## LEGISLATIVE COUNCIL

Wednesday 9 September 1992

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

### LEGISLATIVE REVIEW COMMITTEE

**The Hon. M.F. FELEPPA** brought up the committee's sixteenth report 1992.

## QUESTION TIME

### SCHOOL ARSON

**The Hon. R.I. LUCAS:** I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about school arson.

Leave granted.

**The Hon. R.I. LUCAS:** The Auditor-General's Report shows that fire losses within the Education Department in 1991-92 amounted to $3.6 million, a 200 per cent increase on the losses for 1990-91. At the same time it reveals that the estimate for fire damage claims admitted by the Public Actuary's Office but not finalised at 30 June 1992 was the daunting sum of $9.7 million. In the year ended 30 June 1991 the corresponding sum was $8.1 million, and 12 months before that it was only $3.3 million. So, in just two years these fire damage claims have risen in dollar terms by almost 194 per cent.

The Opposition has been calling for some years for an overhaul of security methods in schools, aimed at limiting the frequency and extent of arson damage. Fire security experts have called for a significant upgrading of the number of schools protected by security devices such as fire alarms. Other proposals put forward have included a nominal spotter's fee for people who provide information that leads to the prevention of a school fire or to the apprehension of persons responsible for arson.

Also, since May 1991 the Liberal Party has been calling for the posting of rewards of up to $25 000 for information leading to the apprehension and conviction of school arsonists. To date, the Government appears reluctant to take up any such suggestions. My questions to the Minister are:

1. Will the Minister admit that the statistics contained in the Auditor-General's Report indicate that arson is a major and costly problem within Government schools and that the Government's current prevention methods are not working?

2. Will the Minister detail what additional security measures have been put in place since 1 July 1990 in an attempt to minimise arson in schools, and the cost of those additional measures?

3. In view of the 200 per cent increase in the cost of school arson during the past 12 months and of the 193 per cent rise in outstanding fire damage claims admitted by the Public Actuary's Office, will the Minister now also examine the Opposition's proposals for rewards and spotters' fees for people who assist in preventing such fires?

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

### AGENTS INDEMNITY FUND

**The Hon. K.T. GRIFFIN:** I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about the Agents Indemnity Fund.

Leave granted.

**The Hon. K.T. GRIFFIN:** The Auditor-General's Report, tabled yesterday, states that the contingent liability of the Agents Indemnity Fund at 30 June 1992 is $5.7 million. That is an increase of $1.2 million over last year. The increase suggests that even further defaults have occurred since last year, adding to the defaults of the well-known agents Hodby, Schiller, Field, Winzor, and a number of others where, as I recollect, the aggregate liability was something over $10 million. At the time of the Hodby default I raised the issue of departmental responsibility for failing to identify the problem earlier, particularly because audit reports had not been lodged. The matter as far as I am concerned has never really been satisfactorily resolved.

Now, the Auditor-General's Report refers to five pending cases of fiduciary default and a concern by the department about auditing standards. However, the report says that two attempts by the department to establish negligence on the part of auditors have failed. The Commissioner has said that the department would 'in future review the standard of the audit in cases where fiduciary defaults occur.' This raises the question of why it has not been done years ago. In 1989-90 a consultant was appointed to undertake audits of trust accounts, in addition to the statutory audit of licensees by private auditors, and it appears from the Auditor-General's statement that that private consultancy is continuing. With the five pending cases of fiduciary default, it does raise concern about the effectiveness of the department's surveillance program. My questions to the Minister are:

1. Since 30 June 1992 have any other fiduciary defaults come to the attention of the department?

2. Why has the department not reviewed auditing standards before this time, and, in view of the reference in the Auditor-General's Report to such a review now taking place, can the Minister indicate what form that review will take and over what period of time that will occur?

3. What is the scope of the consultancy, which has been in operation since 1989-90, and its cost, and has the effectiveness of that consultancy been reviewed?

4. Were any of the five pending cases the subject of audit by those consultants?

**The Hon. BARBARA WIESE:** The questions raised by the honourable member are quite detailed and I will have to seek a report from the Commissioner on matters that have been raised. But there is a general comment that I would like to make about the auditing program which was commenced by the Department of Public and Consumer Affairs back in 1989 and which has been successful in a number of ways in discovering poor practices on the part of agents in their bookkeeping arrangements and the manner in which they keep accounts generally. In a number of instances there has been the

opportunity for appropriate advice to be given to a large number of people about ways in which they can improve their systems, and that advice I believe generally has been accepted and acted upon.

However, I think it is also worth making the point that, if a person in business deliberately seeks to defraud, it is often very difficult for those matters to be picked up in an audit program of this sort. People who are engaging in such activity very often will go to quite extraordinary and complicated lengths to arrange their finances so that it becomes very difficult to uncover or unravel information in order to discover fraud that is being perpetrated on others. To the extent that it is possible for an audit program of this sort to provide some deterrent effect and to provide information and advice to people who are not keeping their books appropriately and who do not have proper systems, I believe that the program has been a success.

There has been an attempt during the course of the auditing program to monitor the effectiveness of the program. This year, in order to be sure that we are receiving the best possible advice on the matter, the consultancy was put out to tender so that we could get a number of submissions from accountancy companies and auditors who might wish to provide such a service. So, the program is being monitored on an ongoing basis and, as I said, has met with some success.

As to the details of cases that have emerged in recent times and the standing of the funds, and so on, I will seek a detailed report for the honourable member and bring that back as soon as I can.

**The Hon. K.T. GRIFFIN:** As a supplementary question, in the light of the answer, would the Minister also seek information as to the criteria by which the success of the consultancy has been assessed?

**The Hon. BARBARA WIESE:** I will be happy to seek that advice, too.

## TRANSIT POLICE

**The Hon. DIANA LAIDLAW:** I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question about Transit Police powers.

Leave granted.

**The Hon. DIANA LAIDLAW:** I refer to correspondence from a Gawler resident, Mrs E.P. Logar, relating to an ugly incident when she travelled on the 2.57 p.m. train from Adelaide on Wednesday 2 September. Incidentally, the train left 10 minutes late, but that was a relief because it was not as late as usual. Mrs Logar writes as follows:

> There was a noisy argument between some passengers, particularly between a large, powerfully built man and a girl. When the girl was asked to stop using that sort of language in front of children by one of the passengers, (a woman, late twenties, thirtyish) the passenger was attacked by the girl who began to slap and hit her. This continued with the passenger being pushed back into the corner, but the passenger did not retaliate.
>
> At the next station an officer in a plain blue uniform boarded the train and put the girl off the train, but she got back on again and resumed her attack on the female passenger. This continued on and off for a while with the officer unable to do anything about it.
>
> Finally, a young lad got up and went to the female passenger's assistance with the result that the large man delivered a severe punch to the lad's face, causing a cut and a badly swollen eye. The group left and the officer just sat beside the injured lad. The officer explained that he was not able to do anything against the group.

Mrs Logar said she phoned the STA to complain about the incident and the lack of protection for passengers. Apparently, the officer to whom she spoke was nice and sympathetic but said that there was nothing they could do—they cannot touch Aborigines. When Mrs Logar indicated that she would speak to her MP, the officer encouraged her to do so and said that he hoped something could be done. Mrs Logar concludes:

> I am very concerned at the perceived powerlessness of the train staff to provide protection for passengers in the face of gangs and also that offenders were not apprehended in any way but simply allowed to leave.

My questions are:

1. Will the Minister investigate and report on the above incident?

2. Does he intend to reinstate the Bill he introduced last session (29 April) to amend the State Transport Authority Act to provide transit officers with additional powers to assist them in the execution of their duty to protect passengers on STA property and vehicles?

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

## PRIVATE INVESTIGATORS

**The Hon. I. GILFILLAN:** I seek leave to make an explanation before asking the Minister for Crime Prevention a question about private investigation companies in South Australia.

Leave granted.

**The Hon. I. GILFILLAN:** The recent finding in New South Wales by that State's Independent Commission against Corruption (ICAC) of a multi-million dollar illegal trade in confidential information has serious implications for South Australia. A three volume ICAC report by Adrian Rodin, QC, on the unauthorised release of Government information found that in almost every case the information being sold illegally was funnelled through the hands of private investigators. The report named the major buyers of confidential information, which included a number of Australia's major banks, finance and insurance companies, most of which operate in South Australia. According to the report, the banks and other firms spent millions of dollars a year on illegally acquiring confidential information on members of the public, and private investigators often played a key role in finding information.

On one occasion, an ICAC raid on an investigator's house found computer files used to form an extensive database which contained the names and personal details of more than 10 000 people. In a number of cases, private investigators had been trading illegally in confidential information for up to 20 years. Of particular concern was the finding in the report that a very large number of people working as private investigators were former police officers or, in some cases, actual serving officers. In one instance, two serving officers spent a large part of their working day extracting confidential information from the police computer system, which they

then transferred to their own private investigation company and sold on to banks, insurance firms and other companies for substantial financial gain. In other cases, former police officers left the force and set up private investigation firms which then utilised an extensive personal network of serving officers who did favours for their former colleagues by providing unauthorised information.

Last week I travelled to Sydney and spent a day at ICAC headquarters and had discussions with Commissioner Ian Temby, QC, and other senior ICAC officials. They held the opinion that similar wide-ranging corrupt practices are taking place in all States, including South Australia. ICAC officials pointed to the national network of banks and other finance and insurance companies as opportunity for extensive corruption and told me that the circumstances that led to corrupt behaviour in New South Wales exist in other States including South Australia. My questions are:

1. Is the Attorney-General familiar with the findings of the Rodin investigation, in particular, those relating to the role of serving and former police officers connected with private investigation companies?

2. Is he aware that at least 60 private investigation firms are listed in Telecom's Yellow Pages in South Australia offering services in criminal intelligence and police investigations and claiming South Australia police experience?

3. In light of the Rodin report, will he investigate the nature of the companies' principal form of business and how those companies obtain their information?

4. Will he investigate whether the directors, shareholders or operatives include any serving or former South Australian police officers?

**The Hon. C.J. SUMNER:** The honourable member raised the question of the ICAC report into the trade of information on a previous occasion and I indicated then that I would have some inquiries made in South Australia within Government to see whether or not there is any information that we have to indicate that the activities that were exposed in New South Wales are going on in South Australia. I am still waiting for a reply to that request. What I will do with respect to the matter that has been raised by the honourable member is also to have that looked at in the context of the inquiries that I have already set in train. I can only hope that the honourable member's foray into corruption allegations on this occasion is based on a little bit more factual information than—

*The Hon. I. Gilfillan interjecting:*

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** Don't get so agitated about the matter. I know you are very upset at having caused $10 million of taxpayers' money to be spent to find nothing. I know you are very upset about it, but you did it, I didn't, and you have to wear the responsibility for it.

**The Hon. I. Gilfillan:** I know the script.

**The Hon. C.J. SUMNER:** That's right. I know the script, too, because it comes from you. I am used to what you have to say about these matters.

*The Hon. I. Gilfillan interjecting:*

**The PRESIDENT:** Order! The honourable Attorney-General.

**The Hon. C.J. SUMNER:** I hope your foray into corruption allegations on this occasion is based more firmly on factual information—

*The Hon. I. Gilfillan interjecting:*

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** —than it has been in the past, because as I said, your previous attempt to expose this issue in South Australia through the Parliament, as the honourable member knows, was found to be completely baseless.

## SCRIMBER

**The Hon. L.H. DAVIS:** I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in this Chamber, a question about a Scrimber overseas trip.

Leave granted.

**The Hon. L.H. DAVIS:** On 20 February I placed a question on notice asking the Minister of Forests, Mr Klunder, to provide within seven days details of an overseas trip undertaken by SATCO Chairman, Mr Graeme Higginson and other SATCO executives. I received no reply and put the question on notice again on 6 May for a reply by 14 May. Eventually in early August I received a totally inadequate reply from Mr Klunder which, apart from confirming that $43 119.60 had been spent by Mr Higginson and two other SATCO officers, Mr Roger White and Mr Max Campbell, during a three week overseas trip between 5 January and 25 January this year, released no other details.

Last month I asked another question seeking further information about the trip and on 20 August I wrote to the Minister of Forests, Mr Klunder, asking 10 questions about this trip and seeking a reply to the above question by Thursday 27 August 1992. Today is 9 September and I still have not received any reply to questions originally asked almost eight months ago. On the Susan Mitchell program yesterday, on radio station 5AN, Susan Mitchell advised that Mr Klunder was referring all matters to the Premier's Office to Mr Arnold. However, Mr Arnold's office accused me of grandstanding and point scoring and refused to answer any questions, and one of the SATCO executives involved in this trip claimed that Mr Klunder was the person to make the statement about this matter. In other words, there was total confusion on this subject which has been around for nearly eight months.

No-one from the Government was prepared to go on the Susan Mitchell program and discuss the matter with the presenter and me—no-one from Premier Arnold's office or Mr Klunder or any of Mr Klunder's officers. Earlier this year I visited Seattle to speak at a conference on the ageing, and Vancouver, Portland and San Francisco where I had numerous appointments to look at small business, forests, arts and economic issues. My trip lasted two weeks. My air fares totalled $2 449 and my accommodation and other expenses accounted for $2 448, a total expenditure in a two week period of $4 897. On any reckoning the SATCO timber executives spending on their trip, taken at approximately the same time, was at least three times the level of my expenditure, assuming that Mr Campbell was away, as I understand it, for only one week. I ask the Attorney-General, in view of the

debate raging about the lack of financial accountability of the Bannon Government, which can be argued brought a Premier down, whether the Parliament and the public can assume that Premier Arnold's dismissal of questions and concerns from both Susan Mitchell and me yesterday on this issue is an indication that a lack of accountability is also to be a feature of the new Arnold Administration.

Will the Attorney-General obtain answers within seven days to the following questions which were asked of the Minister of Forests in my letter of 20 August 1992, namely:

1. The dates of reservations made at hotels or other accommodation and the names of such hotels or accommodation used by Mr Higginson, Mr White and Mr Campbell;

2. The cost of such accommodation for each executive;

3. The names of cities or towns visited by these three executives;

4. The length of the Asian leg of the overseas trip;

5. The period of time which Mr Campbell was overseas with Mr Higginson and Mr White;

6. Whether the three timber executives kept diaries of their itinerary;

7. How many separate appointments were made and kept on this three-week trip;

8. The cost of travel for each executive, including air travel and ground content;

9. A summary of other expenses incurred by each executive in addition to the cost of travel and accommodation; and

10. Why has the Minister been so slow to respond to the question that was first asked in February?

**The Hon. C.J. SUMNER:** I will refer that question to my colleague and see whether he is able to bring back a reply in the time suggested by the honourable member.

## LOCAL GOVERNMENT GRANTS

**The Hon. J.C. IRWIN:** I seek leave to make an explanation before asking the Minister of Local Government a question about Commonwealth grants.

Leave granted.

**The Hon. J.C. IRWIN:** The Minister would be aware of a certain amount of unrest within the local government community following the announcement by the Commonwealth Government of the local capital works program aimed as it is at improving unemployment levels and, I hope, leaving something of permanent value to the community. I refer also to the Better Cities Program which will make Commonwealth funds available to certain selected councils to improve the amenities of those areas.

The common factor with these two programs is that the Commonwealth makes available millions of dollars over a number of years to selected local government areas. Not all areas selected are common to both programs but many are. Not all the programs seem to embrace the social justice principles that all unemployed people should be treated equitably. We have in this State, as indeed there are in all States, a Local Government Grants Commission. In this State that commission enjoys an extremely high regard earned by the judgment of all councils that its methodology is fair. Now, there is obviously some quibbling amongst councils about a few dollars and cents but overall I am sure I am supported by all councils in their judgment of the fairness of the Local Government Grants Commission. I quote from a grants commission report:

> Its Act provides for the allocation of these funds by the commission. Under section 18 (2), it is required to ensure that:
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> '. . . as far as possible the amount of the grant will be sufficient to enable the council by reasonable effort to function at a standard not appreciably below that of other councils that are in the opinion of the commission similar to the first mentioned council in relation to such factors as the commission considers relevant.'

In so doing the commission under section 18 (3):

> '. . . may in relation to a particular council take into account any special needs for disabilities of that council'.

The Minister has frequently told us about the inequities of the base Commonwealth Grants Commission allocation as it is based on a *per capita* allocation to the various States. As I read the Minister and the Local Government Association, they are very much in favour of a fiscal equalisation allocation of Commonwealth grants, much the same as the South Australian Grants Commission.

**The Hon. Anne Levy:** Aren't you?

**The PRESIDENT:** Order!

**The Hon. J.C. IRWIN:** That is not relevant at all to the question; indeed, the interjection is not relevant in any case.

Does the Minister acknowledge that the *ad hoc* nature of the Commonwealth allocation to local governmental capital works grant and the Better Cities Program grants quite dramatically throws out the relativities so carefully established by the South Australian Grants Commission allocations, based as they are on equalisation, and the fact that they can take into account already—and no doubt do—any special needs or disabilities of councils which must include unemployment levels, for instance. Will the Minister initiate serious discussions with the Local Government Association and the South Australian Grants Commission to find ways of including councils who receive no grant at all from the capital works or Better Cities Program, or indeed any other program the Commonwealth Government may invent?

**The Hon. ANNE LEVY:** I am sorry, but I am not quite sure what the honourable member's second question was. With regard to his first question, I can indicate only that the Commonwealth makes its own decisions with regard to allocations of moneys. I am not aware exactly what criteria were used for the Better Cities Program, but I am sure that they were based on the needs of underprivileged areas and their needs for improving the physical environment in which people live.

Certainly, the recent local capital works grants were based on the degree of unemployment that existed in council areas, and it was councils with high unemployment areas that received the largest grants, with a *per capita* component. Obviously, a council such as Salisbury with over 100 000 residents will receive a higher grant than Renmark, with only about 10 000 residents, even presuming that the unemployment rates were the same.

I should point out that, contrary to the remarks of an honourable member in the other place, it cannot be said that the grants have gone only to Labor electorates. Many Labor electorates did not obtain grants, and there were

Liberal electorates where councils received grants. It was determined purely on the basis of the degree of unemployment.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** If members opposite doubt the statements I have made, I suggest they have the matter taken up by their colleagues in the Federal Parliament. It is the Federal Government—

**The Hon. Diana Laidlaw:** You should check your facts.

**The Hon. ANNE LEVY:** I have checked the facts very carefully.

*The Hon. Diana Laidlaw interjecting:*

**The PRESIDENT:** Order! The Chamber will come to order.

**The Hon. ANNE LEVY:** If members of the Opposition have queries about the allocation of Federal grants, and the methods by which it has been done, I suggest they have their colleagues in the Federal Parliament take up the matter with the Government that is responsible. I am answerable to this Parliament for matters relating to my role as Minister for Local Government Relations. I am not responsible for the distribution by the Federal Government of grants to local government capital works that it has decided to distribute. Members can obtain the information through the channels that are available to them. If members do not believe me or the data that has been provided (and publicly so; one does not need to read the Commonwealth *Gazette*), I can only say that there are publicly available data on the distribution of these grants.

In the second question I believe the honourable member was talking about the LGA and the Grants Commission getting together to discuss whether these Commonwealth grants would affect the methodology of the Grants Commission. As the honourable member knows, the Grants Commission takes a total of about 26 different factors into account when determining the fiscal equalisation formulae for distribution of money to South Australia's local government bodies. Unemployment is certainly one of them, but only one out of 26.

The total money distributed through the Grants Commission is of the order of $69 million or $70 million, and I am not counting the local roads grants, even though they are now untied. It would be difficult, given that unemployment is only one out of 26 different factors, to make much impact on the distribution, should the Grants Commission adjust its formulae to take account of Federal Government grants.

As I say, it is only one of 26 factors and, while account could be taken, the other 25 would not be altered. I doubt whether the relative distribution would change very much although, doubtless, there would be some differences at the margin. This is something that the Grants Commission could consider, and I will be happy to draw it to its attention. However, I should point out that I cannot direct the Grants Commission, and the grants for this financial year have already been determined, and distribution of the first instalment has already occurred. So, any correction to the formulae could apply only for the next financial year.

**The Hon. J.C. IRWIN:** As a supplementary question, although this is part of my first question, does the Minister acknowledge that the *ad hoc* nature of the Commonwealth allocations to those two major programs for capital works and grants does throw out quite dramatically the relativities that have been so carefully established by the commission, and does she agree that the Commonwealth does not make its own decision regarding the South Australian allocation of grants through the South Australian Grants Commission, which was set up under the South Australian local government legislation?

**The Hon. ANNE LEVY:** I have already answered the first of those questions. With regard to the second one, the grants are determined by the Local Government Grants Commission in South Australia. They need to be approved by the Commonwealth Government before any resources are released through the Grants Commission to the 119 councils in this State.

## TUBERCULOSIS

**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 tuberculosis.

Leave granted.

**The Hon. M.J. ELLIOTT:** A recent edition of *New Scientist* magazine has reported that, after 20 years of being under control, cases of tuberculosis are on the rise in industrialised countries. The rise in the United States has been attributed to a combination of the arrival of HIV, increasing homelessness and the emergence of new drug-resistant strains of the disease. All recorded cases of infection with strains of *Mycobacterium tuberculosis* that were related to existing drugs have resulted in death.

The magazine reports on the new wave of TB research under way around the world. South Australia is certainly not immune to this rise in new TB cases. My questions to the Minister are:

1. How many cases of drug-resistant strains of TB have been identified in South Australia?

2. If any, what work is being done to prevent the spread of this disease?

3. If none, what work is being done in preparation for the strains appearing?

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

## CHILD ABUSE

**The Hon. BERNICE PFITZNER:** I seek leave to make a brief explanation before asking the Minister representing the Minister of Family and Community Services a question about child sexual abuse.

Leave granted.

**The Hon. BERNICE PFITZNER:** About four weeks ago there was alleged child sexual abuse in a family day care centre. The child was a three-year old female. It was reported that it took a week for the mother to contact the appropriate authority and to be seen by the Child Protection Service at the Flinders Medical Centre. She had to phone several places before getting on to the

southern area of FACS, which finally made the appointment.

Physically the child had a reddened vagina and swollen hymen. Some cream was given to mother and no further emotional assessment or follow up was done. Ever since then the child has been having nightmares and screaming and crying for two hour periods continuously. Apparently, there are other children being cared for at this family day care centre. FACS and the Children's Services Office have been involved, and I understand that this family day care centre is now not a day care facility but has changed to an after school care facility. The FACS officer involved has remarked that this incident is an everyday occurrence and that it was only 'child's play'. This remark is of concern to me. I have been involved in child development for over 15 years and certainly do not subscribe to this incident as being normal. If we are to accept that the safety of the child is paramount, then my questions are:

1. Will the Minister look into the reason why the family day care facility is still operating but now as an after school care facility?

2. Have the other children been checked as to their wellbeing, and have the parents been informed of the situation?

3. Why has the three year old child only had a physical assessment and not had any emotional assessment at the Flinders Medical Centre, and will the latter assessment be done?

4. Has the carer's family had any counselling?

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

## LOCUSTS

**The Hon. PETER DUNN:** I seek leave to make a brief explanation before asking the Minister representing the Minister of Agriculture a question about plague locusts.

Leave granted.

**The Hon. PETER DUNN:** There is a potential for a plague of locusts, as there have been observations of these pests in the Flinders Ranges, in the Mid North and on northern Eyre Peninsula in March/April, when they came in from southern Queensland and western New South Wales. They have the potential to devastate pastures and crops in South Australia. The last very bad plague that I can recall was back in 1955 and it virtually cleaned out everything north of Adelaide. Plagues have a very devastating effect on primary industry because the locusts come through at the end of September and destroy crops as well as pasture. I can remember them killing chooks and garden plants. There was only one garden plant, one which contains pyrethrum, which they did not attack, and there were mountains of dead grasshoppers around those plants. However, they pollute rainwater tanks and they infest the roads.

It is impossible to ride motorbikes when they are about. This pestilence is of course referred to in the Bible. Early intervention is a cheap control, and we now have the means to control plague locusts. It is by the use of toxic chemicals, and that use is during the early moulting stage before the pest develops wings and flies. Once it starts to fly it is nearly impossible to control but when it is still bound to the ground it is easy to control. Specialist services are needed, involving aircraft, footpath and motorbike patrols, to observe and find the hatching locusts. I understand that the recent rains may have made some difference to the plague, but I certainly observed them in April on one late afternoon at 7 000 feet; I was running into them in the aeroplane. My questions to the Minister are:

1. In the light of the State's finances, what contingency program does the Department of Agriculture have in place to observe the plague locusts?

2. Have funds been set aside for the control of these plague locusts and, if so, how much?

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

## LIQUOR LICENSING

**The Hon. J.C. BURDETT:** I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about liquor licensing administration.

Leave granted.

**The Hon. J.C. BURDETT:** I refer to page 137 of the Auditor-General's Report on the Department of Public and Consumer Affairs in relation to information technology, and it covers various areas. In regard to liquor licensing it states:

> The initial delay until October 1991 was caused by under-estimation of the complexities associated with the project. Since October 1991, higher priority has been given to activities concerning the gaming machine legislation. The department has indicated that the implementation of the Liquor Licensing System is still dependent on Cabinet approval being obtained for the funding requirement.

My question to the Minister is: can she report on the extent to which the funding requirement for the implementation of the Liquor Licensing System is being implemented?

**The Hon. BARBARA WIESE:** The funding requirement for the liquor licensing computer systems has not yet been fully estimated as far as I know. Certainly I have received no submissions from the Liquor Licensing Commissioner recently that would lead me to believe that the project has reached the point where it is appropriate to seek Cabinet approval for funding, although, as I recall, previous Cabinet decisions which approved the implementation of a computer system for the liquor licensing area did include approval for funding for at least parts of the project—developing feasibility studies and other matters. So I cannot quite recall whether all approvals for funding have been achieved, but I suspect there is still one to come, which would be the final approval for the actual implementation. As I say, I have not received a submission from the Liquor Licensing Commissioner yet that would lead me to present a submission to Cabinet. If the honourable member is interested in knowing more about the timetable for this, I can seek a report as to when it is that the Liquor Licensing Commissioner expects that such a submission is likely to come forward.

## STATE THEATRE COMPANY

**The Hon. DIANA LAIDLAW:** My questions are to the Minister for the Arts and Cultural Heritage and they relate to the General Manager of the State Theatre Company. Is the Minister able to confirm that the board of the State Theatre Company decided—possibly yesterday—not to review the contract of the General Manager, Mr Robert Love? If so, what are the reasons for this move? Telephone calls to my office today have suggested that Mr Love is being made a scapegoat for the company's $500 000 operating deficit last year or, even worse, that he is being penalised by the Government on his role as spokesman for the Arts Industry Council, which has been active in deploring Government cuts to arts funding in this State.

**The Hon. ANNE LEVY:** Certainly, the latter suggestion is absolutely absurd. The matter is one between the board of the State Theatre Company and the General Manager. I was informed that it had been mutually agreed by the board and the General Manager that his contract would not be renewed when it expires early in 1993. My information certainly was that it was by mutual agreement and that no scurrilous conclusions at all can be drawn from that, certainly not in the way indicated by the rumours to which the honourable member referred.

## CLUB KENO

**The Hon. R.I. LUCAS:** I seek leave to make an explanation before asking the Attorney-General, as leader of the Government in this Council, a question on Club Keno and answers to questions.

Leave granted.

**The Hon. R.I. LUCAS:** In February this year, I asked a series of questions about abuses of the Club Keno game conducted by the Lotteries Commission. I was advised that about five or six months ago the Lotteries Commission provided answers to those questions to former Premier Bannon for response to me in this Chamber.

*The Hon. Barbara Wiese interjecting:*

**The Hon. R.I. LUCAS:** I asked it a month ago; you've got a good memory, anyway. About four weeks ago, when Premier Bannon was about to stand down, I asked the Attorney-General, as leader of the Government, whether he would be prepared to take up the issue with the then Acting Premier, Dr Hopgood, to see whether he was prepared to release the information that had been provided to former Premier Bannon about abuses of the Club Keno game conducted by the Lotteries Commission.

It is now about three or four weeks later and there still has been no response; I presume, therefore, that the Acting Premier, Dr Hopgood, is unprepared to release the information. I now ask the Attorney-General, as Leader of the Government, whether he is prepared to take my request for an answer to the new Premier, Mr Arnold, and ask whether he is prepared to release the information provided by the Lotteries Commission about abuses of the Club Keno game conducted by the Lotteries Commission and enable those answers to be provided in this Parliament, some eight months after the questions were first asked in this Chamber.

**The Hon. C.J. SUMNER:** I am happy to refer it to the Premier, as I take it he is the responsible Minister, and bring back a reply.

## TOURISM SOUTH AUSTRALIA

**The Hon. J.F. STEFANI:** I seek leave to make a brief explanation before asking the Minister of Tourism a question about the survey conducted at the South Australian Tourist Centre.

Leave granted.

**The Hon. J.F. STEFANI:** For some time now, I have been seeking information dealing with the presence and removal of asbestos from Government-owned buildings. The building formerly occupied by Tourism SA is one such property which has been identified as containing asbestos. On 26 November 1991, in an answer to a question which I asked the Minister, the Minister advised Parliament as follows:

> Following the asbestos removal program, SACON, which is the Government department responsible for this area of activity, assured us that, although there was still some asbestos left in the building, as is usually the case after removal programs in buildings of this vintage, the asbestos which was left is in inaccessible areas and there was no risk to health.

My questions are: has the Minister read a report from Environment Industrial Laboratories, dated 19 September 1990, detailing a survey on the presence of asbestos at Tourism SA, and will the Minister make such a report available to Parliament?

**The Hon. BARBARA WIESE:** As far as I can recall, I have not seen the report to which the honourable member refers. If it exists, then I imagine it is a report which would be in the hands of SACON as the agency which is responsible for the asbestos removal programs for Government buildings. I will undertake to make some inquiries about that matter and ascertain whether or not that report is available for release.

Following a question which was asked by the Hon. Mr Stefani in this place a couple of weeks ago relating to asbestos and 18 King William Street, I have also asked officers in my office to follow up questions which were previously asked but which have not been responded to so that replies can be provided on this matter as soon as possible.

## FLOOD DAMAGE

**The Hon. BERNICE PFITZNER:** I seek leave to make a brief explanation before asking the Minister of Local Government Relations a question on the subject of flood damage in the Adelaide Hills.

Leave granted.

**The Hon. BERNICE PFITZNER:** In last week's flood devastation, the Adelaide Hills was particularly hard hit. I understand that the East Torrens council had 115 mm of rainfall overnight. East Torrens council is a metropolitan council that has a large number of unmade roads and is, therefore, more vulnerable to floods. The estimated cost of repair of the damages was approximately $500 000. With the reduction in

Government grants this year and a small population with large tracts of rural land, the council will be struggling to pay for its road repairs. I understand that there is a submission to the Minister from the Hills councils to an emergency fund set up after the Ash Wednesday fire. My questions are:

1. How is the emergency fund administered and what are the criteria for eligibility and the determination of apportionment?

2. How much is in the fund at present?

3. Is the Minister likely to be granting some funds to these Hills councils?

**The Hon. ANNE LEVY:** As the honourable member mentioned, there is a disaster fund, which is funded by .005 on the FID tax. This fund is set up with a sunset clause to assist local government in disaster situations to build up a fund. I am afraid I do not know the actual sum which is in the fund at the moment; some draws have been made on it. I will seek that detailed information and bring back a response to the honourable member.

It is administered by a board of trustees, with representatives from both local and State Government. There are detailed criteria for applicability of the fund. It is certainly made quite clear that it is a fund solely for disasters where the financial responsibility lies with local government. It is not established for damaged private property, as a result of natural disasters. But roads which are clearly a council responsibility would be eligible for funding from the disaster fund if all the other criteria are met. I will get the detailed information and bring back a report. I have not yet received a request from any of the Hills councils, but it may well be that, before making formal application, they are still assessing the total bill for the damage caused.

The honourable member spoke about reduction in grants for roads, but this is not true. If she examines the figures which I issued some time ago and which were distributed to all members of Parliament she will find that road grants have increased.

## CONTROLLED SUBSTANCES (CLASSIFICATION OF OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 September. Page 265.)

**The Hon. K.T. GRIFFIN:** At the Attorney-General's request, for reasons on which Opposition members have been briefed and with which we agree, we have indicated our support for dealing with this matter quickly because it is a matter of some urgency. That is why we are prepared to facilitate consideration of this so that the matter can be considered by the House of Assembly. The Director of Public Prosecutions expressed some concern to the Attorney-General about an amendment to the Controlled Substances Act in conjunction with transitional provisions of the courts restructuring package. Those provisions came into operation on 6 July.

The change that was made related to section 32 (5) B *(b)* of the Controlled Substances Act. That section deals with penalties for the manufacture, production, sale or supply of a prohibited substance other than cannabis. It is framed in three categories. If the quantity of the substance involved in the commission of the offence equals or exceeds the prescribed amount in respect of that substance, the penalty is a fine not exceeding $500 000 and imprisonment for life or such lesser term as the court thinks fit. If the quantity of the substance involved in the commission of the offence is less than the amount prescribed for the purposes of this subsection but one-fifth or more of that amount, a penalty not exceeding $200 000 or imprisonment for 25 years or both may be imposed. Thirdly, if the quantity of the substance involved in the commission of the offence is less than one-fifth of the amount prescribed for the purposes of the subsection, the penalty is not to exceed $25 000 or imprisonment for five years or both. That is the key provision to which this amending Bill relates.

It was intended that the third level deal with what might be regarded as relatively minor offences of production, sale and supply of drugs other than cannabis and was designed to be regarded as a minor indictable offence, which means that, if an accused wanted to plead guilty, the matter could be dealt with summarily in the magistrates court without the matter being referred to a superior court for trial. In that event, the penalty that would be imposed by the magistrate would be no more than two years imprisonment, although if a magistrate were of the view that the penalty ought to be more than that, it could be referred on to the District court.

The difficulty that has occurred is that the prescribed amount of a substance such as heroin is quite large; it is 300 grams. If the offence involves 60 grams or less of pure heroin, the penalty is no more than a $25 000 fine or imprisonment for five years or both. The concern that was expressed by the Director of Public Prosecutions was that the effect of that low penalty for production, sale or supply of a relatively large amount of heroin could be to reduce the penalties across the whole scale of these offences in this subparagraph *(b)*. That was seen to be undesirable and it is certainly in my view also undesirable if it is likely to have that consequence.

It is interesting to note that, when that provision was before us when we were considering amendments last year, I think, to the Controlled Substances Act, the reference to one-fifth was initially one-half but, in the deliberations of the Committee, when I suggested that that was too high, it was accepted that something like one-fifth might be appropriate. That was really something plucked from the air. It was agreed across the Chamber, and it appeared at the time to be reasonable, but in conjunction with the courts restructuring package, the transitional provisions in that and a closer look at the prescribed amounts of heroin, it became clear that that one-fifth is much too high.

The scheme that the Government proposes is to eliminate that third level and allow the courts to make judgments on the level of penalty divided into only two parts. If the amount is more than 300 grams, the penalty may be a fine of $500 000 or imprisonment for life. If it is less than 300 grams, the penalty will be 25 years imprisonment or a fine of $200 000. I think that leaves with the court a reasonable discretion so that it can grade the seriousness of the offences.

The Bill applies back to 6 July; therefore, it is retrospective. It is an issue upon which I am particularly sensitive, as is the Liberal Party generally. We have not said that in no case should there ever be retrospectivity and that each case has to be judged basically on its merits, although in principle we would be reluctant to agree to retrospective legislation. That is what prompted me to talk to the Director of Public Prosecutions. Because of the limited time that has elapsed since 6 July, I was concerned to ascertain whether any accused person was likely to be affected adversely by this amending Bill. I was informed that one case where sentence is yet to be considered might be affected by it but that the offences in relation to which the accused has pleaded guilty all occurred before 6 July when the original penalties applied, so there is no detriment or disadvantage to the accused in the context of the general principle of the law that this Bill should operate from 6 July. The accused will continue to be subject to the penalties which applied at the date of the commission of the offences.

As far as I am able to ascertain, no other case would be affected by the repeal of subparagraph (iii) of section 32 (5) B *(b)*. It is in that context that, recognising that there is a need to ensure that the penalties for these serious offences are not watered down inadvertently, I indicate support for the Bill.

I repeat that we are prepared to facilitate the consideration of the Bill through all its remaining stages today on the basis that it addresses an issue which, if left unchecked, would be more difficult to address in four weeks' time when we resume after the budget Estimates Committees. Obviously it is desirable to deal with this matter immediately it came to light rather than deferring it for further consideration.

**The Hon. I. GILFILLAN:** We do not oppose the Bill in so far as it appears to be an unforeseen consequence of rationalising the use of the courts. I take this opportunity to express what I see as a major flaw in the approach to the penal system and the treatment of offences in the move for extensive prison sentences as a punishment for various ranges of offences. Virtually all serious studies of criminology have shown that periods of time spent in prison are distinctly unproductive in anything other than removing a person from circulating in society for a period of time and result in extraordinarily high costs to the taxpayers of the area which is providing the prison and the staff that are needed to maintain the prison.

I take this opportunity to indicate that the offence of possessing 60 grams or under of heroin for sale (which is the only example that I have had a chance to consider or discuss at all) would, under the legislation that currently exists, be dealt with efficiently and properly in the Magistrates Court with an upper limit of penalty which I gather, although listed as five years and a fine of $25 000, would, in effect, be only two years. The fact still remains that a two year penalty in prison plus the fine (which is possible) is a severe penalty.

I am unhappy that we are juggling the workload of the courts purely because there is an agreed position between Labor and Liberal that we cannot tolerate in this society a punishment level of that type for the possession for sale of 60 grams or under of heroin (referring again to the particular example that I quote). I think that it is misguided. I think that we will evolve to a more rational approach to what is the proper punishment for offences, but I recognise that this Bill is not the occasion for a wide-ranging debate on the appropriateness of penalties.

However, I think it is important to indicate that, although I do not have an objection to the rational readjustment of workloads between the courts for the motive which is expressed—that it is being done because of an unforeseen reduction in the penalties applying to the trading in substances other than cannabis—I think it the wrong motive and therefore I want to put quite clearly on the record that the Democrats would not support this measure as a basis for readjusting the workload of the courts.

However, both Labor and Liberal wish to have this happen and as a result of the earlier legislation it cannot be addressed in any other way, so we do not intend to oppose the Bill.

**The Hon. C.J. SUMNER (Attorney-General):** I thank members for their attention to this Bill, in particular to the Opposition and Democrats for facilitating its passage because of what I think were unintended consequences of the courts' package which came into effect on 6 July. I am not sure whether the Hon. Mr Gilfillan has accurately portrayed the situation. The courts' package was designed in part to ensure that minor offences were dealt with in the Magistrates Court rather than by judge and jury in the District Court.

In consideration of that we removed offences for the possession for sale of heroin of less than 60 grams from the District Court to the Magistrates Court. The Government did not believe that that was appropriate because 60 grams of heroin being possessed for sale is a substantial amount of heroin. No doubt we could have considered a lower amount, but in the end the Government felt that it was better to return to the *status quo*, and that is what this Bill does: this Bill returns the situation with respect to the possession for the sale of heroin to the *status quo* as it existed prior to the introduction of the courts' package.

**The Hon. I. Gilfillan:** I understand that.

**The Hon. C.J. SUMNER:** Yes, the Hon. Mr Gilfillan understands that. Having clarified that, I accept what I think he is saying, namely, that if there is to be a debate about the level of penalties and punishment for the possession and use of drugs then that is something that should be done up front in a debate about that issue rather than for it to happen in effect by sleight of hand by the adjustment of offences between jurisdictions through the courts' package, which is what we have done. In so far as the honourable member is saying that, I agree with him. If there is to be a debate about drug penalties it should be a debate on that substantive issue and not via these Bills on the courts' package.

I accept what the honourable member says, that he has a different view from the Government and the Opposition on the appropriate means to punish drug offenders, and that is fair enough. If that substantive issue comes before the Council we can then have that debate. However, for the time being, this Bill returns the situation on these matters—possession for sale of the so-called hard drugs—to the situation as it was prior to the courts' package. It will not have a significant effect on the

rationalisation that was involved previously through the courts' package. As I understand it, there would be some 15 or so cases that would now be returned to the District Court which, had we not passed this Bill, would have been heard in the Magistrates Court. Therefore, I express my appreciation to members for allowing the Council to deal with this matter as a matter of urgency.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Prohibition of manufacture, sale, etc., of drug of dependence or prohibited substance.'

**The Hon. I. GILFILLAN:** Would the Government consider in due course determining a quantity other than the figure of one-fifth or more of the prescribed amount which was plucked out of the air on the run by the shadow Attorney-General and which proved to be embarrassingly high to the Labor and Liberal Parties? Would the Government consider determining a lower amount which could be introduced so as to enable the minor offences to be considered in the magistrates court?

**The Hon. C.J. SUMNER:** No, that certainly would not be Government's intention at this stage.

Clause passed.

Title passed.

Bill read a third time and passed.

## INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

**The Hon. I. GILFILLAN** obtained leave and introduced a Bill for an Act to establish the Independent Commission Against Crime and Corruption; to define its functions and powers; and for other purposes. Read a first time.

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

*A quorum having been formed:*

**The Hon. I. GILFILLAN:** I move:

*That this Bill be now read a second time.*

In moving the second reading of this Bill, I remind members that it is similar to a Bill that I introduced some four years ago when New South Wales was in the process of setting up its Independent Commission Against Corruption.

Much has happened since then. The New South Wales ICAC has been in place since March 1989 and has three years experience. The original Bill I introduced has been amended in the form I am moving in this Council, and I indicate that I will be seeking further amendment during the Committee stage, since the New South Wales experience, particularly in relation to the finding regarding ex-Premier Greiner, has resulted in some discussion and recommendations for amendments. That is by way of introduction to some of the mechanics of the Bill I am introducing.

I should like to quote extensively from an address given by Mr Simon Stretton, a South Australian who is currently general counsel to ICAC in New South Wales. He gave an address on ICAC and stated:

> Most people have some idea of what corruption is. Some think of it just in terms of bribery, others more widely in terms of misuse of public office . . . Most people believe that corruption is a bad thing, but how often do we analyse to any depth why it is bad?
>
> The ICAC in New South Wales recently conducted a survey to see what the public thought were the main effects of corruption. The highest response, 92 per cent, was that corruption costs taxpayers money. Closely following that view was the view that corruption unfairly advantages some and unfairly disadvantages others. These are two undoubted effects of corruption.
>
> Our society, like all complex modern societies, is extensively regulated. That regulation pervades our lives . . . It regulates the hospitals we are born in through to the cemeteries in which we are eventually buried. On the way, it controls the quality of food we eat, the amount of pollution we breathe, it regulates the safety of the trains, cars, boats and planes we travel about in, and it controls the financial, social, legal, military and other structures in which we all live. The list goes on. All that regulation is imposed by laws which are both created and administered by public officials. When we look at it in this way, we see how important it is that public officials behave impartially, fairly and honestly. We can see just how many aspects of life can be affected by the corrupt exercise of official functions.
>
> We are all aware that when a public official awards a tender for equipment to his brother at twice the appropriate price, every one of those extra dollars paid comes out of the taxpayers pocket. We must also be aware that that corruption could result in the purchase by that tender process of a massively unsafe piece of equipment that may endanger the public. The motive to accept the tender has been money or favouritism, rather than the merit or otherwise of the tendered equipment.
>
> We are all aware that if a truck licence tester just sells passes, then that is bribery. We must also be aware that such behaviour is likely to result in incompetent drivers propelling semi-trailers around the streets that the public hopes to use in safety. If they were competent drivers, they could have got the licence honestly.
>
> We are probably all aware that if corruption occurs in the legal system, unfairness will ensue. We must be plainly aware that this involves the risk of the guilty going free, the innocent being convicted, and of civil and commercial injustice.
>
> These are but a few examples of the true cost of corruption. It is more than just a cost in terms of money and fairness. The cost to society can include costs in terms of public health, public safety and criminal, civil and commercial justice.
>
> Corruption, like organised crime, is hard to detect. Often there is no clearly apparent 'victim'. The corrupting and the corrupted party have an obvious interest in keeping the matter secret, and there may be no other parties to the transaction. Where the corrupting party simply wants a corner cut or an approval given upon relaxed criteria, there will often not even be a disadvantaged third party. Even if someone complains, there may be a temptation for the department concerned to 'close ranks' or simply accept the assurances of the public official that nothing untoward occurred. If the corruption is sufficiently pervasive, a common belief may start to exist that it is futile to complain as either *(a)* no one will care, *(b)* no one will do anything, or even *(c)* that there is no one uncorrupt to complain to.
>
> Of course, corruption can become so pervasive that you just can't miss it. At times in history this accusation has been levelled at both Queensland and New South Wales. How much corruption actually exists, like the question of how much organised crime exists, is a hard question to answer.
>
> Since its inception in 1989 the New South Wales ICAC has received 4 380 complaints alleging actual or suspected corruption. In the six months to May 1992, complaints were up 50 per cent on the corresponding period a year earlier. Research indicates that this increase is likely to reflect an increased awareness by the community of the existence of the commission. Hopefully it also reflects a corresponding reduction in tolerance amongst the public of corruption. These complaints come from a variety of sources. They come from individual members of the public, from companies, from other law enforcement agencies, and from public authorities themselves. The level of complaints tends to indicate that the community at least perceives there is a problem.
>
> No-one would argue against the proposition that a society should strive to make itself fair, impartial and honest. The ICAC does its part by attempting to reduce corruption in three major ways.

Firstly, through a process of inquiries, hearings and reports it seeks to investigate instances of suspected corruption. The process of public hearings is probably the most visible aspect in that it receives the most media attention. The detection of corrupt conduct usually leads to its cessation, and may deter others from the same behaviour. As part of the investigatory process, the hearings are by nature investigatory. Whilst the ICAC possesses powers similar to other investigatory bodies, such as the New South Wales Crime Commission and Royal Commissions, there are significant safeguards. A strict application of the principles of natural justice ensures procedural fairness, and all witnesses have the right to legal representation. Further, evidence given by a person under objection cannot be used against that person in civil or criminal proceedings. Hearings can be held in public or in private, depending on which most serves the public interest. In general, they are held in public, for a number of reasons. Justice should generally be done in the open; it should be seen to be done as well as actually being done. The public has a right to know as its taxes are paying for the process. Reporting of hearings and the corruption issues therein helps to raise public awareness of those issues. A final argument for public hearings is that the ICAC should be as open and accountable as possible to the public it serves. These arguments must be balanced against the public interest that individuals be treated fairly. There will be some occasions where, say, the allegations are weak yet scandalous, or where the protection of a particularly vulnerable witness is needed, that a hearing or part of a hearing will be in private. It is certainly hard to please everybody. If you hold a public hearing, some cry 'character assassination', yet if you hold a private one others cry 'star chamber'. It is important to keep the public interest squarely in view when resolving the issue.

The second way the ICAC seeks to improve the system and reduce corruption is through its Corruption Prevention Department. This part of the ICAC is available to give advice to public officials and public authorities on how to prevent corruption. Whilst it is undoubtedly important to root out existing corrupt conduct; it is better to prevent it occurring at all. There are a number of detailed strategies for prevention, but they essentially boil down to the creation and implementation of structures which reduce the opportunity for corrupt conduct and reduce the temptation for individuals to indulge in corrupt conduct. Many public authorities now avail themselves of this service both in relation to existing and proposed structures. In addition to individual advice, where an issue of general relevance is thrown up or it is thought that the difficulties experienced by one public authority may be shared by others, a project leading to the publishing of a report may be undertaken so that the remedial advice can be more generally available. To date 16 such projects have been undertaken and eight completed. For example, in December 1991 a corruption prevention report was published concerning the purchase and sale of local government vehicles, and this month a report was published concerning cash handling in public hospitals. Both reports highlighted areas where there was a risk of corrupt conduct and where millions of dollars of public revenue were handled and accordingly were at risk, and suggested simple remedial strategies. Three principles are at the root of all corruption prevention advice;

1. Prevention is better than cure;
2. Corruption prevention is a management function;
3. Accountability makes for committed management.

The third major way that the ICAC seeks to prevent corruption is through public education. Unless people know what corruption is and why it is bad, then investigation and structural change will have only a band-aid effect. The ICAC has three central aims in the area of public education;

1. To show that corruption does matter to all citizens in New South Wales because of its detrimental effects;
2. To persuade people that something can and must be done about corruption; and
3. To motivate individuals to play a part in fighting corruption.

A separate education unit was set up in November 1990, to address these aims. A number of methods are used. These range from going to schools and addressing classes and providing speakers to community and other organisations, through to setting up displays at shopping centres and adopting a variety of other measures to promote awareness at a grass roots level.

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There are several differences that I will note at this stage of my second reading speech. First, that ICAC in New South Wales is set up purely for corruption whereas the Bill that I am introducing here in South Australia is against organised crime as well as corruption. So it does embrace the New South Wales' Commission Against Crime in the one body, reflecting the difference in size and workload that applies between New South Wales and South Australia. The other aspect which I want to refer to and which was emphasised in that address concerns how valuable the prevention and education aspects of ICAC's work are. I shall comment on this further later. It is unfortunate, I think, that they do not get as much publicity as the more sensational investigatory work, particularly where outrageous examples of corruption are discovered. However, I believe that it does all go together in one cohesive argument for the establishment of an ICAC in South Australia.

I turn now to perhaps one of the most famous recent examples of an ICAC investigation, and that is the report on unauthorised release of Government information. It has had publicity in the media in South Australia. I shall select just some of the instances that are outlined in this report, undertaken by Adrian Roden QC. The reason I do this is partly to provide something that I think will be of interest to honourable members and also to give an indication of to what ends people will go in relation to misuse of public knowledge when there is a dollar at the end of it. I shall quote from page 22 of this report. At 2.4 it states:

Mr Rindfleish and the ANZ Bank.

. . . Kevin Rindfleish, who operated an unlicensed private inquiry and commercial agency, and who sold DMT [Department of Motor Transport]/RTA [Road Transport Authority] and social security information on a very large scale. His principal client was the ANZ Bank.

**The Hon. Anne Levy:** Did he go through rubbish bins?

**The Hon. I. GILFILLAN:** He did not need to, as the Minister will find out. The report continues:

He had been unknown to the Australian Taxation Office while conducting a thriving business in the sale of information to clients, including the ANZ Bank, the Australian Guarantee Corporation, NRMA Insurance, the Government Insurance Office and Chase AMP Bank . . . His sources were named.

I did not actually intend to go through those, but I was prompted simply to observe that, following the interjection from the Minister as to whether he had gone

through rubbish tins. With reference to the sources it states:

They included Robert Kenneth Bailey, a former Senior Field Officer with the Department of Social Security . . . a Computer Systems Administrator . . . an RTA officer with thirty years service . . .

And there were some others—so there was no need for Mr Rindfleish to bend down to go through any rubbish tins. However, he was paying these people, and although the details are here in this report I shall just quote this part (from page 23):

The commission had access to Mr Rindfleish's records. On their face, they suggest that he paid a total of slightly more than $730 000 to his sources of confidential government information between 1984-85 and February 1991. Acceptance of his evidence that he falsified certain entries, would reduce the figure substantially, but it would still be of the order of $220 000.

I make the observation here that I cannot make a judgment about whether the amount of $730 000 or $220 000 is accurate, but in any event it is still a lot of money. It continues:

The Cards Division of ANZ Bank was a substantial client of Mr Rindfleish for about 10 years to early 1991. A bank account he said he used exclusively for fees received from the bank shows deposits total more than $1.4 million for the period May 1985 to September 1990. A considerable part of that was the purchase price of confidential Government information that the bank expressly ordered and obtained from him. The bank continued to use Mr Rindfleish for this purpose even after this investigation [ICAC] had commenced, and public hearings had been advertised and held. Its requests for social security information were collated into lists prepared weekly in Mr Rindfleish's office. One list recovered by the commission showed 46 requests. It was dated 30 January 1991, and a note on it indicated that the required information had come back from Mr Rindfleish's source on 6 February 1991.

Another example that I want to share with honourable members is referred to at page 26 of the report and is entitled 'Terence Hancock and All Cities', and this shows some of the spread of the clients. I quote:

The sale of confidential Government information to NAB [National Australia Bank] and Westpac over a number of years was a significant part of the business of XD Pty Ltd and its successor All Cities Investigations Pty Ltd for most of the 1980s. The companies were formed and operated by former police officers, of whom Terence John Hancock was the sole survivor in the business from 1986 . . . A brochure was issued listing the services Mr Hancock provided to clients. They include DMT [Department of Motor Transport], Social Security, Medicare, Immigration, telephone, post office box information and criminal history checks. Each was shown in a brochure with description and price. Mr Hancock maintained his own computerised record of the information he purchased. Evidence from members of his staff and print-outs obtained from his office indicate that at any one time confidential Government information relating to as many as 10 000 people could be found there.

This next quote refers to a particular study case involving New South Wales police, and it concerns a proprietory company, Satinvale Pty Ltd:

At a late stage in the investigation the commission took possession of a number of documents from security consultant and private inquiry agency Satinvale Pty Ltd. Those documents and the subsequent investigation of Satinvale's affairs, including the examination of more than 50 witnesses, disclosed an extensive participation in the private inquiry industry by both former and serving police officers. It also disclosed a network of former and serving police officers, through whom confidential information from a variety of State and Commonwealth Government departments and agencies has been put onto the illicit market.

The company was formed in late 1985, and in January 1986 it was controlled by three directors, of whom Brendan John Whelan, then a Superintendent, and Nelson Rowatt Chad, then a Detective Inspector, were serving New South Wales police officers . . .

While Superintendent Whelan was still a serving police officer he used his position to obtain confidential police information for his company. He improperly released the information from police records to Satinvale and the company then sold it or used it in its business for profit. From August 1986 to February 1987 he was on leave pending retirement and did not have direct access to the police computer system. He then obtained the information from officers at any of the 14 Sydney northern suburbs police stations which had been under his command when he was District Commander at Dee Why. He did that, he said, by asking for it on the basis that he was the 'ex-boss' . . .

One of those who assisted him with confidential police information after his retirement is John Timothy Anderson, then a chief superintendent and the senior police officer at the State Drug Crime Commission. Mr Anderson told the commission he was aware it was improper for him to release the information and he said that he did it 'under the Old Chums Act'. By that he meant that, because Mr Whelan was a friend, he was giving him privileged treatment . . .

When Chief Superintendent Anderson retired in 1989 he became a shareholder and director in Mr Whelan's private investigation company, Carrington Investigations Pty Ltd. They remain together in that company today and do a good deal of work for the Government Insurance Office.

I remind members that the report (page 53) about Satinvale clients states:

Those who purchased confidential Government information from Satinvale include insurers, other business and commercial enterprises, members of the legal profession, and even a risk management officer of Telecom Australia, acting on behalf of the corporation. Telecom's interest was in obtaining information regarding the criminal record of an employee whose possible dismissal was under consideration. Telecom paid Satinvale $150 for the information.

At page 97 of the report, the Assistant Commissioner, Adrian Roden, says that the benefit flows in a rather interesting way financially to the Governments involved unearthing of this form of corruption. He states:

Benefit flowed to the Commonwealth in another way in consequence of this investigation. As is mentioned in the preface, disclosure of the activities of a number of persons in the elicit information trade has led to income tax and penalty assessments which already exceed $2 million and are continuing, and the recovery of more than $700 000 to date.

So, it is very close to being a cost recovery organisation. Adrian Roden makes what I consider to be a very significant statement at page 112 of the report. He states:

This one investigation (relating to the unauthorised release of Government information) has revealed a widespread practice of corrupt conduct, based largely on bribery of public officials, and involving hundreds of people, millions of dollars and massive invasion of privacy. I am satisfied that little or none of it would have come to light if reliance had been placed upon traditional investigative techniques alone. That extract clearly spells out the justification which I argue supports the establishment of an ICAC in South Australia. He said that he believed that none, or very little, if any, of this corruption would have come to light had there not been an ICAC-type structure in place.

Page 117 of the report, in the chapter entitled 'Private investigators', states:

Practically all the information found by the commission to have been released from Government departments and agencies without authority passed through the hands of private investigators. I use that term to cover licensed private inquiry agents and sub agents, licensed commercial agents and sub agents, and others who carry on a similar business although unlicensed.

Further, the report states:

But in the great majority of cases they corruptly paid for the information, the payments being inducements to public officials to release it in breach of their duty.

Sale of the information was a lucrative business for them. A single criminal history could fetch as much as $100. One private investigator said that his sales of confidential Government information yielded $100 000 in a two-year period. There were others who turned over that amount or more in a single year. It is clear that the illicit sale of confidential Government information has been a multi-million dollar business.

I have used that example because it is easy to see that that practice could apply to any State in Australia. It is so easy to see how that practice could not or would not normally be uncovered. It is also easy to see, through taxation, prosecution and fines, that a source of revenue to Federal and State Governments is involved.

In New South Wales ICAC puts out annually a summary of the major issues which are involved in the previous 12 months, and they are wide-ranging. I intend not to provide the details in this second reading explanation but just to outline one or two of the characteristics of the report and to indicate that several of the allegations have been found to lack substance, were dismissed or the complainant had fabricated the story. So, the hearings of ICAC clear and set to rest—dispel—in many cases allegations, some of which may be malicious or based on ignorance. It is not just a matter of hunting to find the investigation which will nail some people and find them guilty.

I have already referred to the case entitled, 'Report on investigation into dealings between Homfray Carpets and the Department of Housing, September 1990 ("Housing Department report")', which is on page 3 of the key issues report. It states:

> The report concerned the conduct of people connected with or involved in the supply and laying of carpet in premises owned by the Department of Housing in its Sydney region. Conclusions reached were that employees of the carpet supply company had secured substantial secret commissions for themselves, and the departmental procedures were lax in the extreme. Several prosecutions were suggested.

On the same page, the report, under the heading, 'Report on investigation into driver licensing, December 1990 ("RTA report")', states:

> The commission investigated allegations of corruption in driver licensing in New South Wales. It found that corruption was endemic in many key Sydney metropolitan registries in the past 10 years, involving at least $3 million.

At page 4, under the heading, 'Report on investigation into harassing telephone calls made to Edgar Azzopardi, January 1991 ("Azzopardi report")', states:

> The report found that four police officers had been involved in the harassing telephone calls to Mr and Mrs Azzopardi in 1990, and lied to the commission. Their behaviour constituted a breach of public trust of a fundamental order. Prosecution and disciplinary action was suggested.

The second paragraph of page 5 of the report states:

> One of the ICAC's important functions is corruption prevention, which involves examining public sector practices and procedures and advising on ways to improve them to reduce the opportunity for corruption to flourish. In doing this work, the commission provides advice but does not instruct, because managers must be given the freedom as well as the responsibility to manage.

Further, on the same page, in relation to corruption that was discovered in regard to police officers—but I feel this observation applies to all public servants—the report states:

> A simple rule set down in the report says that no police officer, or other public official, should accept a gift if it could be seen by the public, knowing the full facts, as intended or likely to cause the officer to do his or her job in a particular way, or deviate from the proper course of duty. Police officers, like all public servants, should never expect to get anything extra for doing what they are paid to do.

In essence, that expresses the Australian approach to public service. We do not condone corruption. Ethically, we are a nation which eschews corruption and bribery; we find it uncomfortable, awkward and embarrassing to go overseas where these practices are endemic.

So, I argue again that ICAC is desperately needed right throughout Australia as a watchdog to suppress and remove corruption. The 1992 ICAC report, under the heading, 'Report on investigation into police and truck repairers, May 1991 ("Police and truck repairers report")', states:

> It was alleged that payments were made to police officers for acting as 'spotters' for truck repair companies in the Wagga area. The report concluded that some police had been involved in improper practices and that disciplinary proceedings were warranted.

Further, under the heading, 'Report on investigation into the Maritime Services Board and helicopter services, July 1991 ("Helicopter report")', the report states:

> An employee of the Maritime Services Board was instrumental in letting a contract for helicopter services to a company he owned. The report recommended that consideration be given to his dismissal.

That is a very brief summary of quite an extensive report. On page 3, there is a report on the investigation into the Planning and Building Department of the South Sydney council, December 1991 (South Sydney report). The report states:

> It was alleged that certain staff of South Sydney council drew plans for private clients which were submitted to the council and sometimes assessed by those who had drawn them. Inquiries revealed that this had happened and that one officer had referred applicants to his brother's architectural firm. He stood to benefit financially from those referrals. It was recommended that council consider dismissing him.

A wide range of activities are vulnerable or susceptible to corruption, and I selected only a few from those two documents. As I noted yesterday in looking through the Auditor-General's Report, there are some statements that bring it right home to South Australia. In his preliminary remarks on page *xviii* of the report under the heading 'Fraud prevention and detection', the Auditor-General (Mr Ken MacPherson) says:

> There is evidence of an increase in the number of cases of fraud being detected within the public sector. Some of this increase in detection is due to the greater awareness of the possibility of fraud occurring and the implementation of fraud prevention policies and detection procedures now in operation. There is no doubt, however, that the increase in the number of fraudulent practices being detected can also in part be attributed to the effects of the current economic times . . . public sector managers are today being required to work with fewer resources, to be more commercially oriented and to operate with a minimum of guidance from central agencies. Partly as a result of these changed managerial responsibilities, internal controls are on occasion reduced or bypassed in what management sees as cost saving measures. Unless those proposed cost saving measures are carried out in conjunction with the application of sound risk assessment procedures and a positive policy covering fraud prevention, management could be exposing its procedures to perpetrators of fraud. It is mentioned that an analysis of cases of suspected fraud reported to this office during 1991-92 indicates that, in the majority of cases, there was a breakdown in internal

control, that is, a failure by a responsible officer to perform a checking or review function.

Risk assessment procedures on their own are not sufficient because, although they may find weaknesses in procedures, they will not always prevent persons with a creative mind and a criminal intent from attempting to obtain a benefit . . . prevention, detection, investigation and ultimate prosecution are all important aspects of fraud control. Just as important is the need for managers to recognise that fraud control is a fundamental management issue. The State Government has established a Public Sector Fraud Coordinating Committee comprising representatives from the following Government departments: Police (Chairperson); Auditor-General's; Treasury; and Attorney-General's. The role of that committee is to conduct education and information sessions across the public sector; assist in the development of fraud control plans by individual agencies and review and monitor final plans; and provide advice to the Attorney-General on fraud matters. To date the main efforts of the committee have been directed towards the provision of education programs with the objectives of increasing the awareness of the possibility of fraud occurring and presenting various prevention measures that may be adopted.

That is totally inadequate, but that is just one aspect of the many that the Auditor-General himself says are important aspects of fraud control. We do not have anything in place that will deal adequately with corruption in the public sector, nor do we have an entity that is properly set up to look at organised crime.

Parliamentary Counsel, who was most diligent in getting the draft prepared so I could introduce this Bill, was still preparing clause notes for me and, as I indicated, there are some matters resulting from the New South Wales review as a result of the Greiner affair that I would like to include in my second reading explanation. I will seek leave to conclude my remarks until they come to hand.

Leave granted; debate adjourned.

## OIL SPILL

**The Hon. DIANA LAIDLAW:** I move:

1. That as a matter or urgency, a select committee be appointed to inquire into and report on the cause of, and response to, the spill of ship's bunker fuel on Sunday 30 August at Port Bonython (which resulted in the largest oil slick in the State's history) with particular reference to:
   *(a)* berthing procedures for various weather conditions;
   *(b)* oil spill contingency plans and facilities;
   *(c)* adequacy and effectiveness of response measures;
   *(d)* resources and costs involved in clean up operations, and
   *(e)* any other related matters.
2. That Standing Order No. 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.
3. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the Council.

This seeks to establish as a matter of urgency a select committee to inquire into and report on the cause of and response to the oil spill that occurred at Port Bonython on Sunday 30 August. The spill, which measured some 296 tonnes, was the fifth in South Australian waters in the past year. The tonnage dumped is equivalent to about 20 road tankers of fuel being poured into the sea. It is also estimated that the equivalent of one road tanker of fuel reached the shore south of Port Pirie. The spill was the largest slick in the State's history and the second largest in the nation's history. The environmental damage is yet to be calculated but many thousands of birds have died and representatives of various fishing associations claim that their traditional fishing grounds have been turned into 'a virtual desert overnight'. It is considered that the spill has the potential to do immense and possibly irreparable damage to our $25 million fish export industry. In those circumstances, it is critical that an independent inquiry be established as a matter of urgency to investigate the cause of and response to this oil spill and, most importantly, to determine what plans and procedures are required to avoid any similar tragedy occurring again.

On behalf of the Liberal Party I first called for an independent inquiry last Friday after learning that the Minister for Environment and Planning seemed content to accept a Department of Marine and Harbor's inquiry as the one and only investigation of the accident and its aftermath. Such an internal inquiry is important and necessary, but it is not sufficient. The department was and remains a key player in all aspects of this nightmare or potential catastrophe. It is responsible for establishing and overseeing maritime berthing procedures in this State, for administering movements at any port in this State, for triggering clean-up operations following any oil spill, for giving permission for the use of chemical dispersants and, depending on the size of any spill, for ordering and coordinating all other response initiatives in association with other relevant parties.

My call for an independent inquiry is not an isolated plea. The South Australian Fishing Industry Council (SAFIC) also wants an independent inquiry. In fact, on the day of the spill, it called for an independent authority to review all berthing procedures and pumping programs because of its grave concern at the circumstances surrounding this spill at Port Bonython. The Prawn Fishermen's Association for the Spencer Gulf and West Coast has since reinforced SAFIC's call for an independent inquiry, as has the local line fishing association, and I note that in its editorial of 8 September the *Advertiser* called for an impartial inquiry.

Santos, the company that owns the wharf and the oil and gas facility at Port Bonython, wants an independent inquiry. On 4 September, its Managing Director (Mr Adler), wrote to the Minister (Mr Gregory) in the following terms:

I am writing in relation to events surrounding the spill of ship's bunker fuel on Sunday 30 August and report that your department is investigating these events. You would be aware that, apart from those parties directly involved in the spill, there are a number of other parties involved in the aftermath, including BP Australia, Santos, the Australian Marine Oil Spill Centre, the Australian Maritime Safety Authority and the Department of Environment and Planning. The Department of Marine and Harbors played a key role, particularly in directing the oil spill containment operations. Furthermore, the department also holds responsibility for the administration of maritime regulation and movements at the port.

In these circumstances, Santos believes that the public interest would not be served best by the department carrying out an investigation when it was also centrally involved with the most important aspects of the operation. Accordingly, I am writing to request that any investigation be carried out by an independent party that was not involved in any aspect of the operation or its aftermath.

Yesterday in the other place the Minister of Marine issued a statement advising that there would now be two

investigations. It seems that over last weekend he began to appreciate the level of community and industry disquiet about his earlier plan for a single investigation by the Department of Marine and Harbors and the fact that such an investigation would never be accepted as being capable of producing an impartial assessment.

Now it seems that the first of the two inquiries will be a joint investigation by officers from the Department of Marine and Harbors and the Attorney-General's Department into the cause of the spill. This investigation will also seek to determine whether appropriate action was taken to ensure that the spill was contained as much as possible. This investigation has already commenced.

The second investigation is to be carried out by members of the State Committee of the National Plan to assess and review the effectiveness of the response to the spill and how it may be improved, if necessary. Membership of the State committee consists of officers from the Australian Maritime Safety Authority, the Department of Marine and Harbors, the Department of Fisheries, the Department of Environment and Planning, the South Australian Police Department and representatives from Santos and the Port Stanvac Oil Refinery on behalf of the oil industry.

Earlier I heard the Hon. Mr Ron Roberts hiss when I suggested that over the weekend the Minister had had a last minute change of mind. It is apparent that my statement is true, because Santos, which has responsibility for any vessel moored at the wharf and owns the oil and gas facility, would not have written to the Minister last Friday if it was aware of the Minister's plan for this State Committee of the National Plan to investigate this matter, because Santos is in fact a member of that committee.

*The Hon. R.R. Roberts interjecting:*

**The Hon. DIANA LAIDLAW:** Mr Ron Roberts is now inanely interjecting that this State Committee of the National Plan is part of legislation. I am aware of that, and that is why I am arguing nevertheless that it is absolutely inadequate to investigate this matter. It may be part of the legislation, but the legislation is not all in the public mind, and it is certainly not adequate in this instance where the key players in this oil spill are also members of the investigating body. If there was ever any cause for conflict of interest and lack of confidence in the outcome one would have to say that it was this situation.

It is apparent that Santos, notwithstanding its being a member of this committee which Mr Ron Roberts believes, because it is enshrined in legislation, is above reproach and should not be questioned at least by me, remains of the view that an independent inquiry above and beyond the two measures that the Minister has outlined is essential in this case.

Mr Ron Roberts may not like to listen to what others in the community are saying. Perhaps he is like his new Deputy Leader, the Hon. Mr Blevins, and does not believe that employers matter much in this State. But I am not of that view, and I think that—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. DIANA LAIDLAW:** I think the Hon. Mr Ron Roberts should start listening to businesses such as Santos and start—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. DIANA LAIDLAW:** —listening to the fishing industry. Mr Ron Roberts keeps on saying that he represents that region of Port Pirie and the other towns in that area. He is certainly not very concerned—

*Members interjecting:*

**The PRESIDENT:** Order! The Council will come to order. The Hon. Ms Laidlaw has the floor.

**The Hon. DIANA LAIDLAW:** He is certainly not representing them if he is not prepared to listen to what the fishing industry in the area is saying. It wants an inquiry that is separate and is seen to have an integrity that is above reproach; and it is not confident that the approaches that the Minister and the Government have set in place at this time have the integrity that it demands. In the *Advertiser* today Mr Gregory is quoted as follows:

> Any suggestion that officers from the Department of Marine and Harbors and the Attorney-General's Department should not conduct the investigation are ludicrous.

In response to that statement by the Minister I would say that it may be ludicrous to him, but I suggest that it reflects more on his lack of enthusiasm for accountability, responsibility and integrity. The Minister is also reported as follows:

> Any suggestion of another inquiry seems unnecessary at this time.

Again I respond to that statement by saying that he is not listening to those who are directly involved in other industries in the area or, indeed, to Santos, and I believe that he should in this instance. I am not sure what Minister Gregory means by the words 'Any suggestion of another inquiry seems unnecessary at this time.' Perhaps he is keeping his options open—and I would think that it would be wise for him to do so—or perhaps he cannot make up his mind.

By contrast, I know that SAFIC, Santos, environmental groups and the *Advertiser* editorial opinion believe that the Minister's efforts to play down the need for a full and open, independent inquiry are absolutely unacceptable. They want such an inquiry and they want it now, and they cannot understand why Minister Gregory and his Cabinet colleagues seem so intent on dismissing or ignoring the fact that the oil spill at Port Bonython was the largest in the State's history and one of national dimension.

Perhaps one of the best examples that I can give of the Government's disinterest, inaction and lack of enthusiasm for this matter is reflected in the silence of the Minister for Environment and Planning. The Hon. Ms Lenehan at the best of times is not known for her silence. We all know that generally she is vocal on every environmental issue at every hour of the day and night, but she has been silent on this issue for a full 10 days. It is not surprising when one reflects on that amazing set of circumstances, coupled with Minister Gregory's obstinance in this matter, that there is speculation that neither the Minister for Environment and Planning or her other Labor colleagues would have been so silent for so long if a private company rather than the Department of Marine and Harbors were alleged to be the responsible party. In such circumstances we would have seen Government Ministers allege—

*Members interjecting:*

**The PRESIDENT:** Order! Everybody will have the chance to enter the debate. The Hon. Ms Laidlaw.

**The Hon. DIANA LAIDLAW:** They are just being very selective on what they want to hear, Mr President, and I think that that has been the case for the past 10 days. In such circumstances we would have seen Government Ministers screaming to condemn this spill. We would have seen them keen to determine liability, keen to prosecute, and keen to recoup costs, possibly even falling over themselves seeking photo opportunities. But, they have been absent in such statements, and absent from the site.

Mr President, it is a fact that neither investigation ordered to date by the Minister satisfies public demands for an independent inquiry, a truly independent inquiry by someone or some group of people that has no axe to grind and no stake on the outcome other than to ensure that no further spill occurs at the site in the future, yet both proposed inquiries comprised representatives of Government agencies and indeed companies centrally involved in the accident and the aftermath. This is just not good enough. It suggests a cover-up. It reinforces community suggestions that the outcome of both inquiries may not be impartial, and may not be keen to uncover the truth, to apportion responsibility or to receive public submissions.

At this stage I should report that former corporate employees within the Department of Marine and Harbors have said to me that an ideal person to head an independent inquiry would be Captain Norman Carr. I do not know Captain Carr and I have not taken the opportunity to speak with him to determine whether he would be able or willing to undertake such an inquiry. However, I have been told that, as the immediate past officer-in-charge of regional ports in South Australia, he would have a sound knowledge of appropriate berthing and practices and procedures. He would also have an intimate knowledge of the Port Bonython area because in his former capacity he was instrumental in drawing up the plans for the wharf facility. I also understand that Captain Carr was responsible for the preparation of the State's guidelines for dealing with oil pollution and spills, and therefore I suspect he would have a keen interest in knowing if these guidelines had been adhered to.

Perhaps my suggestion that Captain Carr be approached and that he conduct an independent investigation will damn Captain Carr from the outset, but I hope not because Captain Carr's name was forwarded to me in good faith by concerned Department of Marine and Harbors employees and by others concerned with maritime safety issues.

In the meantime, I do not consider that this Parliament can or should wait around to see whether or not Minister Gregory is prepared to accept Captain Carr or any other individual from this State or elsewhere to conduct an independent inquiry. Indeed, I do not believe the Parliament should hang around waiting for the Minister to make up his mind what time may be right for an independent inquiry to be conducted, if ever.

We, in this Parliament, should act now to tell the Government that we support the views of Santos, the fishing industry and exporters of fish in this State, environmental groups and the like, volunteers, and the RSPCA, all of them having worked hard over the past 10 days to deal with this mess. We should be telling them that we too are demanding an independent inquiry. A select committee of this Council will achieve this goal. It will provide an opportunity for all who want to speak out about the spill to do so. It will uncover the truth of what happened when the tug hit the tanker *Era*. It will openly and honestly assess whether or not an attempt should have been made to berth the *Era* in the prevailing weather conditions, and it will determine the adequacy of procedures to deal with the spill immediately after the alert was raised.

I have noted in my motion a number of matters that I and the Liberal Party believe should be looked at in particular by the select committee. The first is berthing procedures for various weather conditions, and this is a critical issue if we are to seek to avoid a repeat of any spill in the future. It is a fact that the gulf waters around Port Bonython are closed waters and they support a sensitive ecosystem. The wharf facilities at Port Bonython are exposed to all weather conditions. They are not protected, for instance, like the facilities at Port Lincoln, which provides a relatively safe harbour.

During the day of Sunday, 30 August, there were high seas and severe swells, and I believe that is a matter that the Hon. Mr Dunn will refer to at greater length. Therefore, there is reason to believe that procedures at Port Bonython should be more alert to local conditions and the sensitive environment than a simple practice of applying the same procedures to all wharf facilities across the State. I do not believe that the conditions that apply at Port Bonython are the same as at ports that are open to sea waters, and therefore different provisions should apply to different weather conditions.

Everyone to whom I have spoken on this issue has argued that on Sunday 30 August the Department of Marine and Harbors should not have allowed the *Era* to berth from about 10 a.m. It has been argued to me that the department should have instructed the *Era* to lay off at a more seaward mooring until better conditions prevailed and that it should not have ordered tugs to bring the *Era* to berth. This issue was under debate at the port of Adelaide on the same date when two vessels were offshore and there was considerable controversy whether they should be brought in to be berthed at berth H, I believe, up the Port River.

The first of these vessels, the *Mearsk Crest*, was to be brought up at about 7 a.m. on Sunday, but Captain Bergland refused to do so. Captain Colsey piloted the *Mearsk Crest* up the Port River at 1130 hours. Incidentally, the *Mearsk Crest* is a car carrier. At the time, the winds were at 35 knots and it required two tugs. I understand that on the forward tug there were two headlines, which is unusual at any time and is certainly an indication of the poor weather conditions and violent winds. One of those headlines parted, or broke away, because the winds were so strong. I give that example to show that on 30 August captains of tugs refused Department of Marine and Harbors instructions when it came to berthing boats within the port of Adelaide.

In relation to another ship, the *River Yarra*, Captain Keavy brought it in at 1230 hours, at which time the wind was at 45 knots. In fact, he asked for a third tug. Later in the same day, at 1430 hours, Captain Wilson refused to bring in the *Australian Searoad*.

So, on the same day on which the Department of Marine and Harbors was overseeing activities at Port Bonython, at the port of Adelaide various pilots and captains were refusing to bring in various ships for berthing, recognising that the conditions were dangerous and that the waters in which they were to move the vessels were not as exposed as those at Port Bonython.

It would be dreadful to think of what would happen if a tug had hit one of the vessels that had been brought into the port of Adelaide on Sunday the 30th. It was bad enough that the tug hit the *Era* at Port Bonython and, if anything is fortunate about that incident, I suppose we would say that it was before the *Era* had loaded its cargo rather than thereafter. It is also relatively fortunate that it contained light diesel and not heavy diesel fuel.

I am informed that these matters must be investigated and that Captain Bob Buchanan, the officer-in-charge of regional ports at this time, is totally unreasonable in the demands he makes upon pilots. That matter has been openly raised with me by several people and, in the circumstances, it is critical that an independent inquiry look at the matter. I reinforce my concerns about the demands being made on the pilots, in the light of those pilots and captains who refused to bring the boats into the port of Adelaide on the same day.

Also, matters need to be investigated in relation to whether the tanker had berthed or was in the process of berthing. These are important matters in terms of liability and cost. I understand that officers of the Department of Marine and Harbors have made public statements that the tanker had in fact berthed. Santos, however, claims that the tanker was 20 to 30 feet from the berth and was being manoeuvred into position at the time.

I am not able to judge the merits of either of those claims, but they are critical matters to be investigated by an independent inquiry. They cannot and should not be investigated or judged by either of the inquiries that the Minister has established to date, first, because the department is involved with one of the inquiries with the Attorney-General's Department in looking at the cause and, secondly, because the department and Santos are both involved in the inquiry into the clean up.

We must also be looking at the contingency plans, as there have been claims of excessive time delays in seeking to contain the spill and to deal with it. There have been claims that it took far too long for one of the tugs to go to Whyalla and to return fitted with sprays. There have been claims that Santos was not quick enough in spraying dispersant on the site, and there are claims by Santos that there were delays in its receiving instructions from the Department of Marine and Harbors to spray this chemical dispersant.

There are further claims by Santos that it could have used more if the department had ordered it to do so, because only half the 7.5 tonnes was used at the end of the spraying operation, which apparently commenced some two hours after the leakage began.

I know that Greenpeace has concerns about the use of the booms. Greenpeace had sought reassurances from the Department of Marine and Harbors some months ago after the last spill; it had sought advice as to what size spill the department could contain at Port Bonython, and it was told that it could contain a reasonably sized spill with booms from the port of Adelaide and Port Stanvac as well as those on site.

What happened, however, is that with this spillage the booms reached a length of only 300 to 400 metres and were totally inadequate for the size of the spill. Greenpeace wants to know what happened to all the other booms that it had earlier been assured by the Department of Marine and Harbors would be available in the event of any spill. Greenpeace is also keen to be heard on the subject of chemical dispersant. I understand that chemical dispersant is the last resort option in such instances.

I am also aware of research that has taken place in Alaskan waters since the *Exxon Valdez* tragedy there some years ago. The research that I have seen identifies that the part of the oil affected area that was deliberately left untreated has recovered more quickly and more satisfactorily than the area that was treated with dispersant. That area remains devastated. I think there are lessons concerning the application of dispersants, pertaining not only to the *Exxon Valdez* incident but also to the latest incident at Port Bonython. We really must get our act together in working out how we will respond to this type of occurrence so that any responses ever required in the future will attract more community confidence than has been the case with this latest oil spill.

I also understand that there were television reports last night about a South Australian company that manufactures a type of blotting paper that can be spread across the surface of the water to mop up the oil spill. It is satisfactory for use in any weather conditions, whether rough water during storms or smooth water. This material apparently is more satisfactory to use than the booms, and it certainly would appear to be more satisfactory than using dispersant. The dispersant may well have its place, but heaven knows where the heavy oil that escaped as part of this rupture has gone. I suspect that it has gone to the bottom of the ocean bed, and we do not know what damage it will do there.

The Liberal Party is also keen for an independent inquiry to investigate the resources and costs involved in the clean-up operations. I have received a number of telephone calls from volunteers and from RSPCA members who are anxious about the large loss of bird life. They certainly would like to be a specific part of any inquiry arising from this tragedy in Spencer Gulf. I know that the fishing organisations, and SAFIC in particular, would like to see the impact on fishery resources looked at under a term of reference separate from the oil dispersant strategy issue. I have resisted those options. I believe that they could be discussed under any number of the headings that I have listed as matters for particular reference; but I would note that paragraph *(e)* provides that any other matters can be investigated and reported upon by the Committee. I also believe that the substance of the motion itself would embrace any matter that the committee would wish to consider.

In conclusion, I would say that we are relatively fortunate that this oil spill of Sunday 30 August did not cause more damage than it is suspected to have caused. Notwithstanding, we should gain no satisfaction that the spill took place in the first place. As shadow Minister of Marine, I am very keen to see that we do look at our procedures. The communities living in the Spencer Gulf

region and the South Australian community in general expect the members in this Parliament to be demanding answers to the many questions that have been raised by this oil spill and certainly demanding that our procedures are excellent at all times and also excellent in taking account of all weather conditions.

I, together with many people in the community, am not confident that the investigative measures that the Minister has established to date will uncover the answers to the questions that are being asked in the community at present. I move this motion in the belief that a select committee would be an independent form of inquiry. I believe that it should be acceptable to all members in this place. If it is not, it may well help to push the Minister himself into establishing an independent inquiry, in addition to the measures that he has set in place, to date. I note from his remarks in the paper yesterday that he has not closed off the option to do so, and I hope it is an option that he will pursue.

**The Hon. PETER DUNN:** It is indeed my pleasure to support this important motion to appoint a select committee. The Hon. Diana Laidlaw has covered the subject quite comprehensively so I shall just make a few comments. I was interested to hear the Hon. Ron Roberts's interjection a while ago that it was Santos's fault.

**The Hon. R.R. Roberts:** I said it was Santos's property.

**The Hon. PETER DUNN:** The honourable member is interjecting again, saying it is Santos's property. It was nothing to do with Santos's property. The boat was in the charge of the pilot supplied by Marine and Harbors and the tug in fact was supplied by Marine and Harbors. It had nothing to do with Santos. However, that aside, it is interesting to note—

*The Hon. R.R. Roberts interjecting:*

**The PRESIDENT:** Order!

**The Hon. PETER DUNN:** Well, Mr President, whatever the case is, the Hon. Ron Roberts seems to be fairly agitated over there. However, if what I have said is the case concerning what Minister Gregory has suggested, then this will be a matter of Caesar appealing to Caesar, and I do not think that is fair and right. In fact, the Whyalla District Council, the Port Augusta City Council and the Port Pirie City Council have all asked for an independent inquiry.

I also understand that Port Broughton council is feeling very similarly inclined, because of the reliance of that area on fishing. Certainly I must say that on the day that the accident took place the weather conditions were very nasty. I asked a question in the Council a couple of days ago and at that time pointed out that at about mid-morning on the day in question I was travelling across Spencer Gulf at a relatively low altitude, and the seas were extremely rough. There was a very high swell coming in from the south or the south-west, and combined with a north-east wind it meant that there was a very nasty weather situation.

I asked what criteria there were for berthing and the Hon. Diana Laidlaw has further covered that matter. All I can say is that we need something very specific as to details that the Weather Bureau can provide. The bureau rates seas from 1 to 7 or 1 to 10—I am not exactly sure—and thus it would not be very difficult to determine the extent of the condition of the sea and roughness and then to put a limit on whether a vessel can dock at that pier. As has been pointed out, the pier does sit out in the open. It is 2.4 kilometres long and sits well out into the gulf. It has to be out that distance to provide enough depth of water for the large ships to berth. I thought it was designed very carefully and very well done, because the prevailing winds in the gulf are south-westerly or southerly, and if there was to be a spill it was reasonable to assume that it would blow back into the bay from which the pier extends. I do not think it is called Fitzgerald Bay—I think it has another name. It was designed so that it could be caught and a boom put around it and the oil or the spill recovered. However, on this day, as I pointed out, there was a heavy swell from the south.

Last night I looked up my weather forecast for that day, and found that the winds were 45 knots from 010 degrees, which is just off north. That is at 2 000 feet; what they were at sea level would be something less than that. Even if they were 35 knots that is still a very strong wind at that level when you are trying to manoeuvre a very large boat which, as anyone who had looked at the pier would understand, would have had to turn side-on into that wind and side-on to the swell, and that would have been a fairly difficult project.

I am not laying blame on anyone, but we must decide what we want in the future, and the future is that we do not want it to happen again. It has happened once, and it is no good crying over the spilt milk; what we need to do is determine a plan for the future. That plan must be clear. If it would help the Department of Marine and Harbors, to say, 'Look we cannot birth this ship today; it must stand off until the weather calms down,' then that is what this committee must be able to do.

It is my understanding that that the Minister has said that we do not want another committee; in other words, he is saying, 'It is too expensive to set up another one.' I know that the financial mismanagement of the Government has brought us to that point. If that is the case, what is wrong with a select committee from this Parliament quickly and efficiently getting up there, taking some evidence, determining what caused it, and then letting someone else determine what the criteria should be for future operations in that area, that is, the berthing of those ships.

It is interesting to note that fishing in the area seems to have picked up in the past few years, and possibly that is because less netting has occurred in the area; in fact, I have been informed from Port Augusta people that more small snapper, which have been caught and which have been returned to the sea, have been found in the Port Augusta area than have been found for many years. The Port Augusta people are all quite excited about the fact that the snapper are returning to the area.

That has some potential for tourism—quite a big potential, in fact. I have been told by one group of people that, if you add their airfares and the money they spend in town, the Japanese are paying about $1 600 for each large snapper they have caught in the area. They go home tickled pink because they have been able to catch a few big fish. Generally, they are people who have had some association with Santos or operations in the BHP at

Whyalla or at Port Pirie. I want those operations to stay; I want them to stay there for as long as possible. We will have that only if we do not get any more oil spills in the future.

So, I reiterate that it was the Department of Marine and Harbors that supplied the pilot on the tug. So, the Minister's request that he look into that is quite unacceptable. His second report says that he will add to his original report and let the Attorney-General supply someone to go on to that. That is putting the dogs on to another scent and having them diverted around the real prey. I think the select committee, as suggested by the Hon. Diana Laidlaw, is the correct way to go at this stage.

It appears that there will be a delay and a long and protracted argument involving the press and the public. We know that the Minister is not one for making snappy decisions; he is fairly slow at the best of times. To see him make a quick decision here would be quite remarkable. A select committee might help him make up his mind. To let this matter go on for much longer might lead to suggestions of a cover up, because memories become a bit fuzzy.

I want all the operations that are occurring in the Northern Spencer Gulf area—that is, Whyalla, Port Augusta, Port Pirie, and Port Broughton—the tourism and industries, Santos and the lot, to stay there because they are all employers of people, and I think all of us in this Chamber would like to see this happen. But it we have another oil spill, we may lose one or more of those operations, and we cannot afford that. So, I have a great deal of pleasure in supporting the calling for a select committee to look into this latest disaster.

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

## WAITE CAMPUS

Adjourned debate on motion of Hon. T.G. Roberts:

That the report of the Environment, Resources and Development Committee on the proposed public work of the construction of facilities for the Department of Agriculture on the Waite campus of the University of Adelaide be noted.

(Continued from 26 August. Page 215.)

**The Hon. PETER DUNN:** Normally we do not speak to reports that have come out of our standing committees but this was an important one and some changes were made. The Hon. Ron Roberts set out quite clearly what had taken place. I would like to put a couple of other points of view not to be contrary in any way but to make quite clear how we came to the decision that the research centre at Waite should take up Northfield and other research centres that have been around the State.

My association with the matter goes back to 1981-82 when the then Director of Agriculture, Jim McCall, was asked to report on research centres. I happened to be a part of that committee when I was a member of the Advisory Board of Agriculture. We looked at all the centres and came to the conclusion that some were in the wrong place, that some were not necessary and that there needed to be a change of emphasis as to where those research centres should be placed.

I can remember we thought that Turretfield could be abandoned and that could go to Roseworthy; that Northfield could be sold and that could go to several places—and I will talk about that in a moment—that Simms farm, a small bequest farm left on Eyre Peninsula, should be sold; and that the Winkler Estate should be sold. As it turned out, the Winkler Estate in the Mid-North was sold to a farmer, the Simms farm at Cleve was partly given to the Cleve area school, and that now forms a part of the agricultural education process that takes place at the Cleve area school.

Turretfield was not sold; neither was Kybybolite, and I think the report said that that should be moved. Also, the report indicated that there should be a research centre in the Kadina area, and that has not eventuated either. What has eventuated is the sale of Northfield. It was not because that report said so but because Northfield was thought to be a good place to put the Commonwealth games village.

That is another saga, and I suspect another failure by the Government. However, the money from it will go to taking those research facilities that were at Northfield, for example, the horticultural research institute and the Department of Agriculture's crop science institute, and centralising the research in the Waite campus for the field crop improvement branch from the Department of Agriculture, the weeds and soil conservation branch, the horticultural branch, the seed and services branch and the information services branch. They are all to be centralised at the Waite Research Centre, and I think that is a very good idea. That move was costed at $59.6 million.

What I have not mentioned is that it was proposed that the administration section of the Department of Agriculture be moved to the Waite. The administration section is currently housed in the Grenfell Centre, the black box, on Grenfell Street. During evidence, a lot of concern was expressed by local residents who were unhappy about the proposal. They were concerned about sprays, partly because one person who lived in the area had some background in that field and objected strongly to the proposal. There was also a problem with Waite Road and the number of vehicles that traverse the road, and it appears that the number is increasing. In addition, the local member (Mr Stephen Baker) was a little agitated and, of course, the Mitcham council was also concerned.

We looked at the whole operation and realised that, if the administration centre were transferred to the Waite campus, that would contravene the zoning of that area. The zoning permits schools and research areas but not commerce. I understand that the Government sought Crown Law opinion as to whether that zoning could be changed. Having sought that opinion, it decided to go ahead and construct a building on the site. We were told initially that the building would house 110 or 120 personnel. It became obvious that the figure would be more than 200. In our opinion, that was far too many people in an area with a residential 1 zoning. We thought that was neither fair nor reasonable, so our recommendation is that the administration centre not be transferred to the Waite campus.

Bearing in mind that a huge amount of space in the city is not leased or rented, I suggest that a good deal could be obtained for the Department of Agriculture,

even in the Grenfell Centre. It has worked on the basis that it will be leaving that building to go to the Waite in the not-too-distant future, so I suspect that its lease is running out. Therefore it should be able to renegotiate another lease and not lose too much money by staying in the Grenfell Centre. In addition, the Grenfell Street site is very central, which is good for people coming into the city from outlying research centres and Department of Agriculture offices in the country. Many of them catch a plane to town, so it will reduce transport costs if they do not have to get a taxi to take them out to the Waite Institute campus.

Relocating the administration centre to the Waite campus would dramatically increase the road transport in the area. It would mean an additional 120 cars every morning at 9 o'clock and every evening at 5 o'clock. The committee thought it better that the administration centre remain in the central business district. Construction of a building to house the administration staff would mean that some trees would have to be cut down and that the size of the crop science institute—the glasshouse area—would have been restricted. The scientists did not want that. The cereal and medical researchers really wanted that area to be as big as possible. However, under the proposal, that area was to be restricted. By taking away the three-storey administration building and the area set aside for car parking, the department and the Waite people can have another look at the size of the glasshouse area and perhaps move it away from some of the trees that would otherwise have to be pulled out.

The problem of the use of chemicals, which was raised by local residents, needs to be looked at throughout the metropolitan area, and perhaps a code of practice for using chemicals can be introduced. I must say that the Department of Agriculture has done an outstanding job in country areas in training farmers, via the Agricultural Bureau and other means, in the use of dangerous chemicals. Fortunately, manufacturers are now making designer chemicals which are less hazardous to human beings. They have shorter half-lives and they are far better than those used in the past. As a result, there is less necessity for a code of practice to be put in place, but chemicals are misused in the city. They are bought in small quantities and, when people spray the apricot tree or the peach tree, they put in enough for the tree and a little bit extra. That little bit extra is the dangerous part. House gardens are close to homes and children, so there is a case for introducing a code of practice for the use of chemicals in the metropolitan area.

The message has got across to people in rural areas who use chemicals for primary production, so on most farms chemicals are locked away or separated from areas traversed by human beings. In addition, their use is restricted. Chemicals have become part of our farming practices and they are very important. We do not want them restricted where they have a value in primary production. Even so, I think an education program is required in the city and, if that were to be implemented, the Waite Research Centre could be part of it. If people were more aware of chemicals, they would understand that much of the work that goes on at the Waite does not involve a lot of chemicals. The horticultural section would use more chemicals than any other area, and most of that work is carried out in glasshouses, so the chemicals are relatively confined. Very little in the way of chemicals is used on broad acre crops such as wheat, barley and oats, yet they are the ones that people seem to be most confused about when giving evidence.

I think that the report is a good one. It involves compromise because the committee asked that compromises be made. If the Minister does not like that, he does not have to accept it, and he does so at his own peril. Since our report was brought down, the locals have accepted that what we have suggested is correct and reasonable. I have heard nothing from the Mitcham council and I have heard little agitation from the local member. He is happy because his constituents have not been complaining to him about it. They seem to be happy. Overall, I think it is a good compromise and I recommend it to the council. The Minister should take note of it.

**The Hon. M.J. ELLIOTT:** I support the motion. I was also a member of the committee that examined the proposals for the Waite Institute. The single most important point related to issues of public consultation and the use of Government powers. Under the Planning Act, there is very little limitation on what the Government can do and, unfortunately, the public servants who were in charge of this project, knowing that ultimately they did not have to comply with the Planning Act, abused that position grossly.

When the new development legislation emerges in this place I hope that that is one area that is ultimately fixed. Every group I have spoken with, from conservation groups through to planning lawyers and even developers, say that the Crown should be bound by the Planning Act in the same way as everyone else is. The failure of the Crown to be bound in this matter has created many of the problems that have eventuated at the Waite Institute. I believe that the public servants in charge of the development have abused their position of power, that their level of consultation was inadequate and that they took insufficient heed of what was being said to them by the public.

If we briefly look at the development itself, there are a couple of issues that were raised publicly. First, there is the question of agricultural chemicals being used on the campus. I think it became evident very early that there was a much bigger issue than just agricultural chemicals on campus; there was the bigger issue of the use of chemicals in the metropolitan area generally. In fact, it is my personal belief that what back-yarders are doing is probably a lot more dangerous than what the people at the Waite Institute are doing. There was very limited use of chemicals at the Waite Institute. They were being used by people who used them regularly—and when I say 'regularly' at least in some sort of ordered fashion—who knew what they were doing and who were trained to do it. Back-yarders go to the local shop, buy something off the shelf which they think will do the job, stick it in the shed for a couple of years, drag it out, put it in their pump spray and away they go. They have no idea of application rates, dilution rates, timing of sprays or anything else.

That is a real worry, and we have made a recommendation that the use of chemicals generally in the metropolitan area needs to be examined. It is my

recommendation that the Government should severely limit the chemicals that can be used and that they should be chemicals of extremely low toxicity and very short life. Some people argue that there should be none at all, but being realistic I think that a severe limitation on what can be used is the way to go, and that the rules in force should also apply to the Waite and everyone else in the metropolitan area.

In terms of the form of the development, I think the major complaint we had from people was the amount of traffic that would be created in what is a residential area. I personally had a concern that people would have to arrive by car; it is not an area easily accessible by public transport.

**The Hon. Diana Laidlaw:** What is today?

**The Hon. M.J. ELLIOTT:** That's a reasonable comment to make. It is worth noting that the Planning Review has recommended that we do not have a ribbon development and that we try to concentrate development; in other words, we put it in the CBD or in other regional centres within the metropolitan area which are linked by public transport. On that basis, putting the 200 administrative employees at Waite Institute was obviously a very foolish idea and is very hard to understand when the Government at present owns, directly or indirectly, so much vacant space within the central business district. It does not make economic sense and it does not make environmental sense; it breaks the planning laws of the area and breaks the zoning. On any count one looks at it, those administrative people should not be going there—and that is the recommendation that the committee made. If that recommendation is picked up it will help solve the traffic problem. I think that it will also relieve another burden and free up the development to solve other problems, in particular the problem with the relocation of the Plant Sciences Building in that there can be far more flexiblity. The number of trees that need to be affected will be reduced. The position will be improved with regard to the oversight over neighbouring homes, noise and light problems. Water runoff problems can be handled more adequately. All that is possible if the administration building is removed from the site; it will allow more flexibility.

There were questions raised about chemicals, such as radioactive materials, used on the site within the laboratories as well as the agricultural sprays. It was our recommendation that there should be very rigid codes of practice developed for all those that need to be adhered to and that the local people should be involved in the development of those codes of practice. I believe that if we give the locals some involvement in this process they will feel far more satisfied, and I think we would be likely to get a code of practice which is reasonable, even if fairly tight, the locals would know what practices are and are not acceptable and I am sure would keep a fairly close watch on what is happening.

I did not intend to speak at any great length. I think the important issues have been covered. This was the first term of reference that this committee had, and it did show that it will behave in an impartial fashion. It certainly has not canned the Government for what it has done but has recommended some significant changes from the development that the Minister first referred to us, and that gives me great confidence in the standing committee system. It is the first test that my particular committee has been through and I would hope that any impartial observer would feel that in this case the committee has done a good job. I commend this recommendation to the Council. Since the Minister referred these terms of reference to the committee to start off with, I hope that he now does what it recommends.

Motion carried.

## COMMERCIAL ARBITRATION (UNIFORM PROVISIONS) AMENDMENT BILL

**The Hon. C.J. SUMNER (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Commercial Arbitration Act 1986. Read a first time.

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

*That this Bill be now read a second time.*

In 1984 the Standing Committee of Attorneys-General adopted a uniform commercial arbitration Bill which has now, with minor variations, been enacted in all jurisdictions. The operation of the uniform legislation was subsequently examined by a Working Party established by the Standing Committee of Attorneys-General. This Working Party was primarily concerned with achieving nationally uniform arbitration laws as well as looking at some matters of substance, including the consideration of arbitral proceedings, the limitation of the right to legal representation and the holding of compulsory conferences.

The desirability of having uniform commercial arbitration laws is indisputable. Practitioners, especially those working in corporate environments are increasingly required to have a knowledge of the law of several jurisdictions. A uniform law facilitates the task of such practitioners and, in addition business interests benefit from operating in a legal environment which is not confused by a multiplicity of divergent rules regulating the same subject matter.

The substance of this Bill has also been approved by the Standing Committee of Attorneys-General and corresponding legislation has so far been enacted in New South Wales, Queensland, the ACT and the Northern Territory. Several of the amendments are purely for the sake of uniformity, for example, the amendments to sections 6, 17, 18, 19, 21, 32 and 54.

New section 4 (2) makes it clear that a reference to an 'arbitrator' in the Act extends to all arbitrators in a particular case if there is more than one. This is included for uniformity purposes as the Acts Interpretation Act probably makes the amendment unnecessary.

Section 20 of the South Australian Act has been taken as a model for the uniform legislation and while a new section 20 is to be inserted in the Act the changes are mainly drafting changes. Changes of substance are, first, to give an automatic right to legal representation where the amount in dispute exceeds $20 000 or a prescribed amount. At present section 20 merely provides for an amount to be prescribed, and the prescribed amount is $2 500. We can prescribe an amount of less than $20 000. The working party chose $20 000 as they considered a substantial amount was required to justify automatic legal representation, and there was evidence that in practice it was uncommon for legal representatives

to appear in disputes involving sums of less than $20 000. Parties will be able to be represented by a representative who is not a legal practitioner if all parties agree. This adds a further category to the instances where parties may be represented by other than a legal practitioner.

Secondly, new provisions are included to make clear that legal practitioners who are not admitted to practice in South Australia may represent parties in an arbitration. These are included because of the practice in arbitrations for companies and firms to be represented by in-house counsel who have legal training but may not be admitted. The provision will also cater for the situation where an arbitration agreement stipulates that parties can be represented by counsel of their choice and the choice is a foreign practitioner.

Section 26, dealing with the consolidation of proceedings, is re-enacted. Previously only the parties, by agreement, or the court, by order, could consolidate proceedings. It is now proposed that arbitrators or umpires may themselves make orders for the consolidation of arbitration proceedings. Different procedures are prescribed according to whether the proceedings have the same or different type arbitrators or umpires. Procedural directions are also provided and the role of the court becomes one of review. The grounds on which consolidation can be ordered remain substantially the same and the parties to two or more arbitration proceedings remain free to agree on the consolidation of these proceedings. This amendment is intended to encourage speedy determination of consolidation applications without, in most cases, any delay in the arbitral proceedings.

Section 27 will make clear that the rules of natural justice apply where an arbitrator has attempted to settle a dispute before proceeding to arbitration. The preferable view is that such an obligation is implied, but this amendment puts it beyond doubt. The parties are, however, able to agree that the arbitrator is not bound by the rules of natural justice. This would enable arbitrators, for example, to meet with the parties separately or to express tentative views on the merits of the case.

Section 27 will also provide for parties 'to contract' to alternative dispute resolution mechanisms rather than 'contract out', as presently provided. Where an arbitration agreement is silent on the matter, and the parties do not agree to alternative dispute resolution mechanisms, no power will be vested in the arbitrator to compel attendance at a conference. New subsections (2) and (3) are inserted in section 31. These subsections appeared in the original New South Wales and Western Australian Acts and are now included in the South Australian Act for the purposes of uniformity. The subsections provide for an award of interest on a debt where the debt is paid before the arbitral award is made.

As to costs, the amendments made to subsection (34) relating to costs bring the South Australian drafting into line with the drafting in the other State and Territory Acts and make one substantive change. Section 34 (6) is deleted as a consequence of the change to section 27 (1), and in its place a provision is inserted which requires an arbitrator, when exercising the discretion to award costs, to take into account both the fact that an offer of compromise has been made and the terms of that offer.

Section 38 of the Act establishes rules governing the judicial review of awards. One of the main objectives of the uniform legislation was to minimise judicial supervision and review. Decisions in New South Wales and Victoria tend towards the courts adopting an enlarged scope for judicial review of arbitral awards, contrary to the original intention of the legislation. Accordingly, section 38 (5) is expanded to specify the circumstances in which a court may exercise its discretion under section 38 (4) to grant an application for leave to appeal.

Section 46 is amended to re-express the grounds on which the court must be satisfied before exercising its powers following delay by a party. The court must be satisfied that the delay is inordinate and inexcusable and will present a real risk to a fair trial or to the interests of other parties. Section 55 is recast. The provisions are in the uniform legislation in other jurisdictions. The working party considered that the provisions should be retained (and included in the South Australian legislation). 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 for the commencement of the measure.

Clause 3 removes various definitions that are no longer to be included in the South Australian legislation. New subsection (2) makes it clear that a reference to "an arbitrator" in the Act extends to all arbitrators in a particular case if there is more than one. This makes explicit in the Act what is probably achieved by the Acts Interpretation Act 1915, which provides that the singular includes the plural.

Clause 4 makes a change merely for uniformity purposes. In particular, it provides that the arbitration agreement is to be taken to envisage the appointment of a single arbitrator unless the agreement otherwise provides or the parties agree.

Clause 5 re-enacts section 11 for uniformity purposes.

Clause 6 amends section 17 to make it more consistent with the uniform model (although some variation is necessary due to local differences in the form of summons or subpoena that may be obtained in a particular jurisdiction).

Clauses 7 and 8 make changes of wording merely for uniformity purposes.

Clause 9 relates to representation. The existing section 20 has been used as the model for the uniform legislation, although some drafting changes have been made. Furthermore, it is noted that the relevant amount for the purposes of the provision is to be set at $20 000, although this can be altered by regulation. A legal practitioner from outside the State is brought within the provisions, and is protected from any potential breach of the Legal Practitioners Act 1982.

Clause 10 makes a change of wording merely for uniformity purposes.

Clause 11 relates to the consolidation of proceedings (section 26) and the settlement of disputes by means other than arbitration (section 27). Whereas previously only the parties by agreement or the court by order could

consolidate proceedings, it is now proposed that arbitrators or umpires may themselves make orders for the consolidation of arbitration proceedings. Different procedures are prescribed, according to whether the proceedings have the same or different arbitrators or umpires. Procedural directions are provided and the role of the court becomes one of review. The grounds on which consolidation can be ordered remain substantially as in the existing provision and the parties to two or more arbitration proceedings remain free to agree on consolidation of these proceedings.

In relation to section 27, the existing section provides that, unless agreed by the parties in writing, an arbitrator or umpire may order the parties to take such steps as the arbitrator or umpire thinks fit to achieve a settlement of a dispute, including attendance at a conference conducted by the arbitrator or umpire, either without proceeding to or while continuing with arbitration.

The new section provides for greater control by the parties in that they may seek settlement by mediation, conciliation or similar means or may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary, whether or not involving a conference and whether before or after proceeding to or continuing with arbitration. It is also proposed that an arbitrator or umpire be expressly bound by the rules of natural justice when proceeding under the section unless the parties otherwise agree.

Clause 12 includes provisions that originally appeared in the New South Wales and Western Australian Acts. The provisions provide for an award of interest on a debt where the debt is paid before the arbitral award is made.

Clause 13 makes a change of wording merely for uniformity purposes.

Clause 14 relates to costs. Some changes relate to uniformity. Paragraph *(c)* deletes a provision which requires an arbitrator or umpire, when exercising the discretion to award costs, to take into account a refusal or failure to attend a conference ordered by the arbitrator or umpire. As section 27 of the Act as proposed to be amended will no longer confer power on the arbitrator or umpire to order attendance at a conference, the existing provision is inappropriate. In its place, a provision is to be inserted which requires an arbitrator or umpire, when exercising the discretion to award costs, to take into account both the fact that an offer of compromise has been made and the terms of that offer.

Clause 15 adds to the provision dealing with judicial review of awards by providing that the court must not grant leave to a party to appeal on a question of law, unless the court is satisfied that—

*(a)* there has been a manifest error of law on the face of the award;

or

*(b)* there is strong evidence that the arbitrator or umpire made an error of law and the determination of the question will add to the certainty of commercial law,

in addition to being satisfied (under the current provisions) that determination of the question could substantially affect the rights of a party.

Clause 16 removes provisions that do not apply in the other jurisdictions.

Clause 17 makes changes of wording merely for uniformity purposes.

Clause 18 re-expresses the grounds on which the court must be satisfied before exercising its powers following delay by a party: the court must be satisfied that the delay is inordinate and inexcusable and will present a real risk to a fair trial or to the interests of other parties.

Clauses 19, 20 and 21 amend the South Australian Act to make it consistent with the legislation in the other States.

Clause 22 sets out various uniform transitional provisions that are necessary for the operation of the measure.

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

## CRIMINAL LAW (SENTENCING) (SUSPENSION OF VEHICLE REGISTRATION) AMENDMENT BILL

**The Hon. C.J. SUMNER (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Criminal Law (Sentencing) Act 1988. Read a first time.

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

*That this Bill be now read a second time.*

This Bill seeks to make further amendment to the Criminal Law (Sentencing) Act 1988 to allow for the suspension of registration of motor vehicles registered in the name of a company where the company is in default of payment of a pecuniary sum imposed on the company in relation to an offence arising out of the use of a motor vehicle of which it is the registered owner. The offences to which the scheme will relate are, of course, those traffic offences where the owner of the vehicle, as well as the driver, is guilty of an offence, for example, parking offences, speeding offences and 'red light camera' offences, but where the driver has not been named by the registered owner of the vehicle.

The Statutes Amendment (Criminal Law Sentencing) Act 1991 ('the Act') passed through Parliament during the last session. Section 21 of that Act provides that a person may be disqualified from holding or obtaining a driver's licence until such time as an outstanding pecuniary sum, imposed for an offence arising from the use of a motor vehicle, has been fully satisfied.

This Bill puts in place the second half of a scheme which operates successfully already in New South Wales and Victoria. In both States, disqualification of a driver's licence is the centre-piece of the scheme. Suspension of registration only applies to vehicles registered in the name of a company, as the company cannot hold or obtain a driver's licence, and of course will not arise if the company gave the name and address of the driver to the prosecuting authority. Suspension of registration does not apply to cars registered in the name of an individual because this would prevent the use of all vehicles registered in that person's name by any other family members for essential purposes. Secondly, an individual would suffer two penalties, that is, licence disqualification and suspension of registration, while a company would only suffer the latter penalty.

The provisions to allow for suspension of registration were not included in the earlier amendments as detailed consultation was necessary with SGIC, Motor Registration Section and the Courts Services Department.

The scheme as proposed will work as follows:

- where a company is in default of payment of a pecuniary sum imposed for an offence arising out of the use of a motor vehicle registered in its name, the court may suspend the registration of the motor vehicle and all other motor vehicles registered in the company's name until such time as the sum is fully satisfied;
- the compulsory third party insurance will also be automatically suspended until such time as the sum is fully satisfied and therefore a claim will be able to be made against the nominal defendant under the Motor Vehicles Act 1959 in the event of the uninsured vehicle causing injury to a third party;
- the company will be advised by the court of the consequences of non-payment of the fine at the time of imposition of the fine;
- the order for suspension will take effect if the fine is still unpaid 28 days after the company is given notice of the order;
- the Registrar of Motor Vehicles will not be empowered to register any other vehicles in the name of the company until such time as the outstanding sum is fully paid;
- the Registrar of Motor Vehicles has been granted the power to transfer registration of the vehicle to a new owner. This provision will protect a *bona fide* purchaser;
- the court may revoke the order for suspension if satisfied that the sum in default has been reduced and that continued suspension would result in hardship.

I commend this Bill to members as it is anticipated that the driver's licence disqualification and registration suspension scheme will see a significant increase in payment of outstanding fines. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

**Explanation of Clauses**

Clause 1 is formal.

Clause 2 provides for commencement by proclamation.

Clause 3 inserts new section 61b, which provides the courts with the power to order that the registration of all motor vehicles registered in the name of a company be suspended if the company has been fined for an offence arising out of the use of one of its vehicles, and has been in default of paying that fine for a month or more. The Registrar of Motor Vehicles must notify the defendant company of the court order, which will take effect if the fine is still unpaid at the end of one month from the giving of that notification. While an order for suspension is in force, the Registrar of Motor Vehicles cannot register any other vehicle in the name of the company and cannot renew any registration. The Registrar can, however, record a transfer of any vehicle to which the suspension order relates. The court has the power to wholly or partly revoke a suspension order if the company reduces the sum in default and would suffer hardship if the suspension were to continue. The court is not prevented from taking other enforcement proceedings (that is, sale of goods or land) while a suspension order is in force. When the amount outstanding is paid in full, or the order is revoked, the Court must notify the Registrar of Motor Vehicles.

**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 8 September. Page 268.)

**The Hon. C.J. SUMNER (Attorney-General):** I thank the honourable member for his considered response to the Bill, which certainly does deal with one of the more complex areas of criminal procedure. He has raised a number of questions and concerns, and I will try to deal with them in order. The honourable member's first question relates to the onus of proof. It was certainly thought prior to *Thompson's* case that the onus lay on the prosecution to prove territorial jurisdiction beyond a reasonable doubt. But the High Court in Thompson did not agree with that view. Mason CJ and Dawson J, with whom Gaudron J agreed, took the view that, where there was an issue as to the location of a crime, the Crown must bear the onus of proof to establish locality on the balance of probabilities only. Brennan and Deane JJ, for different reasons, held that the civil onus applies where the law in the possible jurisdictions is relevantly identical, but that location must be established beyond reasonable doubt where it is not. For Brennan J, the onus is changed where the difference would 'expose the offender to punishment of a higher order'. For Deane J, the higher onus applies where there was a significant difference in the substantive law. He was also inclined to the view that that would also be so where there was a significant difference in penalty.

The Bill therefore follows the majority view in providing that the issue should be decided simply on the balance of probabilities. It must not be overlooked that the facts constituting the offence must be proved beyond reasonable doubt. If we assume facts which constitute an offence in Queensland but not in New South Wales, and the facts which constitute the offence are proved beyond a reasonable doubt, is it so unjust to require proof on the balance of probabilities that none of the facts occurred in Queensland?

The honourable member next raised concerns about the fact that subsection (6) reserves the question of jurisdiction for the trial. He takes the point that, if there is in fact no jurisdiction, then the committing court (for example) will equally have no jurisdiction (assuming that an indictable offence is involved). It may be, therefore, that the accused will be deprived of his or her liberty for a time when, in the end, no jurisdiction is found.

I quite understand what the honourable member is aiming at. The explanation of the position taken by the Bill has two parts. The first is about what the position is at common law—that is, the position from which we seek to advance. It is at present simply not possible in a practical sense for the accused to argue before the trial process begins that there is no territorial jurisdiction. I am not aware of any procedure whereby a person, who is not already before either a trial court or a committing court, can apply to a court for some kind of order to the effect that the State has no territorial jurisdiction over a

crime committed by them. Indeed, very formidable difficulties would present themselves in such a situation. The accused would either be compelled for the purpose to confess the allegedly criminal activity in advance of trial; or he or she would be unable to give the court the relevant information on which it could decide whether or not the State had jurisdiction over a hypothetical crime which is based on facts which are not admitted.

The real place where it might be thought that the jurisdiction issue might be raised and decided in advance of trial is at the committal (where an indictable offence is alleged). Whether or not that should be so is not an easy question to answer. The root of the answer lies in understanding the role of the committing court. The role of the committing court is to determine whether there is sufficient evidence to warrant placing an accused person on trial. The committing court typically does not hear or decide on matters which are not elements of the offence or defences to it and which are reserved for the jury (particularly where there is to be a special verdict), even though they may prove to be a complete answer to the charge. The most obvious example of this is that the committing court will not decide questions of double jeopardy (the pleas of *autrefois* convict or acquit) or a plea of pardon. The same appears to be true about fitness to plead and (probably) the defence of insanity. There is a clear analogy to be drawn between these cases and the one we have before us. There is no authority of which I am aware which deals with the current position at common law. But, even if the matter could be decided by the committing court, the accused would need to establish lack of jurisdiction very clearly indeed to succeed at that point.

To allow a committing court to consider the question would require a complete redraft of the scheme of the Bill. The Bill aims to deal with the case where the location of the crime is unknown by raising a presumption and protecting the accused by providing that where the facts necessary to constitute the crime cannot be proved beyond a reasonable doubt, the accused is entitled to an acquittal on the merits rather than the lesser protection of a finding of lack of jurisdiction (even if there was no jurisdiction). The point of the latter protection is to ensure that, where, for example, territorial jurisdiction is doubtful, the accused will have a verdict on the merits which will operate as a bar on any subsequent prosecution in the State or elsewhere, thus ensuring that, if at all possible, the accused will not undergo more than one trial. The committing court cannot do any of this. It cannot provide a verdict on the merits and hence dismissal at that stage will not prevent a further prosecution in this State or elsewhere. Further, the committing court is faced with the presumption and onus of proof questions which are wholly inappropriate to its function of deciding whether there is sufficient evidence to put the accused on trial. These questions are interconnected as part of the overall scheme of the Bill. To change one would undermine the others and make them unworkable.

This leads me to the honourable member's concern that the issue is, as proposed in the Bill, to be a question of fact for the jury. Opinion was divided on this question at common law. In *Thompson's* case, however, Mason CJ, Dawson and Gaudron JJ held that it was a question of fact for the jury. Deane J did not comment on the issue beyond remarking that a special verdict was not required in this case as the implied allegation of locality was sufficient to found jurisdiction. Brennan J also contemplated a special jury verdict. So in this matter the Bill follows the unanimous view of the High Court.

The honourable member raised concerns about subsection (7). The essence of the concern as I understand it is whether or not the reference in it should be to a reasonable belief or a reasonable suspicion. There are two answers to this. The first is that subsection (7) does not create any power of arrest at all. What it does is explain how an existing power to arrest on suspicion must be interpreted. The object of the subsection is to explain that the existing suspicion need not include a reasonable suspicion that the territorial nexus exists. The reason is that it would be unrealistic to expect an arresting officer to turn his or her mind routinely to that question.

The second reason is that, while I am inclined to agree with the honourable member that, in the interests of the liberty of the subject, reasonable belief is a surer safeguard than reasonable suspicion, the fact of the matter is that the basic powers of arrest and so on contained in the existing Summary Offences Act are all phrased in terms of suspicion. I instance sections 67, 68 and 70—all powers to search—and sections 71, 75 and 78a—all powers to arrest.

The honourable member queried the need for the retrospectivity of this measure. I am aware that this is a matter on which he feels strongly. I can say that this is something of a special case. The reasons are that *(a)* the section does not deprive any person of an accrued right who has accrued that right through being charged; *(b)* it is not as if the section deems a person guilty of an offence or anything like it—it merely removes a procedural technicality to the conviction of a person whose guilt is otherwise fully established (and actually provides a protection to an accused person via the use of the special verdict); and *(c)* it will mean that if a case arises in the future where, say, a body is discovered near a border and it is not clear where the murder was committed, then the time at which the murder was committed (before or after proclamation) will not become an issue. It is not uncommon for hidden bodies to be discovered years after the event. Deane J of the High Court intimated that, in his view, to allow the acquittal on the ground of jurisdictional uncertainty in such a case would be an affront to justice, policy and commonsense. That is the reason for the limited degree of retrospectivity proposed here.

The honourable member queried the definition in subsection (10) as including the sea on the landward side of the territorial sea but not within the limits of the State. The need for that provision lies with the complexities of the law of the sea and constitutional law in relation to the definition of the territorial limits of the State. I am informed that this is meant to include bays and gulfs of a certain size which are not part of the territorial sea because they are sufficiently enclosed, but which lie beyond the low water mark and hence the territorial limit of the State, and historic bays which are of a similar nature.

The honourable member also queried the meaning of subsection (11), which is admittedly of a technical nature. I am advised that this is again an interpretation clause designed to ensure that the provisions of this Bill will apply to all offences of which an accused person may be convicted on the charge concerned, whether or not the offence is actually an offence charged on the indictment. A good example is that attempted murder is an included offence on a charge of murder. So, where an accused is charged with murder, the Bill will also apply in relation to the alternative verdict of attempted murder, for which the jury may convict (where appropriate), even though it may not be technically an offence charged under subsection (4).

Bill read a second time.

## TOBACCO PRODUCTS (LICENSING) (FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 September. Page 298.)

**The Hon. C.J. SUMNER (Attorney-General):** In response to the Hon. Mr Lucas, and to conclude the debate: first, the Hon. Mr Lucas indicated that he was going to move an amendment which effectively refunds to tobacco companies the additional fees payable for the period 1 July 1992 to 7 July 1992 inclusive. Advice from the Crown Solicitor is that that amendment could jeopardise our ability to maintain the tobacco company fees revenue and, accordingly, the Government is not anxious to accede to an amendment of that kind. However, the Government will grant—and this has been approved by Cabinet—*ex gratia* payments of refunds of amounts raised from the tobacco company licence fee increase in respect of the period sought by the tobacco companies. With the granting of *ex gratia* payments for the period sought by the tobacco companies it is not believed there will be ongoing problems in the industry.

The increased licence fees operate for the September licence which is payable by 31 August. Consequently, the Government will receive 11 months increase in 1992-93, and this is why there is a difference between the increased revenue for 1992-93 as opposed to a full year effect—which I understand was the other question raised by the Hon. Mr Lucas. With those assurances, I would suggest to the Hon. Mr Lucas that it may not be necessary to move his amendments, particularly as they may lead to constitutional difficulties as to the validity of the tobacco levies and liquor licence levies, etc.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Licence fees.'

**The Hon. R.I. LUCAS:** I will respond to the comments that the Attorney-General made at the end of his second reading reply, and indicate that I welcome the response that was given by the Attorney-General on behalf of the Government regarding *ex gratia* payments to be made to the tobacco industry in relation to those first seven days of July. Therefore, I do not intend to proceed with my package of amendments.

Lawyers are much the same as economists. There are a variety of opinions as to whether there might be problems in relation to the drafting of amendments. All I can say is that the very best legal advice available to me indicated that they did not share the view that the Attorney put to the Council. There certainly was a concern that the amendment that the Liberal Party had drafted in the House of Assembly might have raised some concerns. As a result of that discussion, there was a complete redrafting of the amendment to be moved in this place, in effect, to meet the very concern that the Attorney-General has flagged. It does not matter now, because we do not have to move it. I thought I would place that on the record and indicate that—

**The Hon. C.J. Sumner:** You were probably basing it on the earlier one.

**The Hon. R.I. LUCAS:** It might have been, yes.

**The Hon. C.J. Sumner:** You might not have seen the new one.

**The Hon. R.I. LUCAS:** That may have been the case. The advice from Parliamentary Counsel and others was that the first one may well have had a problem, but that the drafting of this was, in effect, intended to get around the very problem the Attorney has raised. As I said, it does not really matter now. I welcome the Government's response, and therefore do not intend to proceed with the package of amendments.

**The Hon. M.J. ELLIOT:** It is always most gratifying when these matters are resolved without having to crunch numbers one way or the other. It appears that a slight error has been admitted, and that the Government is now rectifying that error. On behalf of the Democrats, I am pleased to see that that has occurred.

Clause passed.

Remaining clauses (5 and 6) and title passed.

Bill read a third time and passed.

[*Sitting suspended from 5.55 to 7.45 p.m.*]

## SUPPLY BILL (No. 2)

Adjourned debate on second reading.

(Continued from 8 September. Page 293.)

**The Hon. K.T. GRIFFIN:** I take the opportunity in this debate relating to money to deal with one aspect of public administration that has caused concern and directly relates to the finances of the State. It relates particularly to supply and tendering processes and directly involves the State Supply Board. It is an issue that I have raised previously in a limited sense with the Minister of State Services in a question, to which an answer has been given but in respect of which the answer is unsatisfactory and does not address the important issues of principle involved in this matter.

This issue requires investigation independently and, whilst I take the opportunity to raise it in this place in the hope that it will be fully explored by the Government, I indicate that I will be forwarding to the Auditor-General and the Ombudsman for investigation the important issues surrounding the letting of a tender by the State Supply Board for 1 000 firefighters overtrousers to a United Kingdom company, Bristol Uniforms Ltd, for

$300 000 in preference to products offered by Australian manufacturers with substantially Australian fabric incorporated in those units.

With regard to this matter, there was sloppiness and uncertainty in the specifications for the tender that could not be resolved between the Australian tenderers, the State Supply Board and the technical contact in the Metropolitan Fire Service, Mr Mick Smith. The specifications appear to have been prepared to achieve a particular result, namely, the letting of the contract to a United Kingdom company for the supply of overtrousers by that company.

There is an issue of a possible conflict of interest by the technical contact, Mr Smith, who was also on the executive of the United Firefighters Union and was until some time in July of this year the occupational health and safety officer of the Metropolitan Fire Service; and, among other things, he has travelled overseas to visit the United Kingdom company, Bristol Uniforms, and, on the information that I have, has been wined and dined by that company and on at least one occasion has stayed with its Managing Director. That raises the question of a conflict of interest which does need to be resolved in the light of the sloppiness, uncertainty and the unprofessional way in which the tender was first prepared and subsequently handled.

Concern expressed by at least two Australian manufacturers—Colan Products and Cross Fire—is that the overtrousers that the State Supply Board has contracted to purchase for the State Metropolitan Fire Service are quite unsatisfactory for fire fighting in Australian conditions where fires are fought in hot weather. The overtrousers to be purchased from the United Kingdom are for fighting fires in a European environment, essentially in cool or colder weather.

One tenderer, Colan Products, does not ordinarily tender for garments supply but rather supplies materials to those who might produce garments. He does not ordinarily get into competition with those people who use his materials to produce the finished product. However, on this occasion, Colan Products thought that the tender may be a set up and that there was something smelly about it, so a decision was made to tender to test the system.

The Colan company has been dealing with the Metropolitan Fire Service for the past three years. It is an Australian company that supplies fabric direct to the Melbourne Metropolitan Fire Brigade for the manufacture of fire clothing, to people who make fire clothing for the New South Wales, Queensland and Northern Territory fire services, to the Department of Defence for the RAAF, and to the Civil Aviation airport firefighting units; also, it exports its material for the manufacture of fire clothing to Singapore, the United Arab Emirates, New Zealand and Malaysia. That is not a bad effort for an Australian company. It is quite obvious that the fabric used is at least acceptable in those States and countries, but apparently is not acceptable in South Australia.

Something like 25 per cent of Colan's production is exported. Colan has accepted the challenge, under the Federal Government's textile, clothing and footwear reduction in tariffs policy to get smart, to develop a high technology product and to export. That is one of the exhortations of the Arthur D. Little report, namely, that in South Australia companies must do that if they are to expand in this State, and it applies equally interstate.

Another Australian company, Cross Fire, has been making fire clothing for three years. Its clothing is used in Australia and exported to the United States of America. It has been in touch with the Metropolitan Fire Service for the past two years with regard to its products. I have had extensive discussions with those two companies about this tender and they are considerably disenchanted with the way in which it was handled and feel that they have been let down and that there is a preference for a United Kingdom product as a result of what appears to be a conflict of interest.

Another tenderer—an Australian company called Can't Tear 'Em—I understand had a similar experience with the State Supply Board and its technical contact, Mr Smith, as did the other two companies. However, I have not had sufficient time to explore with Can't Tear 'Em all of its experience in this tender.

The Australian companies noticed registrations of interest from an advertisement in *Tenders Australia*, a volume that publishes tenders being called around Australia, and that was contained in the 2 April 1992 volume. The advertisement for the registration of interest appeared only in the *Advertiser* and the *Australian*, and no attempt was made to draw the attention of known Australian interest to it—a course of action which should have been taken in view of the known activities of the Australian firms.

In fact, the State Supply Board indicated that when the request to call for registrations of interest had come from the Metropolitan Fire Service there was no indication that some notification should be given to these two companies in particular or to Can't Tear 'Em, notwithstanding that there had been contact on a fairly regular basis between those companies, the Metropolitan Fire Service and the technical contact, Mr Smith, over the past two or three years. Although the specifications were extremely badly drafted and were obviously focused on the Bristol Uniforms product, it was known that Mr Smith wanted to buy the Bristol Uniforms product direct as a result of some information that was communicated in a telephone conversation between Mr Smith and Mr Peter Love of Colan Products on 18 February 1992.

So there is a bit more evidence that Mr Smith wanted this particular product from Bristol Uniforms in the United Kingdom. The amount of the likely tender of $300 000 was more than would have allowed the purchase to be made on a direct contract basis without tenders being let, so the tender specification was written so that it would favour Bristol Uniforms and ultimately result in Bristol Uniforms being the successful tenderer.

The following matters are seen to be problems with the specifications. First, discussions with Mr Smith and the State Supply Board about uncertainties and lack of detail in the specification did not provide helpful information and in some cases there were no responses to inquiries by the Australian companies. In some instances, in various conversations, the technical contact, Mr Smith, contradicted himself. Secondly, a fire-proof jacket is regarded universally as the critical garment giving fire protection to firefighters, not the overtrousers. So the priority in the specification focusing on the overtrousers was wrong.

The third point was that 50 per cent of a firefighting garment is an inner garment but this was not even mentioned in the specification, and that was one of the reasons why there had to be further contact between the companies and Mr Smith to try to ascertain exactly what the tender was seeking.

Fourthly, a fabric was specified in the specification by brand name. As I understand it, that is a somewhat unusual provision but, curiously, this fabric was only available to Bristol Uniforms. Fifthly, the outer garment was overspecified and used to draft European standard, which is not even available in Europe except to members of the European Standards Association Committee which is developing the standard. Bristol Uniforms is a member of that committee as, I understand, is Mr Smith, who does provide some assistance to that committee.

Sixthly, 10 paragraphs of the specification are identical to a Malaysian tender specification which Bristol was involved in drafting and which was ultimately successful. One can only speculate as to how they came to be so similar and one suspects that not so much the department plagiarised the Malaysian tender but that Mr Smith and Bristol Uniforms had input into the drawing up of the specification and the Australian companies did not. The seventh point is that no delivery time was specified in the tender. Australian companies could have manufactured the garments expeditiously if that was required. One of the criticisms of their tenders was that it would take longer to get their product than it would to get a product off the shelf from the United Kingdom, but there was nothing in the tender specification which specified urgent delivery.

The eighth point is that there was no whole garment test required by the specification, although the Australian companies were told that this was what was required by the specification, and because they had not provided the appropriate test certificate they therefore did not qualify. As I indicated, there was no whole garment testing required by the specification; it was something which seemed to have been developed subsequently by the State Supply Board and Mr Smith.

There are a number of other matters that are relevant. It is a fact that more firefighters are injured by heat stress than by direct burning, and this is of considerable importance in the heat of a South Australian summer where firefighters operate. That is why a European standard is not, in the view of the Australian companies, appropriate to Australian conditions and in fact may be dangerous to South Australian firefighters rather than being an added safety benefit to them because it does not allow the dissipation of heat from the inside of the uniform. So, it is of some concern that Mr Smith seems to have had a one-track view—the Bristol Uniforms product or else.

The assessment that has been made by people who have dealt with Mr Smith is that he is neither qualified nor competent to deal with the technical aspects of firefighters' clothing. The State Supply Board initially recommended that an Australian tender be accepted, but then the United Fire Fighters Union of South Australia imposed bans and limitations—and remember that Mr Smith was on the executive of that union. The day after the bans and limitations were imposed the tender was let for the United Kingdom product.

An interesting press release was put out in a volume called *Word Back* which is a United Fire Fighters Union of South Australia Incorporated publication (No. 8/1992) published on 30 July 1992 entitled 'Further delays on protective clothing. Bans and limitations imposed.' The press release states:

As a result of a departure from what the union believed to be the agreed process that would occur with respect to the tendering, ordering and purchasing of overtrousers for operational firefighters, State council has been left with little choice, but to impose bans and limitations.

As most members would be aware, some time ago tenders were called by the fire service to supply overtrousers to a prescribed standard as agreed between union and fire service. Of the five manufacturers that tendered, only one, Angus Fire Armour, was able to provide a sample to the standard required, and it was expected by the union that an order would be placed forthwith.

Unfortunately, State Supply appears at this stage to hold the opinion that the protective overtrousers must be manufactured by an Australian company. Angus Fire Armour is the Australian distributor for English protective clothing manufacturer, Bristol. The union, would of course, normally support such a position, however, there can be no compromise whatsoever when it comes to the safety and protection of our members. The locally manufactured argument being advanced by State Supply could delay for several years the introduction of overtrousers to the specified standard.

Members would be further aware that the union has vigorously pursued the introduction of overtrousers for many years, and now, to be confronted with further delay when the fire service finally has funds available within its budget, is intolerable.

At this stage there appears to be three options which can be pursued to allow the purchase of overtrousers to go ahead:

Proceed with the purchase of overtrousers manufactured in Australia by an Australian company which would result in the provision of overtrousers that would not offer the necessary degree of protection.

Allow an Australian company the time to develop, test and manufacture overtrousers to the required standard, a process that may take as a minimum, several years.

To proceed with what was the agreed process and immediately place an order with Angus Fire Armour.

The first two options are obviously totally unacceptable and, as a result of the insistence of the State Supply not to proceed with the only realistic option, State Council has little choice but to impose bans and limitations.

As from 1800 hours on Thursday 30 July 1992, bans and limitations will be imposed. If State Supply does not review its position, a position which quite simply places our members at an unnecessary and ongoing risk, then the union will have little choice but to escalate the bans.

That is a bit of strongarm industrial blackmail which seeks to place pressure on State Supply, and that is what happened: within one day—in fact the very next day—State Supply capitulated and decided that the contract should go to the Australian distributor for the United Kingdom company.

But then Colan Products and CrossFire responded with an open letter to members of the South Australian branch of the United Firefighters Union, and it is important that I read this into the *Hansard* to balance the statement made by the union and to answer the allegations made. The joint open letter is as follows:

On 30 July 1992 you imposed bans and limitations aimed at forcing the South Australia Supply Board to abandon a fair tender process and to place an order overseas for protective overtrousers.

The justification for industrial action was outlined in *'Wordback'* newsletter 8/92.

The newsletter contains untrue assertions about the capability of Australian manufacturers.

We are local firms who have invested heavily in R. & D. to develop fabrics and garments for the unique needs of Australian

fires. We demand the right of reply to a document which misrepresents our achievements and abilities.

*Wordback* 8/92 claims that Australian industry was unable to meet specifications issued by the Union and Fire Service. It further claims that it would take Australian manufacturers 'a minimum of several years to develop, test and manufacturer suitable garments'.

These claims are nonsense. The facts are these:

1. The specifications were blatantly biased towards a European style cold weather garment. We chose to offer an advanced low stress garment designed to reduce heat stress experienced in hot climates whilst offering a high level of protection.

2. The specifications were badly written, vague and restrictive. Our requests for clarification were unanswered.

3. We provided excellent sample garments and the test results required within six weeks, not 'several years'.

It is important that you understand the consequences of your industrial action. They are:

1. You will be issued with a hot, heavy and fatiguing garment. It will make your job harder to perform and increase the chance of injuries caused by fatigue and heat stress.

2. The imported garment costs more than the local product. Therefore there will be less money available for crucial safety gear such as jackets and boots.

3. Australian workers will lose their jobs. TCF unionists will lose their jobs.

4. A large sum of taxpayers money will leave Australian shores.

5. You are sending a signal to Australian industry not to invest in R. & D. to serve your future needs.

You have been induced to take industrial action under false pretences. You will suffer. Australian workers will suffer. The Australian economy will suffer.

That is a fairly blunt response to the union executives' observations in relation to the imposition of bans.

During the whole period from the registration of interests until well after tenders closed there has been continuing communication between Colan Products and CrossFire on the one hand, and Mr Smith and State Supply Board on the other. As a result of the concerns of the Australian tenderers, the State Supply Board or the Metropolitan Fire Service has convened a seminar under the title of National Protective Clothing Seminar for next Monday. It is, in fact a small State-focused meeting and, while there may be one or two representatives from other fire brigades in Australia present, those other fire brigades, I am told, are surprised by the title and in fact are ringing CrossFire and Colan Products to ask, 'What's all this about a national protective clothing seminar?' More particularly though, interstate fire services are shocked by the decision of the State Supply Board and fire service to buy Bristol products. These other brigades have evaluated these products over the past two or three years and all regard them as unsuitable for use in Australia.

As a result, South Australian firefighters will be behind the times and not be wearing protective clothing suitable for the Australian environment, and more up-to-date than the products from Bristol Uniforms. For these reasons, the propriety of the decision by the State Supply Board and the Metropolitan Fire Service should be independently assessed by the Auditor-General and the Ombudsman, and I will be ensuring, as I said at the outset, to have that course followed. The way this has been handled has been shoddy. It lacks professionalism and gives no encouragement to Australian industry.

There are several other matters that it is important to relate in the context of this problem. Some of the background provided to me by Colan Products identifies the factors which need to be taken into consideration. Modern fires have special hazards for firefighters. The existing protective clothing ensemble which is generally made of wool and leather is being replaced with new material specifically engineered for heat and hazard protection. While protection from heat and flame is important, heat stress build-up during operations is a critical consideration. The ensemble includes helmet and visor, fire turn-out gear, level 2 overtrousers and jacket, balaklava, boots, breathing apparatus and station wear (level 1) worn beneath this gear. Special items include gas-tight suits and communications gear.

Local textile weavers and finishers allow maximisation of Australian content. The majority of clothing ensemble for firefighters is manufactured in Australia. There are at least five manufacturers of fire turnout gear and station wear: ADI Ltd, CrossFire Designs, Can't Tear'Em, Melbourne Metropolitan Fire Brigade and Equipage. They supply New South Wales, Victoria, Queensland, Northern Territory, Department of Defence and the Civil Aviation Authority Fire Services, yet in South Australia it is not possible to get an advanced product into this State.

In one of the discussions which Mr Smith had with Mr Peter Love of Colan Products when Mr Love was in Adelaide during 1990 and 1991, Mr Smith was quite properly concerned about the delay in getting suitable protective clothing for his members, but on those occasions he said that the South Australian Metropolitan Fire Service did not have money allocated because of tight budgets and the management could not make up their minds what they wanted. But the priority seemed to be a level 1 shirt and jacket for everyday wear which is to replace the cotton and polyester station wear. That cotton and polyester gear which is currently worn by South Australian firefighters is highly flammable and dangerous and, being worn under fire protection gear, if there should be an accident at a fire and the firefighter is set alight, then that gear will flame, melt and stick to the body. It is highly dangerous and undesirable and in the view of the Australian firms that should have been the first priority for change rather than going for over-trousers.

The priority which seemed to be required by the South Australian Metropolitan Fire Service also stipulated level 1 pants to replace the woollen pants and level 2 over-trousers and jacket when the money was available. There was a telephone conversation between Mr Love and Mr Smith on 18 February 1992, and a summary of that conversation is that both Mr Smith and the union wanted something done that week. The union was prepared to call a strike to bring the matter to a head.

During that week, they were actually buying gloves. They wanted to purchase the level 1 shirt and Bristol gear direct, not going through the tender process. They had budgeted for two sets of gear per firefighter (that is, 1 000 x 2) and set aside $2 million, which included 55 per cent duty. Mr Love asked where he as a fabric supplier fitted in. Mr Smith suggested in that telephone conversation that Colan investigate the possibility of supplying Bristol with fabric, but Mr Love stated that customs duty on the total garment, including Australian fabric, would be payable. He was then proposing to contact the customs agent to clarify that, but Mr Smith indicated that, due to budget restraints, the purchase would be split into the first 1 000 overtrousers, the

second priority would be 1 000 jackets and the third and fourth priorities would be another 1 000 overtrousers and jackets.

On 6 April 1992 there was another telephone conversation between Mr Love and Mr Smith regarding matters in the registration of interest specification. On that occasion Mr Smith stated that the specification covered both overtrousers and tunics, although only overtrousers were being requested at that stage. The intention was to get manufacturers to test to the specification. The South Australian Metropolitan Fire Service was not closing off any changes to the specification but needed the clothing to meet certain standards. The specification was a redraft of the CEN or European standard in South Australia.

In fact, he boasted that he had actually drafted the specification from the ISA standard. Mr Smith indicated that he wanted 2 000 sets over all in time. There was no one manufacturer in Australia who could make them, although an Adelaide company said that it could be up to speed in 12 months. Bristol could supply the garments ex stock, and Mr Smith said that the fire service would like to go for the overtrousers and jackets in the first registration of interest but settled for overtrousers first, because of budget constraints.

Mr Love had a number of other conversations with Mr Smith, and he sought to contact Mr Peter Bridge, the Chairman of the State Supply Board, after he had made some contact through the Industrial Supplies Office in New South Wales, which has links to that office in South Australia. However, although he endeavoured to contact Mr Bridge, Mr Bridge was not available and rang back only after about three or four weeks. I suggest that that is not particularly satisfactory.

Mr Marshall, from Cross Fire, had much the same experience and, again, there has been correspondence between the State Supply Board and Mr Marshall, and I will just refer to a few extracts from those letters. On 24 July the State Supply Board wrote to Mr Marshall in response to a complaint from him that he had not been able to get any sense out of the State Supply Board or Mr Smith in respect of certain technical specifications. Mr Harris of the State Supply Board responded on 24 July by saying, among other things:

I was informed that Mr M. Smith had discussions with you during the National Health and Safety Conference held in June, at which time he considers your questions were fully answered. As far as fabric combination goes, it is up to the manufacturer to provide a garment that he considers complies with the specification and has been tested. The design of a garment is something that could be discussed after evaluation.

It is a fact that some discussions took place at this conference. It was, actually, a dinner. On the information that I have, there was no discussion of the technical specification. In fact, other witnesses at the table indicate that at no time were technical matters discussed over the dinner table, and were certainly not discussed at any other time. In fact, it was somewhere around 8.30 p.m. that Mr Smith, who had been drinking in a social context, had talked about everything except fire clothing, and there was, as Mr Marshall ascertained afterwards, some suggestion that Mr Smith and the union wanted to develop Australian manufacturing, and the union raised the question, 'How can we arrange the buying to favour an Australian manufacturer? How can the union help to ensure that Australian industry gets the job?'

Other unionists were around the table at the time and said that that was a bit blatant; that he was being put on notice that he had to make some contribution to ensure that the union worked with him in the supply of Australian clothing. It is not Mr Marshall's assessment: he says that he was fairly innocent about it but that afterwards the other unionists around the table said to him, 'That was pretty blatant: didn't you realise what was going on?' He said that he did not, but he was alerted to some of the facts of life in that context.

On 27 July Cross Fire replied to Mr Harris at the State Supply Board, partly in the following terms:

It seems that Mr Rod Hagan and yourself are unaware of the ambiguities and factual flaws in tender specifications 455/92 and that your staff do not have the professional courtesy to reply to a series of letters requesting clarification of these issues. I am sending by mail detailed chronology and circumstances of this case so that you might understand my concern.

In the meantime, I must register my strongest protest at the way Cross Fire has been excluded from this tender due to negligence by SAMFS and the State Supply Board staff.

He followed that up with another letter on 28 July. Without going into all the technical detail, several aspects of the letter are responses to the State Supply Board's assertions. In relation to the attempt to discuss the South Australian Metropolitan Fire Service requirements for firefighters clothing, he says:

Mr Mick Smith, Mr Geoff Turner, Mr Peter Clark and Mr Tom Williams have been on our mailing list for over a year and have received brochures, letters or phone calls updating them on our design work. I cannot recall any of these gentlemen writing or phoning to investigate products or design capabilities. I have telephoned Mr Smith several times for general discussion about fire safety gear and Cross Fire's design work.

There is then discussion as to the matter to which I have referred, the dinner discussions, and the letter continues:

The discussion you refer to was in a social context of after dinner drinks at the UFU conference in Wodonga. It did not address and certainly did not answer my concerns about tender 455/92.

In fact, one impression Mr Marshall received from phone calls to Mr Smith was that he favoured being offered a wide range of fabric options. Mr Marshall writes:

It seemed necessary to do so, as many fabric qualities were not mentioned at all in the tender specifications. Such important values as comfort, drape, breathability, availability and Australian content were not addressed in the tender. Furthermore, no qualities at all were specified for the liner fabric. This vital component of the protective clothing is not even mentioned. Conversation with Mr Smith suggested that these issues would be discussed after the tender closed . . . The board has not given this Australian manufacturer every opportunity to compete because it has not replied to three written requests for clarification of a flawed tender. I will explain just how flawed directly . . . I did receive a phone call from Mr John Gray, to which I assume you refer. I do not know Mr Gray's authority within the buying process and he did not explain it to me. The conversation was not definitive. Mr Gray was under the impression that Mr Smith had already answered my questions. I explained that this was not so. He seemed unaware that we had already submitted a sample shell, most shell test results, and that we were awaiting clarification of technical matters.

He could not confirm the brigade's preference for either fire-rated treated or fire-rated inherent fabrics and concluded by advising me to 'give it my best shot'. This conversation was no substitute for a researched, written reply on the record.

He makes reference to the fact that he had not heard about any urgency of the project, and certainly it was not

referred to in the tender. His observation about the tender specification includes the following:

This specification contains ambiguities, contradictions and omissions which make the manufacturer's task of compliance difficult. It ignores many issues important to the delivery of a satisfactory fire garment. In some cases it specifies design features more suitable for a garment designed for use in European climatic conditions. The specifications suggest the conclusion that they are written to favour the product of a particular European manufacturer.

Then he talks about omissions, as follows:

The glaring omission is that of any direct reference to the lining fabric. The lining is nearly 50 per cent of the garment assembly and yet it is not mentioned. No strength, shrinkage, abrasion resistance, weight, comfort, etc., requirements are made for this vital component.

The crucial omission is any discussion of whether the lining fabric should be of a fire-rated inherent or fire-rated treated type. This question has major bearing on lifespan, protective qualities, comfort, price and delivery time of garment.

Then there is other correspondence, and I refer to a couple of extracts. In a letter which Mr Marshall wrote on 17 August 1992 to Mr Harris at the State Supply Board, and this was in reply to some letters of 4 and 5 August from the State Supply Board, he writes as follows:

I appreciate your attempt to explain the tender process, which resulted in the order for firefighters overtrousers being placed overseas. However, your letters only serve to confirm my conviction that members of the South Australian Metropolitan Fire Service and/or the South Australian Branch of the United Firefighters Union have misled the State Supply Board in a successful attempt to subvert a fair purchasing procedure.

Later he says:

I submit that issuing biased, incomplete specifications, providing misleading advice by phone, not replying to letters and caving in to ill-considered industrial action is not 'doing everything possible to allow Australian manufacturers to compete'.

Then there was this reference to the test certificate on the whole garment, which was one of the reasons why the State Supply Board had said that the tender was not acceptable. Mr Marshall says:

Please explain about this legendary 'test certificate' on the whole of the garment. There is no such requirement in the draft ISO or NFPA (European and American standards). Please ask if the South Australian Metropolitan Fire Service has read this ISO standard. Does the State Supply Board hold a copy? Thank you for the reminder that this is an expensive and technical project. The fact that I have spent many thousands of dollars on tests which have been disregarded out of hand is not lost on me. If the South Australian Metropolitan Fire Service technical officer provides contradictory and confused information over the phone, am I to expect that an expensive trip to Adelaide would provide me with better quality advice?

The State Supply Board had suggested that he make a trip to Adelaide to talk about it. He continues:

Regarding the choice of liner it should be understood that fabrics as diverse and unsuitable as 12oz tent canvas, Neoprene-coated wool or horse hair felt would meet the specifications as written. The garment would be unwearable but it would comply with specifications. If the South Australian Metropolitan Fire Service wanted a Ventile cotton liner why didn't they ask for it? They over specified the shell fabric right down to the brand and model name. Why didn't they do the same for liner instead of playing guessing games?

It did not occur to me that the South Australian Metropolitan Fire Service would require a liner (Ventile) which causes such heat stress problems that it is unacceptable to at least six other Australian fire brigades.

I respectfully suggest that confusion on my part is not the problem. The South Australian Metropolitan Fire Service has created confusion and made no effort to allay it by replying to written requests for clarification.

In relation to the European standards, he then says:

Is it fair to expect Australian manufacturers to provide results to PrEN tests? 'PrEN' stands for 'Preliminary European' and is not available for public circulation, only to ISO Committee members. Could it be that the two UK firms able to comply in time have links with the ISO Committee?

He then makes other observations. The whole thing is a saga of mismanagement, incompetence and, in some respects, impropriety, and they are the issues that I believe ought to be addressed. Mr Marshall says that he supports the view that the interests of the firefighter are paramount. Do not forget that he has been developing and manufacturing product for some time in the high tech area and his product is accepted by other firefighting services. In one of his letters to the State Supply Board (17 August) he says:

Of course the interest of the firefighter is paramount. Please ask the South Australian Metropolitan Fire Service to explain how well the firefighter is served by being issued with a hot, heavy, fatiguing garment completely unsuited to South Australia's hot climate? If flashover is the primary threat why don't the specifications call for duplicate positive fastenings, minimum TPP of 35, high water head on shell, and tensile, flame spread, thermal integrity and abrasions standards on liner. Without these features the garment will not withstand a flashover.

So they are a number of other matters that are relevant to the consideration of this issue. I have taken up this matter in the Supply debate because I think it is an important issue. Yesterday, the Minister of State Services provided a reply to the question I had asked several weeks ago, but the reply was not anything more than a repeat of what has already been told to both Mr Marshall and Mr Love of CrossFire and Colan Products respectively. It does not address the real issues.

I suggest that the only way the real issues will be addressed is for an independent inquiry to be conducted. I would think that the question of tendering and tendering processes is within the competence of the Auditor-General. As I indicated at the outset, I intend to refer all the papers and documents on this matter to the Auditor-General for investigation of that issue.

I also intend to refer the matter to the Ombudsman, because I think we ought to make as much effort as possible to get this issue resolved, so that if it is occurring with other areas of tendering it does not occur again. The Ombudsman has power to conduct independent investigations into administrative actions, and this quite obviously is an administrative action which does need to be investigated.

I would hope that, in referring these matters to both the Auditor-General and the Ombudsman, it would flush out the true answers to the problems. It would address the issues of perceived conflicts of interest between Mr Smith and the ultimately successful tenderer, and, hopefully, assist the Metropolitan Fire Service in the future, at least, to acquire high tech, modern firefighting protective clothing which will serve the interests of all firefighters in the fighting of fires in an Australian environment. So it is with those observations that I indicate support for the second reading of this Supply Bill.

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

## EXPIATION OF OFFENCES (DIVISIONAL FEES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 18 August. Page 122.)

**The Hon. J.C. BURDETT:** I support the second reading of this Bill, provided that its philosophy is, as expressed in the second reading explanation, to rationalise some aspects of expiation fees and provided that its philosophy is not to use expiation fees as a fundraiser to prop up our bankrupt Government, as has happened to some extent in regard to expiation fees related to road traffic offences.

*The Hon. R.R. Roberts interjecting:*

**The Hon. J.C. BURDETT:** It is a worry. There is no doubt that with regard to road traffic offences an attempt has been made to use the expiation fee procedure as a revenue collector and not as a means of preventing offences against the law. If this Bill is an exercise in that direction, I am opposed to it. But the philosophy as expressed is not to do that, and the philosophy as expressed I support.

I point out that the Bill does extend the expiation fee procedure. It extends the statutory authorities with respect to which expiable offences apply, and they include the local government area. So, the Council should be aware that an extension is involved. As stated in the second reading explanation, I cannot see anything sinister about that extension.

In the second reading explanation, it was stated that perhaps the most important change made by the Bill is that clause 4 alters the scheme of the Act so that offences will be expiable under the Act where the words 'expiation fee' appear at the foot of the provision of an Act or regulation. This will replace the present system whereby offences are made expiable by being designated in the schedule to the Expiation of Offences Act. This in itself is to be applauded, because it means that, instead of having to plod one's way through the schedule to the Expiation of Offences Act, in the principal Act 'expiation fee' will be clearly designated, so that one will know in the principal Act what it is all about, which offences are expiable and which are not. This is a more efficient way of bringing the matter to the attention of the public so that they will not have to refer to the schedule in the Expiation of Offences Act.

The third thing that the Bill does, and it is important, is extend the references to divisional fees into the expiation system, and this is set out in the Bill. This is also to be applauded, and I have no objection whatever to that. Other procedural matters are provided for, the most important one I suppose being that a late payment regime is provided for the first time, and that applies among other things to local councils where they may retain the fines. This also makes sense.

I am still, with some of my colleagues, working my way through the individual Acts and the particular expiation fees therein. That applies to this Bill and its consequential Bill. I hope that we may not proceed into Committee this evening, so that we can continue our examination of the individual expiation fees, because I would not like to think that we have supported the Bill and found that some of the fees seem to be out of kilter with fines at the present time or with what appeared to be appropriate. I will say that in my examination so far I have not found that, but I would like to be able to complete that examination. With those remarks, I support the second reading of the Bill.

**The Hon. K.T. GRIFFIN:** I, like my colleague the Hon. John Burdett, who is speaking on behalf of the Liberal Oposition, support the general concept of the Bill in the sense that the particular offence in statutes will thereafter refer to the expiation fee which is fixed if there is to be an expiation fee for a particular offence. That is preferable to fixing it by regulation.

I have periodically expressed concern about the growing number of offences which are expiable on the basis that making provision for an expiation fee tends to remove the exercise of discretion by enforcement officers. Whereas previously one might have expected a caution or warning, where there is an expiation fee the inducement is to issue the expiation notice and collect the fee, rather than exercise discretion.

That is an undesirable development. There still needs to be some element of discretion in minor offences relating to parking and dogs or offences for which expiation fees might be fixed, for there not to be a sudden death application of expiation notices. In a sense it becomes the lazy way of raising revenue, particularly so where under this Bill some statutory authorities are to have power to issue expiation notices. They tend to become a revenue-raising opportunity, which is why I have always been cautious about it, even though the Liberal Government was responsible for initiating the scheme with road traffic infringement notices. One must scrutinise carefully legislation that seeks to extend the application of the expiation scheme. I am not saying that it is something that ought to be opposed absolutely, but it ought to be applied with some degree of caution.

With this Bill I will raise one issue in Committee but flag it now, namely, the question of allowing service of an expiation notice on an employee or agent of the alleged offender as contained in clause 4 *(e)* and *(g)*. It seems that that is a development or extension of the system. It has a division 12 fine for an offence where the fine is $50 for an agent or employee who does not give the notice to his or her employer or principal, but it opens up the potential for employers to be left in the dark and I seek some explanation on this issue of principal and agent in the context in which it will be addressed. With the next Bill I will have one or two observations to make in relation to specific issues addressed within it.

Bill read a second time.

## STATUTES AMENDMENT (EXPIATION OF OFFENCES) BILL

Adjourned debate on second reading.
(Continued from 18 August. Page 171.)

**The Hon. J.C. BURDETT:** I support the second reading. As I indicated on the previous Bill, this one is consequential upon it and again it is a question of examining individual offences to which the Bill applies. I would hope that the Committee stage would also be

adjourned until the next day of sitting, as the Attorney was gracious enough to do in relation to the previous Bill. I have no other comments on this Bill. The Hon. Trevor Griffin obviously has some concerns, which I am sure he will express. I support the second reading.

**The Hon. K.T. GRIFFIN:** The Bill deals with a variety of expiation fees under various legislation. As the Hon. John Burdett said in relation to the earlier Bill, it is a monotonous task to go through each piece of legislation to check them out. The second reading explanation refers to the fact that some of the offences have already been expiable under the Act and others are newly inserted. It refers to business franchise, petroleum products, National Parks and Wildlife, noise control and dry areas under the Liquor Licensing Act as being new. Perhaps in Committee tomorrow the Attorney-General might have available a list of other offences new to the expiation scheme.

Bill read a second time.

## CONTROLLED SUBSTANCES (CLASSIFICATION OF OFFENCES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

## ADJOURNMENT

At 8.53 p.m. the Council adjourned until Thursday 10 September at 2.15 p.m.