be anything other than supportive of any move to reduce the size of the bureaucracy. We have been calling for that for years, but I will not go into the history of the matter.

I was interested when the budget papers were released recently to look at what progress has been made in relation to this bold move. I seek leave to have incorporated in *Hansard* a purely statistical table comparing the number of employees in various categories in the Education Department from 1991 to 1992.

Leave granted.

Employee type	1992	1991
GME Act	759.2	840.8
Weekly paid	524.1	562.2
Other major Act (Teachers)	14 089.3	14 128.8
Other	2 705.2	2 642.0
	18 077.8	18 173.8

The Hon. R.I. LUCAS: This table is a compilation of figures from the last two financial statements, that is, the 1991 budget and the current budget. What it shows is that the number of public servants employed under the GME Act in the Education Department has been reduced by only 81 in the 1991-92 year. Last year the Minister said, 'There will be no reduction of teachers in schools. In fact, it will mean teacher numbers will increase in line with expected enrolment increases.' What the Minister of Education argued last year was that there would be a cut of 300 bureaucrats in the Education Department and that there would be a corresponding increase in teachers delivering essential services in our schools.

When one looks at the figures for teachers, one sees that there has not only not been an increase in teachers but there has been a further decrease of some 39 to 40 teachers in that period. The stark reality is revealed for all to see, the stark comparison of rhetoric and promise with practice. It is a further indication of why, by the end of the month, the Minister will no longer be Minister of Education. It is commonly known that he will be dumped from his portfolio because of his lack of performance over a broad spectrum of education issues, many of which I have raised over recent years, but starkly revealed in his performance in relation to reducing the size of the Public Service.

Last year he said that 300 bureaucrats who were not required or needed in the Education Department would be moved out and better deployed in schools or elsewhere. However, there has been a reduction of only 80 public servants in that department. Instead of saving approximately $15 million this year, there has been a further over-expenditure, in effect, of approximately $9 million or $10 million. If as the Minister said he does not need the 220 staff who are still in the department, heaven only knows what they are still doing there.

They are costing us some $9 to $10 million, and it therefore means that that $9 million to $10 million cannot be redeployed into schools. I give that as one example in the education area of the lack of resolve by this Government, particularly by this Minister of Education, to tackle that general question that the consultants to the Arthur D. Little report and Professor Walsh have so adequately described. We must tackle the question of how much money we are spending or, indeed, perhaps wasting, on the bureaucracy in the delivery of essential services in South Australia. We must look at that overall difficult question, and that will, I guess, take much of this decade in relation to the expenditure revenue gap that they have identified.

However, in some important areas such as education, health and others as well as Ministers of this Government—and if not this Government an alternative Government—will have to tackle these important questions of money being wasted in central offices and in Public Service departments and not being freed up to be spent in schools and in hospitals. With those words, I indicate my support of the second reading of the Supply Bill.

The Hon. BERNICE PFITZNER: I rise to support the second reading of the Supply Bill. As explained, this Bill provides for $1 000 million to cover expenditure until early November. This Bill can give us time to reflect on the hundreds of millions of dollars that the Government is spending in the main for public services. However, this Bill must be linked to the financial mismanagement by this Government of our taxpayers' money. Finance is not a particular area of interest to me but, when the management of our taxpayers' finance is so grossly inept that it infringes on the State's being able to provide adequate public services, it is time we called a stop.

Let us look at this State's debt. This debt cannot be highlighted enough, as it is so enormous. At June 1990, two years ago, it was approximately $4.3 billion, to be exact it was $4 303 million. Last year, in June 1991, it was approximately $6.7 billion; to be exact, it was $6 737 million. In June 1992 this year, it was estimated to be approximately $7 268 million or, to put it so that it sinks in, it is approximately $5 000 per head of population for every man, woman and child. It represents approximately 25 per cent of the State's gross product.

Further, although the net State debt on borrowings is about $7.2 billion, there are the State liabilities, the sum of which is approximately $1 900 million, almost another $2 billion. Details of some of these State liabilities are due to increased net indebtedness, increases in accrued superannuation, increases in long service leave—

The Hon. C.J. Sumner: This is the same speech as your Leader just gave.

The Hon. BERNICE PFITZNER: Of course it would be the same figures because we are talking about the same figures, and I hope to give a basis of these figures to explain.

The Hon. L.H. Davis: That's not an unreasonable proposition. They need to be hammered into this Government; they don't seem to understand.

The ACTING PRESIDENT (The Hon. M.S. Feleppa): Order!

The Hon. BERNICE PFITZNER: Details of some of these State liabilities are increases in net indebtedness, increases in accrued superannuation, increases in long service leave, increases in Government workers compensation and increases in accounts payable, the last of which includes the $450 million indemnity for the 1991-92 State Bank losses.

Now let us look at the three major instrumentalities of the State that are, to say the least, causing our community great concern. The Government has been further propping up the State Bank to the tune of a further $850 million. To make things seem better, we are treated with a concept of the bad part and the good part of the bank. It is ridiculous to try to separate parts of the bank to minimise the bank's poor performance. 'Mismanaged' is the only word for it. This mismanagement must impinge on all the sections of the bank and all its facilities. It is nonsense to talk about good and bad parts of the bank.

We cannot accept the whitewash of the bank making it better than it is perceived. Whoever is to blame, we are all aware that the Treasurer takes the final responsibility. It is like a patient who is moribund: we cannot blame the clerk, the porters, the enrolled nurses, the registered nurses, the interns or the registrars. The blame for the possible death of the patient must be put fairly and squarely on the senior doctor or specialist. So, too, is the Treasurer the financial specialist.

Another State instrumentatility is the SGIC. There is a $600 million bail-out of this facility, not to mention its disastrous acquisition of 333 Collins Street. And SAFA apparently—

Members interjecting:

The ACTING PRESIDENT: Order! The Hon. Dr Pfitzner has the floor. I ask members to pay attention to what she is saying.

The Hon. BERNICE PFITZNER: I am reading, reiterating and highlighting all these mismanagements. I know it does hurt the Government to hear it again and again, but I think it has to be hammered in because it is so destructive. SAFA apparently achieved a trading surplus of $386 million before abnormal items, and a reported surplus of $790 million. It is difficult to accept that this is a real surplus, as we in the lay community understand. For SAFA to generate such a large surplus when all around interest rates are falling, one can only surmise that the borrowing margins for departments and authorities have increased substantially.

Against this background of State indebtedness, let us look at our public services. We are aware that, due to a decrease in State finance, education services, welfare services and health services are at crisis point. In particular, let us look at health services, especially the hospital system. The metropolitan hospital boards are expecting a $30 million cut which the AMA suggests would have a $60 million impact. The direct financing cuts to the metropolitan hospitals, to the Institute of Medical and Veterinary Science, to community services, to the Mental Health Service and to the disability service amount to approximately $17 million.

With this reduced budget, wage rises and inflation which previously have been met by Government will now have to be met by the hospitals as well. An indication of the reduction of hospital services is reflected in the surgical waiting lists. These waiting lists have increased from 6 986 people in July 1990 to 8 856 to date. Nearly 9 000 people are on hospital waiting lists. Whilst there are some who try to make light of the situation and say that the waiting lists are not a significant social burden, that it is not a life and death situation but rather a quality of life, they are using the standards of a developing third world country, not Australia which is supposed to be a developed country, a lucky country, a clever country. No, let us not make light of a serious situation, where there are waiting lists of people with joint problems and with ear, nose and throat problems, people who are in considerable pain and considerable discomfort, and at considerable disadvantage for everyday living.

As the AMA has reported, 22 per cent of nearly 5 000 patients have been on the waiting lists for more than 12 months. As at 31 May the Royal Adelaide Hospital had nearly 7 000 patients on the waiting list for orthopaedic surgery. Of these patients, 126 had waited for 12 months, 149 had waited for 6 to 12 months, and over 400 had waited for under six months. At the Queen Elizabeth Hospital, as at 31 May over 300 patients were on the waiting list for ear nose and throat surgery. Nearly 100 have waited for over 12 months, and nearly 100 have waited between six and 12 months, and nearly 200 have waited for less than six months.

Further, the Queen Elizabeth Hospital expects to close another two wards of 50 beds, adding to the two wards that were closed last year. This hospital, as we know, is in the Labor heartland. At Flinders Medical Centre, 29 beds have been closed, and further closures are expected. At Modbury Hospital, 32 beds were closed for up to 12 months, and similar reductions are expected.

Let us consider the Mental Health Service, where there are even greater problems and greater concerns. The new South Australian Mental Health Service was formed only recently, following the announcement that Hillcrest Hospital, a top class psychiatric hospital, was to be closed. The latest date for closure is placed at mid 1994. The South Australian Mental Health Service is to supervise and coordinate this closure and the relocation of patients to other hospitals or community based care services. The sale of the Hillcrest land was to fund these new community based care services.

Now, at this crucial stage of transition, it is anticipated that approximately $1 million is to be cut from the mental health budget. The Mental Health Service is in danger of collapse. Just at the beginning of the transfer of

60 patients to Glenside Hospital, with 20 patients soon to be transferred to Lyell McEwin Hospital and a further 30 to Noarlunga Hospital, we have drastic budget cuts in this area. Plans to establish at the Queen Elizabeth Hospital a stand-alone facility for treatment of the mentally ill has been shelved due to lack of funds. This hospital, as we know, is in the Labor heartland.

A significant proportion of the Hillcrest Hospital specialist medical staff have resigned due to the untenable situation of pending hospital closure without any plans for further medical involvement. Where there were 36 full-time doctors at Hillcrest, there are now 21 doctors, and medical locums are now being used, which does not provide for continuity and therefore quality in patient care. An internal memo from the nursing section of the hospital to the hospital administration reads:

> The hospital's effective model of patient care, developed by dedicated and professional staff over a number of years, is rapidly collapsing and becoming totally disorganised due to the shortage of medical staff, loss of continuity of medical coverage and obvious difficulty in the provision of medical leadership.

I understand that the previous Medical Director, a psychiatrist of eminent standing amongst his peers and in the care of his patients, has left to go interstate where he is appreciated by the health system. South Australia has lost yet another dedicated medical specialist. Even the Chief Executive Officer of the South Australian Mental Health Service has commented that the quality of care is starting to be 'shaky at the edges'—as stated in the *Advertiser* of Saturday 29 August. If a bureaucrat CEO has admitted that the service is shaky then we may be sure that in reality the service is about to collapse.

Finally, in relation to the preventive health service and immunisation in particular, we have an upward trend of TB disease in particular areas, for example, in the western suburbs, the Labor heartland, and on Eyre Peninsula. These are areas that are related to particular disadvantaged groups—that is, the Aborigines and the migrants from the Asia Pacific areas. Due to a lack of funding, the excellent TB immunisation program that was started two or three years ago for Aborigines has now ceased. That program, which aimed at immunising all Aborigines with BCG, was effective and efficient, but that was two or three years ago. There is also no specific group of people nominated to implement an immunisation program targeting high risk groups. This inactivity is also due to lack of funds.

Further, the latest Hib vaccine for immunisation against Haemophilus influenza type B (Hib) has not been widely proclaimed due to its expense. The Federal and State Governments are reluctant to advertise the availability of this vaccine which, if used on children 18 months and older, would be successful. The excuse is that the vaccine available now is ineffective on children younger than 18 months of age and that we ought to wait for the vaccine which can be used on younger children. This vaccine for the younger children is now being evaluated. However, Professor Lyn Gilbert of Westmead Hospital in Sydney says:

> Why should we leave children 18 months or older unvaccinated just because a better vaccine will be available for younger children? Sixty per cent of all disease from Hib and 45 per cent of Hib meningitis occurs in children older than 18 months. Infection with Hib can cause serious complications of epiglotitis (which is a swelling in the throat, even preventing breathing) or meningitis. The mortality rate is between 2 and 4 per cent. These consequences are prevented only through immunisation.

However, since there is a lack of funds this very important vaccine that can prevent disastrous effects on children is not widely proclaimed and therefore not known, and not used. In these times of financial crisis due to Government mismanagement we note that the Supply Bill also hopes to implement a change—

The Hon. C.J. Sumner interjecting:

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order!

The Hon. BERNICE PFITZNER: In these times of financial crisis due to Government mismanagement, we note that the Supply Bill also hopes to implement a change introduced by this Government which involves State Government departments having their own special deposit accounts, instead of operating through the Consolidated Account. This all sounds very clever and innovative.

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order!

The Hon. BERNICE PFITZNER: I know that the Government feels that it is very hurtful to bring out and remind it about this financial mismanagement, but what has to be said has to be said. In these times of financial crisis due to Government mismanagement we note that the Supply Bill also hopes to implement a change which has been introduced by this Government and which involves State departments having their own special deposit account instead of operating through Consolidated Account. This all sounds very clever and innovative. However, let us not have another repetition of the State Bank debacle where things were also done cleverly and with innovation.

The Government should be concentrating on accountability and should be working hard at putting evaluation programs in place rather than nitpicking on certain questions which have been asked in the House; that is of no consequence at all. The Government's energy should be targeted towards improved financial reporting so that if there are danger signs these signs can be observed early and acted upon before we have another State Bank type disaster. Therefore with concern I support the second reading of this Bill.

The Hon. DIANA LAIDLAW: I support the second reading of this Bill. In doing so I want to talk about Supply in terms of the State Transport Authority and allude to changes that have taken place since Sunday 16 August—a black day for the STA and for those in the South Australian community who rely on public transport services.

Today I was interested to note in the Auditor-General's Report that over the past year passenger journeys have decreased by 4.1 million. This is a tragedy when one considers that over the five years to 1990 passenger journeys fell by 17 per cent and increased only slightly the following year after the introduction of free transport for students, although that policy has since been abandoned by the Government.

We now find that passenger journeys have again decreased and that fares have gone up. What is happening in South Australia with respect to the State Transport Authority is quite different to what is happening in those States which are prepared to invest in new rail and bus

infrastructure and in the promotion of services and which insist on reliability and efficiency in the delivery of those services.

My office has been inundated with calls from irate passengers who have been inconvenienced by delays and breakdowns in services and who have missed connections since the introduction of the new timetables and the rationalisation of services after 7 p.m. and on weekends.

I was interested to note that on Wednesday 19 August Mr Ric Teague, the STA Customer Services Manager, said that he did not know of any complaints from the public about the introduction of the new timetables. I can only believe that Mr Teague had his phone off the hook or refused to keep in touch with the customer services section for which he was responsible. Certainly, my office was deluged with calls, and I know that many people who phoned my office were directed to the Minister's office and the STA to lodge their complaints because it was felt by my office that the Government was responsible for the inconvenience that was being caused to passengers and that it should hear the same bad news that was being directed to my office. If Mr Ric Teague is talking in that vein it is hardly surprising to learn that his contract with the STA has not been renewed.

I understand that for the future the STA is looking at a new arrangement for customer services coordination and that it will be at a lesser salary than that which Mr Teague now enjoys, namely, about $78 000 plus a vehicle. Perhaps if it were not for the vehicle, Mr Teague and other senior executives within the corporate structure of the STA would have more appreciation of the havoc that they are causing public transport passengers in our community stretching from Gawler in the north to Noarlunga in the south.

I want to refer to a number of the letters that I have received on this matter. A Mr K. Stokolosa from Parafield Gardens lodges a complaint regarding the new Adelaide to Salisbury train timetable which took effect from 16 August. He states:

> As a buyer for a large department store in Adelaide it is impossible for me to leave the store before 5.30 on a weekday, a problem undoubtedly faced by the majority of people employed in the retail stores in Rundle Mall. Your new timetable shows the next train to Salisbury will be the 5.38 p.m. express. Finishing work at 5.30 p.m. it is physically impossible to walk to North Terrace station and board the train in eight minutes, therefore forcing one to wait an additional 20 minutes for the next train. A similar situation will occur on Friday nights. The current 9.30 p.m. service will be cancelled, leaving the only other train to Salisbury at 9.50 p.m., thereby again forcing an additional and unnecessary 20 minute wait at the station.
>
> After working for 12 hours the need to have to wait a further 20 minutes for the arrival of the train is unsatisfactory. Neither I nor any of my fellow train travellers have, to the best of my knowledge, ever been approached by STA personnel with regard to altering the train timetables so that train services could be improved to better cater for the needs of the public who use the STA rather than their own cars. If this problem is not resolved to the satisfaction of the travelling public we will have no alternative but to use private cars as a better means of getting to work and returning home.

Certainly, none of us in this place or in the community at large should be encouraging the greater use of private vehicles for commuter travel, particularly from areas that have traditionally been well served by public transport. That is what is happening at the present time.

I have another letter that was written by an STA employee; the name and address has been provided but I have been asked not to publish it. The letter states:

> I feel I should write in defence of the SA Government in relation to their public transport policy. Everybody seems to feel that they [the Government] have got it all wrong, and from the public's point of view they have. But, from the Government's point of view it is working perfectly. Public transport has again been made unavailable and unattractive to thousands of regular travellers. Ask all those who have been left standing by full buses on a Saturday because the previous four buses are now replaced by one, or those who now do not have a bus any more at night or weekends unless they walk a kilometre or more to the next closest route.
>
> The Government knows exactly what it is doing. For every bus that falls off the road it saves money in wages, costs of the bus, servicing costs, etc. But more importantly, every bus it takes off the road forces an average of 40 people back into the family car, which is part 2 of the plan, because the Government then gets a double bonus by reaping in more petrol tax. The most upsetting thing about all of this is that with all the letters and complaints you know what will be done about the above—nothing, because the politicians and the STA management all travel to and from work by public-owned cars, so they do not see the problem and all their letters are regarded as just the bleating of the minority of travelling public who, because of the incompetent management, cost too much to carry, anyway.

This disgruntled STA worker realises that his or her job is at stake because, with fewer people using public transport, fewer people are required to operate those services. It may well be that the Government is following the example of Australian National and deliberately cutting back services, making the STA far less attractive as an operation and thereby seeing less people willing to use the operation and providing the Government with more excuses to close down those services.

I have also received correspondence from the Hackham West Community Centre, and I believe the Hon. Ian Gilfillan referred to similar correspondence in a question in this place a couple of weeks ago. But the writer, Miss Angie Gesserit, talks about the tortuous routes that people must travel by bus at night once they leave the Noarlunga railway station, and I have received similar complaints from local residents who are now taking up to 45 minutes to get home after they have been picked up by bus at Noarlunga. That trip in the past had been about 15 to 20 minutes, and so it is becoming increasingly unattractive to use the STA as an option.

I have referred to those two or three letters that relate to complaints from the outer metropolitan area. I now refer to complaints received from a Mrs M. Seddon from Walkerville. She has sent me a copy of correspondence to the Minister in which she writes:

> I have just come home after spending three weeks in Sydney and I am absolutely horrified at your so-called transport system. In Sydney buses and trains run all the time and so frequently—it is a wonderful system—and the buses have the name of the destination as well as the number on the front of their buses, so you know exactly what to catch. Of course, it has been and is a Liberal Government over there. Mr Blevins, I would like to see you, your Premier and all your Government wait and wait for buses, especially at the end of the day. I have seen, this week, up to 12 people at a stop on Walkerville Terrace and I have picked up some of them and they have been very angry and very frustrated. I went to get a new timetable and when I said 'What a frightful cut-back in services here' to the employee, he replied, 'What can you expect from a bankrupt State?'

I am most concerned about the plight of inner city residents and those who live closer to the city because there is no question that, with these new changes to bus

and rail routes, they have been severely disadvantaged. The focus of the Government's new approach is on the outer metropolitan area, and even those people up there are not satisfied about the quality and frequency of service that they believe they should enjoy. However, it is residents closer to the city who are the most deprived at present.

At a meeting I attended last night one woman told me that when she was standing on Main North Road last week seven buses went by over a three-quarters of an hour period when she was standing there.

Of those seven buses, five were not full and, of the five, two stopped at the bus stop to let people off but the driver would not let her on. The driver said that his was an express bus service from the outer metropolitan area and all he was entitled to do was drop people off at bus stops and not pick up people from those same stops. It is a ludicrous system, and something must be done to help people who live close to the city and those who are elderly and should not be required to wait three quarters of an hour for a bus on a weekday to find half empty buses roaring pass them and ignoring their needs.

I received a letter from a resident of Walkerville who noted that the timetables leave much to be desired, especially in relation to the infrequency with which buses run after 7 p.m. and on Saturdays and Sundays. This person questions the plight of shift and weekend workers who are faced with the alternative of catching costly taxis. She states that she has waited many times at bus stops on North Terrace with many other disgruntled passengers, waiting for up to 50 minutes for buses that never came or buses that did not run to timetable schedules. She states that on several occasions she had walked to and from the city from Walkerville, and that the STA bus service offered is just not good enough for the people of Adelaide.

I have also received correspondence from the Mitcham Private Nursing Home, whose staff are very anxious about the fact that the Government has cut the bus service from its street. They are all people who no longer drive cars, and the majority of them were keen to have access to public transport, as were the staff who must work evening and night duty and must now walk a considerable distance in the evenings to new bus stops to catch a bus.

That is another group that is angry about what is happening with STA services. I have also received correspondence from constituents from Tea Tree Gully, who tried to obtain timetable information in the Henley Beach area but found that no retail outlets selling bus tickets had any bus timetables on hand. It seems extraordinary that, following the enormous changes to the system that had recently been announced, the Government was essentially providing the timetables from the corner of King William and Grenfell Streets but not through local outlets where people could conveniently purchase tickets.

I appreciate that because of the hour it may be unwise to go through more of this correspondence, but I have received expressions of concern about train travel on the Outer Harbor and Grange lines; complaints about train services from Belair; as well as concerns about cancelled tram services and the speculation of driver only trams.

I have also received considerable expressions of agitation about the seeming lack of inspectors on bus services these days, as well as about increasing violence on the Gawler line. There have been complaints from Flinders University students who must travel to the northern suburbs and who find that there are no buses with which they can connect after their courses finish at 6.15 p.m. They are agitated that their needs as lower income residents in this State have not been addressed.

The issue of fare evasion continues to be raised with my office. Only today I was told by an infuriated constituent that he does not intend to pay, because he is not receiving a service. If a train does turn up, it is rarely on time and, when it turns up, it is so overcrowded because the STA is cutting back railcars on services that have high usage, and he generally stands all the way into town, a journey that takes probably 20 minutes. He does not believe that that is a service for which he wishes to pay. He also says that inspectors are so rarely on those lines that it is unlikely that he would ever be caught and, if he saw one getting on, he would hop off at an earlier station than the one from which he intended to alight. That example is indicative of upset passengers in our community today.

Earlier today, during Question Time I read into *Hansard* bus control reports for Saturday 5 and Monday 7 September which highlight the number of missed and late services on those two occasions. The most alarming aspect of these reports is the number of breakdowns and the number of occasions on which, according to the writer of these reports, there are no bus operators to meet the timetables that the STA has designed—in the so-called best interests of customers.

On 29 August the STA issued a very prominent advertisement of over one-third of a page in the *Advertiser*. It read as follows:

> The STA apologises to train commuters inconvenienced in recent weeks by commuter signalling faults and mechanical failures. The STA is committed to providing a reliable, modern, efficient service, but it is unfortunate that our efforts to upgrade our operations for railcars have been hampered by technical and mechanical problems. The STA and its contractors are working hard to remedy the situation and will continue to do so until the problems are fixed.
>
> The STA's aim is to fulfil the mass transport needs of Adelaide's commuters and to provide good customer services. Our immediate objective is to get reliability back into the rail system. Again, we apologise for any inconvenience caused to commuters.

Generally, I believe that the people who contact my office and those to whom I have spoken at bus stops and train stations over recent months would be rather bemused by the STA's apology. However, they are sick of apologising for the STA, and it is very distressing to a taxpayer, and one who has some civic pride in this city, to see that the STA, whose sole reason for being is to provide public passenger transport services, is doing so badly that it actually feels the need to put these major apologies into the paper.

The distressing part of this apology is that it refers only to rail operations and not to buses. As I indicated by those bus control reports and by the correspondence I quoted earlier, the bus services are also experiencing manpower and mechanical failures, and the very least the STA can do in these circumstances is to issue another publicly advertised apology.

I understand that, in the near future, the Government is looking to install ticket vending machines at railway stations and, according to an article some nine weeks ago, on railcars themselves on a trial basis. I have made contact with rail authorities in other States, none of which has ticket vending machines on railcars, and they think it is a novel idea, particularly for a State that has not cared to provide convenient ticket selling facilities for passengers for at least the past 18 months. Certainly, the authorities in Western Australia, New South Wales, Victoria and Queensland provide ticket vending machines at stations and each of those States has invested many more millions of dollars to extend those ticket vending facilities. The Liberal Party has been calling for the Government to address this issue for some 18 months. Liberal members have never accepted that the Government should remove guards from trains and, therefore, remove the capacity to buy tickets on trains and not install an alternative, convenient system for purchasing tickets. So, we are pleased that, after 18 months, the Government appears to be getting its act together in this regard and that passengers needs will become a priority.

I could never understand the rhetoric from the Minister as to why ticket vending machines were not acceptable or could not be accommodated in Adelaide because they would be vandalised. I have not seen one parking ticket machine on the open streets of Adelaide vandalised and, if those machines are not vandalised, I question the motivation behind and the cause of any suspected vandalism of STA property. Perhaps it says a great deal more about the STA and its public perception than it does about our community.

Having left train travellers bereft of convenient ticket selling options some 18 months ago when the Government removed guards from trains, it was with horror that I noticed that it had repeated the same practice when it removed one-third of evening and after-hours services from 16 August and again provided no alternatives for those customers. So, it is with enormous disappointment and disgust that I have followed the Government's management of STA services in recent times. It does not necessarily surprise me that passenger journeys last year decreased by 4.1 million, and it will not surprise me if they decrease by the same number in the forthcoming year. The corporate plan from the STA to the year 1994 predicts a further decrease and that is an appalling indictment of a public transport service which is heavily subsidised by the taxpayer and the very purpose of which is to provide a public service. It is about time that it started to do so.

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

DEBITS TAX (RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 216.)

The Hon. R.I. LUCAS (Leader of the Opposition): I have already spoken at length on the disastrous position of the State economy and the budget in my contribution to the Supply Bill and, given that the Council will deal with a series of taxation measures in separate Bills, I do not intend to repeat those general comments. However, they provide a background to debate on this Bill and the other tax Bills. This is part of an overall defective budget strategy which ignores the real world of business in that it continues to increase taxes, as this Government has done over the past three budgets, and in doing so condemns thousands more South Australians to unemployment, adding to the record number of unemployed people in this State.

The simple fact is that it seems to be beyond this Government that, if Governments continue to increase taxes on business, business will not be in a position to generate jobs. If Governments continually club businesses behind the head with taxes and more taxes, this State will never see the economic recovery that is essential. Again, without going over the contributions made by Professor Walsh and the various consultants to the Arthur D. Little report from which I quoted during my contribution on the Supply Bill, I point out that that is their essential message. In this Bill, as in other tax Bills, there is an indication of a Government concentrating solely on the revenue side of the budget by increasing taxes and charges, but not looking on the other side of the equation. The Bill seeks to impose a doubling of the debits tax and will result in increased revenue for this year of some $12 million and $29 million in a full year.

The background to this Bill is that, on 1 January 1991, the Commonwealth Government transferred the debits tax to the States but undertook to continue to collect the tax on the States' behalf after 31 December 1992 provided that uniform tax rates applied. In this Bill, the Government has decided to double the duty payable on debits to eligible accounts, which are principally those accounts with cheque-drawing facilities, following similar announcements by New South Wales and Victoria after the most recent Premiers Conference.

The Australian Taxation Office has indicated that it would be willing to collect this tax on behalf of the States even if differential tax rates applied across the States. The Government has indicated that, with that changed intention from the Australian Taxation Office, it intends to accept that offer, so the Commonwealth will collect the tax and the money will be applied to the various States even though there are differential rates. There will be a common rate for New South Wales, Victoria and South Australia but differential rates with the other States of Australia. Those rates for withdrawals and debits will be as follows: $1 to $99, it will increase from 15c to 30c; $100 to $499, 35c to 70c; $500 to $4 999, 75c to $1.50; $5 000 to $9 999, $1.50 to $3; and $10 000 plus from $2 to $4.

Members may be aware that the BAD tax or duty is levied and will continue to be levied on all debits on cheque-drawing facilities but will also include debits such as financial institutions duty, for example, stamp duty, debits on cheque-drawing facilities and also on service fees charged by financial institutions, so it is a tax that is levied on a tax that is levied on a tax as a further impost for anyone with cheque-drawing facilities with our financial institutions.

There has been a recent trend for closure of a number of these cheque accounts by people, particulary older

people. I am sure the contingent increasing of taxes such as the BAD tax and the FID duty will see a further strengthening of that trend.

I just want to look into a couple of examples of the practical and real-world effects of the BAD tax. I guess it does not sound much. I would like to look at one effect on a typical business, in effect, on a typical consumer or financial institution customer. I refer to the example of a small fuel distribution business where the company is required to withdraw three fuel tax cheques per fortnight each amounting to $5 000, those cheques being to pay fuel tax to the Federal Government.

As a result of the BAD tax, the $1.50 banks debits tax, which the company has been paying on each of those cheques for $5 000, will now be doubled to $3 every time a cheque is signed. That means that a total of $450 per annum is to be paid in banks debits. If one adds that to the $1 000 per annum the business is paying by way of financial institutions duty tax, one sees that it goes to show that a typical small fuel distribution business will be paying $1 450 in a year on BAD tax and financial institutions duty alone.

I guess most members can do the sums for themselves in relation to the number of cheques each one of us writes in a particular year. If you work on the average of, say, five cheques a week for under $100 and five cheques a week for over $100—that is an example of a not atypical individual—and if you work out the calculations over a particular year, you will find that it works out to additional bank debits tax of $250 a year, just in the increase in BAD tax.

So, as I said, what we are looking at for a typical small business is an extra $450 in addition to all the other costs and for a typical individual or consumer another $250. When one looks at it alone, they are not stunning figures. They might not be the figures that by themselves will see businesses roll over but when one collapses them together with the whole range of additional costs and charges imposed on businesses in South Australia, such as WorkCover and a whole range of other Government taxes and charges, it again leads to a situation where businesses certainly cannot look to provide further jobs in South Australia; in fact they are desperately trying to hold on to the existing level of jobs and in most cases, as we know, many companies are having to shed jobs.

So, I conclude by saying that it is just another stark example, as I indicated in the Supply Bill debate when I made a more major and significant contribution on the analysis of the budget problems, of the wrong budget strategy for South Australia, which will only increase unemployment and increase the misery index in South Australia. It is another example where this Government has run out of ideas. As the Liberal Leader, in another place and publicly, has said on a number of occasions, what we need in South Australia is not more of the same—the simple kneejerk economic responses of more and more taxes—but a new Government with new ideas and a different vision for the future economic generation of South Australia and this Bill is a further indication that we are not likely to get that from this Government.

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

TOBACCO PRODUCTS (LICENSING) (FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 217.)

The Hon. R.I. LUCAS (Leader of the Opposition): This Bill seeks to increase the tobacco tax in South Australia from 50 to 75 per cent; it seeks to increase Foundation SA's share of revenue from the tobacco tax from 3 to 5 per cent of revenue; and it also seeks to impose a 150 per cent increase in consumption licences which involve purchases from unlicensed tobacco products. The revenue projections for 1992-93 are an increase of $34.4 million and for a full year some $37.5 million. As I indicated earlier in the Supply Bill debate, this is another example of the tax grab, the concentration on the revenue side of the equation of the Government during this budget and associated tax Bill debate.

In looking at those projections for revenue for a full year of $37.5 million and for 1992-93 for $34.4 million, I would seek information from the Leader of the Government in this Council as to why there is a difference because, as explained by Treasury officers, it was intended that the first tax in relation to this Bill be payable from 1 September, based on sales in the month of July. As I said, that was the original intention of the Bill and that was the way these revenue projections would have been constructed. If that is the case, then the revenues collected for 1992-93 I would have thought would be a full 12 month period. Therefore, I seek a clarification—there must be something wrong with my interpretation of those figures—as to why there is a difference between the revenue projection between 1992-93 and the revenue projections for a full year.

The effect on smokers in South Australia is that a 20 pack of cigarettes will increase by 56c a packet, and a 50 packet of cigarettes will increases by some 75c a packet. Mr President, I note your applause for that. I could go back to the budget nights at home in Mount Gambier with my father who was a smoker in 1970s. When smokes went up 2c a pack, the whole world fell in. It was a courageous Government that had bitten the bullet to increase cigarette prices by some 2c a packet. It was certainly always emblazoned across the front page of the *Herald* or the *Sun*, which we took at home, with such headlines as, 'Smokes up 2c', 'Beer up 1c' or something. It was shock horror, black budget for workers, and so on.

How times have changed, when a 56c or 75c increase in the price of a packet of cigarettes can barely attract much attention or public debate. As most members would know, my father was a pretty strong Labor supporter, and he would certainly turn in his grave to know that his Party, the Party of the workers, had increased cigarette prices by 56c or 75c a packet.

The Hon. Peter Dunn interjecting:

The Hon. R.I. LUCAS: That is right. My father, God bless his memory, had a very simple view on life and on politics, and the Liberal Party was the Party for big business and the Labor Party was the Party for workers. As my colleague the Hon. Mr Dunn says, that certainly is not the case. My father and I had many a strong and vigorous debate about that view of the world. Talking of this changed perception reminds me of a cartoon that I

think I saw first in the *Bulletin*, in relation to the increased price for a packet of smokes, commenting that this was a budget for the workers because it restricted cancer to the upper classes. Certainly, I note your nods of approval, Mr President. One could well say that the Labor Party in South Australia could argue that this is a budget for the workers, for the ordinary people, because indeed it will restrict cancer to the upper classes, or to the wealthier classes, because pretty soon they will be the only ones able to afford a smoke in South Australia.

When ex-Premier Bannon first announced the increases in the tobacco tax, on 23 June this year, he made the following statement:

> The Government has rejected any retrospectivity attaching to the move, with the changes to operate from the introduction of legislation to be introduced in the budget session of Parliament.

I want to return to that promise made by ex-Premier Bannon on 23 June 1992 later on in my contribution. When we discuss the Tobacco Products (Licensing) (Fees) Amendment Bill and the tobacco tax in general, we must note the very complex background to the levying of such a licence fee by State Government. Whilst I am not a constitutional lawyer—and I will leave those sorts of discussions and debate to my learned colleagues the Hons Mr Griffin and Mr Burdett—I am advised that it is a pretty thorny area of constitutional law—section 90 of the Constitution tied up with the Commonwealth being the only level of Government that can levy an excise, and the State Governments have to steadfastly ensure that any of their licensing fees or taxes or duties cannot in any way be construed by the High Court or any other court to be an excise, and there have been a number of examples of State Governments having their State taxes or duties being struck down by the High Court because they have not been vigilant enough or careful enough in the construction of the legislation in this area.

There was a recent example in the past few years, where the Victorian Government had a pipeline tax or duty struck down, for much the same reason. The tax or the fee is charged in an unusual way to therefore try to get around this excise question. For example, the tax is paid on the first of the month, let us say 1 September, and it is paid on tobacco sales for the month of July. So, there is a clear gap of one month between the sales period and the payment of the licence fee. It is also a monthly licence which is renewed every month by the payment of a fee. I am advised that it is not an ongoing licence, where one makes monthly repayments but that it is actually a monthly licence which is renewed by the payment of the appropriate tax. I want to quote from a copy of a letter that I, together with many other members, received from Mr Phil Francis of Philip Morris to Mr Mike Walker, the Commissioner of State Taxation, in which he outlines their understanding of the way that this complex fee operates. He states:

> This is in line with practices generally accepted by both the South Australian State Taxation Office and the industry, namely: that the licensed tobacco wholesaler charges (on invoice) the licence fee on sales made to its customers during a particular month; that the licensed tobacco wholesaler collects that licence fee from its customers based on those sales; and that the licensed tobacco wholesaler remits the licence fee collected from its customers to the South Australian State Taxation Office.

They argue that they do it for administrative convenience. They do it on the basis that it is meant to be revenue neutral to them and it is an easier proposition for the Government. It is revenue neutral to them as a company, and that is the way that the industry has operated.

I now want to look at how the Government has handled, or in my view mishandled, the administration and the announcement of this particular increase. I want to draw on the views of Philip Morris and Rothmans in relation to how they sought to clarify matters with the State Government. As I said, members need to bear in mind that as to the tax, if it was going to operate from 1 September, the tobacco companies had to know prior to 1 July what the operative date was going to be so that therefore they could charge the tax from 1 July to the end of July, so that they would be in the position of having collected the appropriate amount of tax for payment on 1 September and, of course, for subsequent months as well.

As I indicated, the announcement was made on 23 June by Premier Bannon. There was an urgent contact made from Philip Morris to the State Taxation Office on 23 June, on the day of the announcement, and Philip Morris received from a Miss Sue Forder, of the State Taxation Office, a copy of a statement and a page which has on it 'Impact of revenue measures'. In relation to tobacco it states:

> Tax rate to increase from 50 per cent to 75 per cent . . .

In the column 'Revenue impact: 1992-93 $m' it has written in handwriting 'from October '92 licence (August sales)'. So, certainly from the original contact they had with the State Taxation Office, Philip Morris was given the impression that they were talking about a 1 October payment date based on August sales—at least in accordance with that particular piece of correspondence. Over the ensuing seven days Philip Morris made a number of telephone calls to various Treasury officers and various State Taxation officers trying to get a clarification of what the starting date was. By 30 June they were starting to get quite concerned and they wrote to ex-Premier John Bannon in the following terms:

> Following your announcement on 23 June 1992 of an increase in the State licence fee on tobacco products, my company has sought information as to the due date of the higher fee. To date we have not been able to obtain the advice we need. Because the increased licence fee for a particular month is based on revenue derived from sales in the month two months prior to that month, it is of critical importance to know when the licence is to be paid at the higher level. I would appreciate your clarification of this matter and ask that it be treated as a matter of urgency.

So for seven days—from 23 to 30 June—they had been trying to get an answer. By 30 June they still had not done so, so they wrote to the Premier.

At the same time Rothmans had been going through the same problems. A letter it wrote on 6 July to the then Premier, Mr Bannon, from Mr David Sturrock, General Manager, Sales and Distributions, is as follows:

> I seek urgent clarification from your department as to exactly when the State licence fee applying to tobacco products is to increase from 50 per cent to 75 per cent as indicated by your recent press release. There is confusion not only within the industry but also in your State Treasury Department from which we have had conflicting verbal advice.
>
> 1. Indicating applicability from 1 August 1992 (Mr A. Sawyer).
>
> 2. Advice last Friday from Mr McPhee to applicability 1 July 1992. This was also confirmed by Mr Walker, however all agree they are uncertain as they have received no official advice from your department.

As the collector of your State revenue we reiterate that Rothmans is seeking definite clarification in writing on this major issue. You will also appreciate two further points.

1. We need time to prepare our administrative systems.
2. It is impossible to collect this revenue retrospectively.

So Rothmans too said that it had been advised by another officer that applicability might not be until 1 August, and that is consistent with the first contact Philip Morris had from the State Taxation Office on 23 June.

Remembering that Philip Morris had written to the then Premier on 30 June, two or three days later there was an acknowledgment letter from the Department of the Premier and Cabinet with Cabinet saying that it was looking at the letter. On 3 July Philip Morris again wrote to the Premier as follows:

I forwarded the attached letter by facsimile on 30 June. As it refers to a matter of significant importance to our company, I would be grateful to receive your response at an early date.

On 6 July Philip Morris wrote to the then Premier as follows:

I attach a copy of my letters sent to you by facsimile transmission on 30 June and 3 July. The letters request advice of the date on which the increase in the State licence fee on tobacco products, announced by you on 23 June, will take effect. To date, no response has been received.

However, the company has been informed verbally by officers of the Treasury and State Taxation Office that 1 September 1992 is the effective date of the State licence fee increase. In particular, the Deputy Under Treasurer, Mr John Hill, informed Philip Morris on 3 July that the State licence fee will increase to 75 per cent on 1 September 1992.

Because the increased licence fee for a particular month is based on revenue derived from sales in the month two months prior to that month, Philip Morris intends to charge its customers State licence fee at 75 per cent effective Wednesday 8 July.

Should it not be intended that the State licence fee will increase to 75 per cent on 1 September 1992, please let me know by the close of business tomorrow, Tuesday 7 July, in order that we can avoid passing on the increase to our customers prematurely.

If we do not hear from you by that time, we shall assume that the State licence fee will increase to 75 per cent on 1 September 1992.

Eventually on 6 July the Commissioner of Stamps, Mr Mike Walker, sent a notice to all tobacco merchants indicating that the operative date would be 1 September and, in effect, that they should have been collecting the tax from 1 July throughout July so that they could pay that tobacco tax.

That mishandling of the situation has created major problems in the industry and for tobacco companies, and has a direct relationship as to how we might consider the legislation before us. From 23 June the companies were trying to find out the operative date and were not advised until 6 July, after numerous attempts to find out; they could not apply the tax until 8 July and did not collect it for the first seven days of July, only collecting the tax for that period at the old rate of 50 per cent; and they collected tax for the remaining 24 days of July at the rate of 75 per cent.

There is now the problem of not enough tobacco tax having been collected for the first seven days of July. The companies have approached the Government and the Commissioner saying, 'We were not told until 6 July. It is not as if we sat back and did nothing: we continually tried to get a response but could not get one. Therefore, we did not collect the tax for the first week and you cannot expect us, as you are now saying to us, to cough up the tobacco tax for those first seven days of July.'

We are not talking about an insignificant sum of money. One of the companies estimates that it amounts to $1.3 million for the industry in that first week of July. One company estimates that the cost to it in uncollected tax which the Government now wants it to cough up and which it did not collect is $480 000. If one looks at the estimated revenue for a full year of around $34 million to $37 million and takes an average for that—and I am not sure whether that is appropriate; perhaps more or fewer people smoke in July than in the summer months—one would be looking at $3 million a month. Clearly the figure would be less than $1 million for the one week of that month; perhaps around $700 000 or $750 000. Maybe the *pro rata* calculation is not accurate, and that is a question that I will direct to the Commissioner of Taxation tomorrow in the Committee stage. I put that question on notice because the average figure of, say, $700 000 for the month of July does not seem to gel with the estimate of one company that it will cost it $480 000 in uncollected tax if it is to be forced to pay the tax.

Subsequent to that there has been ongoing correspondence with the Government, the Commissioner of State Taxation and the Opposition, in effect arguing that case. I do not intend to read all the correspondence but will quote briefly from one of the letters. This is a letter to me of 3 September, and it states:

Philip Morris and other tobacco wholesalers have sought an *ex-gratia* reduction of the tobacco licence fee payable for the month of September 1992 for the following reasons:

The tobacco licence fee for September is paid at the end of August and based on sales made during July.

On 23 June the Premier announced that the licence fee would increase from 50 per cent to 75 per cent. However, wholesalers only received notice of the effective date of the increase on 7 July.

Philip Morris made every possible effort to obtain confirmation of the date from Treasury and the State Taxation Office between 23 June and 7 July by numerous telephone calls and correspondence.

Further on the letter states:

On 28 August wholesalers were asked to pay over to the Government the licence fee for September, calculated at 50 per cent on July sales, since enabling legislation had not been passed. Wholesalers were informed that the Commissioner would call for the balance to 75 per cent on July sales, after the enabling legislation was passed by both Houses of Parliament.

Would you please support an amendment to the legislation permitting wholesalers to pay to the Government the licence fee collected at 50 per cent for the period 1 July to 7 July and at 75 per cent for the remainder of July.

This means the tobacco companies and other wholesalers would be forwarding the exact amount of money collected from retailers and consumers to the Government.

For that reason I have had circulated in my name an amendment to do that. On equity grounds the Government, and if not the Government I would hope the majority in this Chamber, would support the amendment or some variation of it. I am not wedded to the particular form of the amendment. I indicate that we have reconsidered our position in another place and we will move the amendment here in a significantly different form. It is to achieve a reduction for a period of seven days from 1 July to 7 July. The amendment we moved in the House of Assembly sought a reduction for the period 1 July to 14 July.

The amendment in another place was constructed in a different fashion for a variety of reasons based on legal advice from Parliamentary Counsel and others, and based

on my discussions with them, and the amendment has been constructed in a different form for consideration of members in this Council, but to achieve exactly the same thing, that is, to apply a 50 per cent duty for the first seven days and a 75 per cent duty for the last 24 days of July and to pay that amount of tax to the State Government.

That amendment, which we will discuss in more detail in Committee, strikes a different levy for the month of July, or the payment that is required on 1 September and it then strikes the Government rate of 75 per cent from the due payment of 1 October and thereafter. The rate for September is 69.35 per cent of the aggregate value of tobacco products and that is calculated by working out seven days at 50 per cent, 24 days at 75 per cent and then averaging of that calculation and coming up with 69.35 per cent.

On page 2 of the amendment a similar calculation is done for the increase from 55 per cent to 80 per cent involving seven days at 55 per cent duty and 24 days at 80 per cent, giving an average of 74.35 per cent. Briefly, that explains the background to those calculations. The intention of the amendment, based on the best advice available from Parliamentary Counsel and others who have been able to provide some advice, is that it will provide a situation where tobacco companies pay over the amount of tax that they have actually collected. To require a company to pay over an extra $500 000 in tax that it has not already collected from consumers through no fault of its own but because of sloppy handling of the increase by Government departments or officers, in my judgment, is too great an impost to be inflicted upon any company in this economic climate. I support the second reading so that we can consider the amendment package in Committee some time tomorrow.

The Hon. M.J. ELLIOTT: I am sure that that speech could have been shortened and that one could have said the same thing without all those words. I support the Bill. It is no surprise to members in this place to find that I have no sympathy for cigarette companies, purveyors of death that they are. However, important questions are raised by the Hon. Mr Lucas. At the time of the budget last year I expressed concern about legislation by way of a press release, and that is what has tended to happen with respect to a number of taxes and fees in recent years at both State and Federal level. I expressed concern about that, while acknowledging that there are some cases where it can be justified, particularly where there can be avoidance of payment of a fee or tax if one gives too much warning. I suppose that is possible with tobacco products where people might buy up if they have sufficient time to do so.

Leaving that to one side, I have seen some of the correspondence, and I also received correspondence similar to that referred to by the Hon. Mr Lucas. It appears that the companies were left in some doubt as to precisely when the new fee rates would be applicable. They were uncertain of the point at which they were supposed to start collecting at the higher rate. They appear to have made a legitimate attempt to clarify the position. There appears to have been a failure at the Government level: that information did not go to them. At this stage, I am expressing grave concern. I would like to hear the Government's response before I commit myself to a position. Although my sympathies do not go to the tobacco companies, they do go at least to the argument that the Hon. Mr Lucas has put forward thus far.

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

ADJOURNMENT

At 11.27 p.m. the Council adjourned until Wednesday 9 September at 2.15 p.m.