LEGISLATIVE COUNCIL

Thursday 22 October 1992

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

WAITE CAMPUS

The Hon. BARBARA WIESE (Minister of Transport Development): I seek leave to make a ministerial statement on behalf of my colleague the Minister of Primary Industries.

Leave granted.

The Hon. BARBARA WIESE: On Tuesday, I advised the Council that the Minister of Primary Industries was reviewing the appropriateness of the Waite Campus as the location for the head office of the Department of Primary Industries in view of the restructuring of the department. In other respects, I made it quite plain that much of the proposed work should still continue since it would form the core of the new South Australian Research and Development Institute and that preliminary work had already begun on preparing the site for the new horticultural complex.

Yesterday in the grievance debate the member for Mitcham said that in view of the felling of two trees and the removal of a cottage he felt totally betrayed and upset. He demanded that individuals be brought to account, and presumably he expected the Minister of Primary Industries to do that. It is clear that the member for Mitcham in fact misled himself and, by his own admission, some local residents.

It has been suggested that the two trees were felled to make way for the administration complex in defiance of the Minister's ordered review of the appropriateness of the administration building now being located at Waite. The trees in question have been removed to make way for a horticultural research complex, not the administrative complex. The horticultural complex has always been part of the Waite relocation plan and was not under review. The two trees felled yesterday have been botanically assessed. They are estimated at between 100 and 150 years old and were not considered by specialists in this field to be of major botanical significance. Notwithstanding that, the Minister is personally very sorry that these trees could not be saved.

The timber from the felled trees has been donated to the Milang Historic Steam and Shipping Museum for milling into planks and beams for the restoration of an historic paddle-steamer which, when complete, will be the oldest in South Australia.

Great effort was made by the planners to save a magnificent 250 year old river red gum near the site of the horticultural research complex. Consultation with botanists helped them to make the decision to move the structure to save this tree. It is also important to understand that this project is being handled with due care and concern for the environment and sensitivity for preservation issues. More than 1 000 new trees have been planted over the entire site and 500 more are due to be planted.

The suggestion by the member for Mitcham that the cottage that was demolished was of strong heritage significance was also incorrect: the cottage was in grave disrepair. It was assessed by the State Heritage Branch and found to be of limited local significance, with only a few internal features and fittings rating a mention. These fittings have been salvaged and will be used in the refurbishment of other cottages on the campus that are of heritage value. Even the bluestone from this cottage will be used in building renovation around the campus.

Every effort has been made to handle this project in an open and sensitive way. Information on the progress of the development is always available from the project planners, and considerable effort is being made through letter boxing, local newspaper articles and public displays to ensure that everyone in the community is aware of what is proposed.

SOUTH AUSTRALIAN COUNTRY ARTS TRUST BILL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I seek leave to make a ministerial statement.

Leave granted.

The Hon. ANNE LEVY: During the debate in the House of Assembly on the South Australian Country Arts Trust Bill, certain matters were raised and questions asked to which I would like to respond. Honourable members will recall that on Tuesday the Committee of this House considering the House of Assembly's amendments agreed that a ministerial statement would be the appropriate course of action.

In his second reading speech the member for Mount Gambier claimed that a substantial part of an extensive Aboriginal artefact collection, formerly held by the Mount Gambier City Council, had many years ago been passed over to the South Australian Art Gallery and is now subsumed within the wider South Australian Aboriginal artefact collection and not identified as having come from the South-East.

A search of the Art Gallery of South Australia records revealed that it was not the recipient of any collection of aboriginal artefacts from the Mount Gambier City Council. That council did, however, deposit 11 Aboriginal artefacts in the South Australian Museum in 1944. They were at that time being housed in Mount Gambier at the local picture theatre.

In 1952, the Mount Gambier institute deposited a number of other artefacts in the South Australian Museum. A Museum report in 1953 notes that the collection had 'once been on display there (in Mount Gambier) but had for many years been withdrawn from view and stored under rather precarious conditions. Some of the material was badly affected by mould, etc., but much has been restored to useful condition.' It is clear that the collections came to the South Australian Museum because the council and the institute were not able to provide proper care.

Only a handful of the objects in the collection are from the Mount Gambier area. Most are from Central Australia, Darwin, Western Australia and other parts of South Australia. Some are from the South Pacific.

The Museum has cared for this collection for almost 50 years. It has had objects conserved and repaired at its own expense. The collection has been studied on many occasions; parts of it have been published by researchers and by the Museum. Items in the collection were displayed in the recent 'Boomerang' exhibition, which was seen by 200 000 people. Other items are in the permanent exhibition 'Aboriginal Cultures of South Australia'. Yet others have been used for displays at the Murraylands Community College (1984), David Jones (1983) and a local primary school at various times.

In the mid-1980s a proposal was put forward for the use of the artefacts in the Lady Nelson Museum in the South-East. The South Australian Museum entered into discussions with the Lady Nelson people but, being primarily a maritime museum, they eventually declined to take the artefacts. Other than this, the Museum has never been approached by the Mount Gambier council about the use of the collection.

Earlier this year the council wrote to the South Australian Museum Director inquiring about the possible sale of items in the Museum's collection. The Director replied, assuring them that the collection which originally came from the Mount Gambier institute would never be sold. As with any community group or local museum, the South Australian Museum would be happy to discuss the use by the council of the collection. They would, of course, have to meet the costs of such use. They would also need to meet certain other conditions concerning the recognition of Aboriginal interests, consultations and safe storage.

Aboriginal material in most museums is now governed by strict policies on appropriate display and usage and respect for Aboriginal culture and custom. The onus is on institutions which hold collections and which want to use them to consult with the correct Aboriginal communities. In the use of the material originally from the Mount Gambier Institute, as with all its material, the SA Museum undertakes such discussion. It has strong connections with local Aboriginal people, heritage committees and ATSIC councils. Having been the custodians of the material for 50 years and wanting the right thing to be done by Aboriginal people, the Museum would want to ensure that any transfer of the material was done in consultation with the appropriate Aboriginal people. The onus would be on the Mount Gambier corporation to fully and adequately negotiate with Aboriginal people on this matter. The Museum would also want to ensure that certain climatic and storage conditions were met before any transfer of materials.

Recently a significant private collection of Aboriginal artefacts (held by the late Mr Black of Mount Gambier) was sold interstate for only a few thousand dollars. If the local council has such an interest in the heritage of its region, it could have been active in ensuring that this collection remained in the State, given that the Black collection includes far more items actually from the Mount Gambier area than the collection in the Museum.

The member for Napier in another place asked for examples of arts grants approved for organisations or individuals in the outer northern suburbs. The following information for 1992 is provided in response:

$14 000 was provided by the Public Radio Advisory Committee to Para Broadcasters Association based at Salisbury, towards general operation of community radio station 5PBA. $9,000 was provided by the South Australian Youth Arts Board to Jumbuck Youth Theatre based at the Inbarendi College at Elizabeth (from the general purpose grant program).

$2 164 was provided to the Salisbury Youth project by the South Australian Youth Arts Board to employ a writer to prepare and edit a poetry publication arising from grief and loss workshops conducted by Shopfront Youth Health (project grant).

For a number of years the Art for Public Places Program through the department has provided advice and financial assistance to the Northern Adelaide Gateway project which has examined strategies with the assistance of artists to enhance the entrance corridor to Adelaide from Gawler to Enfield. The program provided $8 000 in 1992 towards the artists' participation in the report stage of the project, is continuing to provide advisory assistance, and negotiations are underway regarding the implementation of the report's recommendations and the potential for further assistance.

It should be noted that all art grant programs are extensively promoted in the local press, and all community art groups and individual practitioners, including of course those from the outer northern suburbs, are eligible to submit an application for financial assistance. They should contact the Department for the Arts and Cultural Heritage to obtain information and grant guidelines relating to relevant programs. The member for Napier also questioned whether the Art Gallery of South Australia imposed unreasonable dress standards on its patrons.

Although the regulations under the Art Gallery Act state that a person who is in a soiled condition, or is not decently attired, is not permitted to enter the Art Gallery, the honourable member can be assured that a person 'dressed in a pair of old daggy jeans, sneakers and a t-shirt' or a person dressed in 'gardening clothes' would be able to visit the Gallery and enjoy the works of art on display. The Gallery is sure that some of the 380 000 people who visited the Gallery during the 1991-92 year would have been wearing this attire and were certainly able to visit and enjoy the Gallery's collections. I can myself recall visiting the Gallery in such attire, though I may have substituted thongs for the sneakers.

Finally, the member for Murray-Mallee mentioned an internationally renowned South Australian sculptor wishing to return to Australia to work on a particular project. Representatives from the University of South Australia and Roseworthy College together with the artist, a Mr Robinson, sought advice and met with the Program Manager, Art for Public Places Program, on 11 May to discuss a sculpture proposal for Roseworthy campus. They were advised that it was unlikely that funds would be available through the program. The artist concerned although eminent in his field is not resident to South Australia, and therefore the proposal was a low priority because it was not providing employment to local artists. The proposal was also not seen as a new or innovative work as the design was to be selected from existing works by the artist. However, the manager of the program discussed possible strategies for the commission and advised on details of contracts, project and budget

management and offered to provide further advice as the University of South Australia develops the proposal.

QUESTIONS

COURT PENALTIES

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to asking the Attorney-General a question about administrative interference with court sentences.

Leave granted.

The Hon. K.T. GRIFFIN: In both the 1990 and 1991 reports of the Supreme Court judges there has been criticism of the failure of the Department of Correctional Services to implement court decisions or the deliberate administrative variation of sentences by the department. The 1991 report says:

> The most serious problem in the criminal justice system at the present time is that of implementation of sentences referred to in the 1990 report. By reason of a combination of home detention, early release and prison leave, the Department of Correctional Services does not implement the sentences of the court according to their intention. Judges construct sentences carefully in order to achieve the well-organised objects of sentencing, namely, punishment, deterrence, protection of the public and rehabilitation of the offender. If they are not implemented as designed, the purpose of the sentence is frustrated.

That was with particular reference to the reduction in the period of sentence imposed by the court. Earlier this year, in the amendments to the Criminal Law (Sentencing) Act the Attorney-General acknowledged that the administrative discharge of fine defaulters had been terminated. He also referred to an amendment in that legislation which allowed remissions of a sentence to be credited against head sentences as well as non-parole periods, a change which, he said, would not result in prisoners spending less time in custody. He also said:

> The changes will allow more intense supervision of parolees when they are at their highest level of risk and will reduce administrative overheads.

I now have confirmation that, on 9 September 1992, managers of community correctional centres and senior probation and parole officers met for a briefing on the departmental budget. At that meeting it was acknowledged that 'each office is under pressure in managing caseloads' and that 'short-term solutions are required now'. The conference agreed that:

> …supervision levels would be immediately reviewed for clients serving both probation and parole orders. It is proposed to utilise administrative discharge to a far greater extent than previously.

The conference resolved that:

> …the majority of clients will be administratively discharged on the completion of the case plan or at six months.

Case planning and goal setting is an important step in management of offenders, but is to be eliminated as part of this short circuiting of the process. The proposal will again raise community concerns about the seriousness with which the Government regards the treatment of offenders and will again bring to attention the conflict between the courts in setting sentences, which might include also some specific requirements as to supervision, and the Correctional Services Department in carrying them out. My question to the Attorney-General is: what steps will he take to ensure that the Department of Correctional Services does not subvert the decisions of the courts in the manner proposed at the 9 September meeting?

The Hon. C.J. SUMNER: I do not know what the status of this meeting was, but I can find out. The problems to which the Chief Justice has adverted previously I understood had largely been overcome as a result of initiatives taken in recent times. The administrative discharge of fine defaulters and dealing with fine defaulters in our prison system has been altered, partly because of the legislation that was passed in this Parliament which would ensure that fine defaulters could not accumulate fines and then spend a short time in prison to discharge them, which was happening under the previous regime. Furthermore, the administrative discharge of fine defaulters, which would see fine defaulters spending one night in prison, when it should have been many more, is being phased out, if it has not already been phased out. But obviously the problem there is overcrowding in the prison system, and I understand that some measures are being put in place to increase the capacity of the prison system to deal with fine defaulters.

On the other issues, I do not suppose that anyone would really complain if, at the end of a 10-year sentence, a prisoner was given 30 days early release. The problem with the 30-day early release being used occurs when the sentence is only two or three months, or less, or perhaps even 12 months or two years.

Obviously, for long sentences I do not think that the 30 days is of great moment. But it was for short-term sentences, which is why the Government took the view that that should also be phased out, and I understood that that had occurred. I do not know what this meeting was about: I do not know whether they were referring to administrative discharge. I understood that the Government's policy was clear in this matter: that these problems should be overcome. I understood that they would be overcome once additional prison places were made available.

As the honourable member knows, the number of prison places has increased in recent times with the opening of the new prison at Port Augusta and with some upgrading at Port Lincoln and Mount Gambier, plus the measures that I outlined that have been taken to deal with fine defaulters. However, it is a major problem because, if you have overcrowded prisons, that is obviously undesirable and occasionally some steps must be taken administratively to deal with that situation.

The Government is also dealing with it by increasing the number of prison places available and, on the information that I had, that policy was going to lead to a reduction in, if not the elimination of, the administrative release where it has occurred in the past. As far as I am aware, that is still the situation. I have not heard of any difference—which is not to say that some administrative release does not occur, but I understood that recently it has been reduced.

The honourable member may or may not be pleased to know that the number of prisoners within the system in South Australia has almost doubled since 1984-85 as a result, to some extent at least, of increased sentences being imposed, but also as a result of increased numbers coming before the criminal courts. Obviously, I cannot

answer specifically the question about the meeting of 9 September, but I will refer it to the Minister and bring back a reply.

ROAD FUNDING

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about the One Nation road funding package.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday the Federal Minister of Land Transport (Mr Brown) wrote to all State and Territory Transport Ministers advising that he had suspended road payments to the States under the One Nation package as a protest against the slow rate of expenditure on road construction projects. Mr Brown has suspended payments until further notice and threatened to redirect road funds to other States and Territories where States are unable to explain why they have not spent their initial allocations. Also, he asks that all States find ways to maintain road construction work during the usual Christmas shutdown.

This morning I rang Mr Brown's office and was told that, since July, the Commonwealth had released 34 per cent of the One Nation road funding package, amounting to $363 million, but that the States and Territories to date had spent only 11 per cent or $13.57 million of this sum. South Australia's allocation this financial year is meant to be $19.1 million. However, Mr Brown's office would not release the State by State breakdown of expenditure figures since July, although his office told me that the Northern Territory had spent all its allocation while New South Wales had spent most of its.

As all in this place will recall in relation to the 10 point black spots road funding package that we debated some two years ago, Mr Brown is a bully and a blackmailer. He appears to be up to his same old tricks again with the One Nation road funding package.

The Hon. ANNE LEVY: On a point of order, I think the honourable member is casting reflections on a member of another parliament, which is not permitted under our Standing Orders.

The PRESIDENT: That is true, but I did not hear what the reflection was.

The Hon. ANNE LEVY: The honourable member said that he was a bully and a blackmailer, and I would have thought that was a pretty strong reflection on a member of another Parliament.

The PRESIDENT: Standing Orders require that a member should not reflect on a member of this parliament or of the Federal Parliament.

The Hon. DIANA LAIDLAW: Perhaps I can rephrase it.

The PRESIDENT: Before you rephrase it, I request that you withdraw.

The Hon. DIANA LAIDLAW: I will withdraw and indicate that members who look at press statements by the former Minister of Transport at that time will see that the use of the term 'blackmail' was used repeatedly in relation to the black spots road funding allocation and negotiations which were conducted at that time.

The PRESIDENT: That was in reference to the progress of some deal, but not in reference to the person.

The Hon. DIANA LAIDLAW: Yes, I said I would rephrase the reference, and the terms 'bully' and 'blackmailer' were used in that context. Anyway, he appears to be up to his same old tricks again in relation to this new road funding package. I note this morning that the New South Wales Minister for Roads, Mr Wal Murray, has called on the Prime Minister to sack Mr Brown because Mr Brown himself has failed to deliver the One Nation road promises. The Minister may be aware that he has certainly promised, as part of the One Nation program, to commence work on the Stuart Highway, which runs from New South Wales through to the Riverland in South Australia, and no work was undertaken on that matter at the Federal level. I ask the Minister:

1. How much of the One Nation road funding package has South Australia received since July and how much of this sum has South Australia spent?

2. What action has the Minister taken to challenge the threat by the Minister of Land Transport, Mr Brown, to redirect to other States road funding allocations due to South Australia?

3. Is the Minister prepared to join the New South Wales Minister, Mr Murray, in calling on the Prime Minister to sack Mr Brown?

The Hon. BARBARA WIESE: I believe that the maintenance of road funding packages in Australia is much too important to be playing petty politics with, as the Minister for Roads in New South Wales is doing at the moment. I would like to explain the situation as far as road funding for South Australia is concerned. The Federal Government, when it provides road funding each year, does so on the basis of monthly payments, so the year's road funding is essentially divided into 12 parts and is paid on a monthly basis. The action that has been taken by Mr Brown in this instance seems to ignore the fact that the program of road maintenance, road building, etc., does not necessarily take place quite as precisely as the payments are received.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: No, I am not saying that at all. What I am saying is that his action seems to overlook the fact that the expenditure of moneys does not always occur with quite the same precision as the receipt of moneys. This year in this State seasonal factors have slowed down our road building program. It has been an unusually wet winter, and that has been a problem. In any event, road program moneys are usually concentrated between the months of September and May in this State due to those seasonal factors. It is still our belief that it is possible for South Australia to spend the moneys that have been allocated for this year under the One Nation statement during the course of the financial year. Currently a review of the program is taking place to ensure that this will be so.

I note also from the statements that were made by Mr Brown that he was inviting the States to put forward ideas for Quickstart projects that might be available. The Department of Road Transport is working on a list of potential Quickstart projects which may in fact enable us

to receive additional moneys during the course of this year.

The results of that review and South Australia's submission will be presented to the Federal Government by the end of October, as requested. I hope that it will not only lead to a quick resumption of funding of the commitments that have already been made but also that it may lead to some additional funding for South Australia.

The Hon. DIANA LAIDLAW: As a supplementary question, how much has South Australia received to date under this program and how much has it spent?

The Hon. BARBARA WIESE: I do not have that information with me but, if the honourable member does a quick calculation based on $19.1 million, which I understand was allocated for this year, divided by the number of months that have passed (taking one-twelfth for each month), she could probably work out pretty reasonably how much has been received.

I am not sure how much has been spent, but I can provide that information, although I do not think it is particularly relevant, because it is the view of the Department of Road Transport that, now that the weather is improving and the road building program can proceed in the way it normally does from about September each year, we will be in a perfectly fine position to be able to expend the moneys that have been allocated to South Australia.

I understand the concerns of the Federal Minister about this matter. He would be concerned to ensure that moneys that have been allocated under the One Nation program are spent to ensure that jobs are provided for Australians and that our roads are made safer. The action he has taken is designed to achieve that aim. I certainly would have preferred it if, first, he had contacted me or the previous Minister to discuss with us whether it was possible for us to fulfil our commitments. However, he has chosen this route. I do not think any damage will be done by it, because I believe that the responses that the South Australian department will make to the Federal Minister will satisfy his concerns, and we can get on with the business of making roads.

OVERSEAS INVESTMENT

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Economic Development a question about overseas investment in South Australia.

Leave granted.

The Hon. R.I. LUCAS: I have been contacted by a partner in a large Adelaide-based accounting firm who has expressed concern at the lack of adequate literature on investment opportunities in South Australia that is aimed at prospective overseas investors. This person was recently about to travel through South-East Asia and thought it would be a good idea to distribute to business contacts some promotional material that would encourage them to invest in South Australia. When he contacted the Department of Industry, Trade and Technology he was told there was little material and that what material was available he would have to pay for.

This accountant expressed amazement to me that the Government should have such a small amount of ppropriate material available and that it expected unofficial ambassadors for the State to pay for the privilege of selling South Australia.

Given that the Department of Industry, Trade and Technology's role, according to a leaflet produced in April, is 'targeting industry leaders interstate and overseas, highlighting operational advantages for business establishment and investment opportunities through joint ventures between local companies and major overseas partners', I had expected the department to have available a wide range of leaflets, brochures and glossy booklets to aid local business people to spread the gospel when travelling overseas—but not so.

The Senior Assistance Officer of the regional development section of the department informed my office that the department used to produce a publication entitled *Investment Opportunities.* However, he maintains that this was withdrawn on advice from the Crown Solicitor. His advice was that the department could be in danger of legal action from firms that had invested in South Australia—particularly in joint ventures—if the ventures failed. This officer also stated that the department had produced some A4 sized publications, including *South Australia—A Profile for Investment* and *Business in South Australia;* however, he said they were both 'a bit out of date now'.

My office checked with the State Information Centre. However, the only material it had on overseas investment in South Australia was the previously mentioned Department of Industry, Trade and Technology publications selling at $1 and $2 respectively. With the paucity of material available, it is questionable whether former Premier Bannon's comments in *South Australia—A Profile for Investment* that 'South Australia is open for business, international investment and collaboration are welcome' are little more than hollow rhetoric. My questions are:

1. Will the Minister review the availability and cost of promotional material on South Australia that is available to business people about to travel overseas who wish to promote investment opportunities in South Australia?

2. Why did the Department of Industry, Trade and Technology accede to the Crown Solicitor's advice on withdrawing literature on encouraging overseas investment in local joint ventures, and did legal action by any company prompt such a decision?

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

MOUNT BARKER BUS SERVICE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about the Mount Barker bus service.

Leave granted.

The Hon. M.J. ELLIOTT: Unemployed people living in Mount Barker and surrounding districts must, as most other recipients of unemployment benefits must do, lodge forms with the Commonwealth Department of Social Security every fortnight. As there is no office in the area, that must be done at Parkside. An arrangement that the

forms can be posted to the city can be made on an individual basis.

Unlike the public bus services run by the STA, the private passenger bus service operating between Adelaide and Mount Barker does not offer concession fares to the unemployed, although I believe it does offer them to pensioners. This means that those people without private transport who need personally to lodge a form or who want to pursue employment opportunities in Adelaide must pay $3.70 each way to and from the city.

While I understand the fare structure of a private company may be out of the Minister's control, people in Mount Barker with whom I spoke claim that a social injustice is being dealt to the unemployed people of Mount Barker by the lack of STA bus services to the town, particularly when it is considered that the Government itself has tacitly encouraged the growth of Mount Barker with the large amount of Housing Trust development that has occurred in that town. Will the Minister undertake to investigate the situation and consider negotiating with the owners of the Mount Barker bus service about some form of concession to be made available to the unemployed?

The Hon. BARBARA WIESE: As I understand the situation at the moment, concessions for public transport are offered to social security beneficiaries and people who qualify for concessions in the metropolitan area. Although it has been put forward on a number of occasions that it would be desirable for such concessions also to be offered to people in country areas, to this time it has not been possible to extend the existing program, which is very extensive, to those areas that are designated as country areas. I understand that some work has been done on this sort of proposal and that an extension of the scheme to cover people in country districts would cost the Government about $500 000 per year.

Although I understand the point that the honourable member is making, namely, that Mount Barker is only a short time away from the city of Adelaide, it is designated as a country area, and to extend the program to Mount Barker would also mean presumably an extension of the program to many other areas that are an equal distance from the metropolitan area, and that would add significantly to the cost of this program. At the moment the Government is not in a position to provide that additional funding, as much as I am sure we would all like to do.

The Hon. M.J. ELLIOTT: As a supplementary question, does the Minister acknowledge that the Government perhaps should not be encouraging the growth of Mount Barker if it is not capable of providing the same sorts of services that it can provide in the metropolitan area?

The Hon. BARBARA WIESE: Is that a statement or a question?

The Hon. M.J. ELLIOTT: That was a question. Should the Government be encouraging the growth of Mount Barker if it is not willing to provide the services which the people being sent there require and which they would get elsewhere in the metropolitan area?

The Hon. BARBARA WIESE: I do not think I am responsible for where we draw the boundaries for what is metropolitan and what is country, but at this stage the boundaries happen to be drawn in a way which excludes Mount Barker, and I do not think it is reasonable to suggest that because the Government may be encouraging or allowing further development to occur at Mount Barker we should also extend the concession service in the way that he suggests. We are also encouraging further development and population growth in Whyalla, Port Augusta and other places throughout the State. The fact remains that we are not in a position at this stage to extend to those people living in rural areas the concessions that are available to metropolitan transport users.

LONG SERVICE LEAVE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Labour Relations and Occupational Health and Safety a question about the Construction Industry Long Service Leave Board.

Leave granted.

The Hon. J.F. STEFANI: Under the provision of the Construction Industry (Long Service Leave) Act 1987, the board is required to have an actuarial assessment of the funds held in trust by this statutory body. This assessment is conducted every three years.

In 1992 the board received a report from the actuary firm of Mercer William M. Campbell Cook and Knight Pty Ltd on the state and sufficiency of the construction industry funds as at 30 June 1991. The report identified a fund surplus and recommended that the board should consider a temporary reduction in the levy rate from 1.5 per cent to 1 per cent.

The actuarial assessment identified the fund's requirements as at 30 June 1992 to be $19.070 million. This compares with a net asset value of $25 941 034, which represents a net surplus of approximately $6.8 million. Because of the nature of the board's operation, a substantial proportion of the fund's assets are held in cash investments with various banks and approved financial institutions.

The board has shown prudence in the investment and management strategies adopted in the administration of the funds, and on present indications it appears that the actuary's recommendations could be given further consideration by the board, thus assisting hundreds of small businesses through these difficult economic times. My questions are:

1. Will the Minister ask the board to consider a temporary reduction in the levy rate to assist many struggling businesses?

2. What is the expected percentage rate of return on the invested funds over the next three years?

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

CHILD PROTECTION

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 on the subject of child protection panels.

Leave granted.

The Hon. BERNICE PFITZNER: The child protection panels were set up initially to monitor cases of child abuse. At present there are four regional child protection panels that meet once a month, and six to eight highly trained professionals attend the whole afternoon, after reading through mountains of case histories beforehand. I understand that quite a large proportion of cases have been on file for three to four months and, by the time the panel comes to discuss the case, a lot of the information is out of date. I also understand that there is a recommendation that the panels move from monitoring of cases to an advisory body on issues of concern in the region.

It is noted in an answer from the Minister of Family and Community Services to the member for Heysen in another place (Hon. D.C. Wotton) that costs are minimal for the panels and restricted mainly to clerical support. I point out that, although the six to eight members of the panel are already paid as public servants, their time taken in reading beforehand and discussing sometimes out-of-date cases could be better utilised in follow-up of the numerous clients now on the FACHS waiting list. My questions to the Minister are:

1. What is the present role and function of the child protection panel?

2. Has the recommendation to change the role of the panel from a monitoring service to a service to discuss and advise on regional issues and service gaps been canvassed?

3. How does the Child Protection Council relate to the child protection panel? If it does not, why not?

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

CONLEY, Mr COLIN

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question relating to allegations of police brutality.

Leave granted.

The Hon. I. GILFILLAN: Ten days ago four police vehicles containing approximately 10 heavily armed police officers surrounded the house of Mr Colin Conley, located 15 kilometres from Waikerie. Fifteen years ago Mr Conley was convicted of a heroin offence and served a prison sentence, but for the past eight years has had no further trouble.

At approximately 7.20 a.m. on Monday 12 October, the police, brandishing shotguns and pistols and wearing flack-jackets, burst into Mr Conley's house and, while two officers began beating Mr Conley about the face and head, the others ransacked his home.

According to Mr Conley, the police officers involved physically forced him into the bedroom and, while at least one officer kept a loaded gun pointed at Mr Conley, another officer smashed him across the head several times from behind, almost knocking him unconscious. At this stage Mr Conley demanded to know what the police wanted, but was again beaten to the ground by the same officer. Mr Conley then demanded to know the name of the officer, who refused to provide it. However, Mr Conley was given the officer's badge number: 2847.

According to Mr Conley, he genuinely feared for his life, with several officers threatening him with loaded weapons while another consistently beat him and physically restrained his *de facto* wife, who police shouted was 'a slut', and refused them the use of a telephone to call their lawyer. It took more than 30 minutes pleading by Mr Conley before the police finally told him the reason for the raid.

The police accused Mr Conley of being the so-called 'businessman/gentleman bandit', responsible for a series of bank and credit society holdups in and around Adelaide in the past few months. Apparently it had escaped the attention of the police that the 'businessman/gentleman bandit' is known to be over six feet tall and thin, while Mr Conley is just five feet six inches and somewhat overweight.

After 40 minutes of police threats and ransacking, Mr Conley was allowed to call his lawyer, Mr Peter Russell, in Adelaide. His lawyer asked if the officers had produced a warrant; they had not, but when Mr Conley asked if the police had a warrant they produced a general warrant.

During the raid Mr Conley was accused of being responsible for the most recent bank robbery by the 'businessman/gentleman bandit'. However, Mr Conley is a fastidious keeper of personal diaries, and notes all daily movements. He has kept diaries for several years and was able to show police that on the day of the bank robbery in Adelaide he was in fact in Berri meeting with his insurance agent, a matter subsequently confirmed by the police.

After more than one and three-quarter hours, the police finally realised they had the wrong man and left as quickly as they had arrived, leaving behind them a trail of destruction in Mr Conley's home; him severely beaten and injured; and an emotionally distraught *de facto* wife. Mr Conley's lawyer wrote a letter of formal complaint to Commissioner Hunt delivered to the Commissioner on 12 October seeking an explanation, apology and damages, but as yet has not received any acknowledgment.

A medical examination of Mr Conley's injuries has revealed a severe neck injury and pinched nerves in his spine, resulting in persistent and extreme headaches. My questions to the Attorney are:

1. In the light of the apparent inaction of the Commissioner, will he undertake an investigation into this incident of alleged police brutality and make a full report to Parliament as a matter of urgency?

2. Will he refer the matter to the Director of Public Prosecutions to determine if criminal charges relating to acts of violence against Mr Conley should be brought against any of the officers involved?

The Hon. C.J. SUMNER: The honourable member has made a number of assertions in his question. I am not in a position to verify or otherwise those assertions, but procedures are established if people feel that they have been wrongly or improperly treated by police. The Police Complaints Authority exists and no doubt Mr Conley could refer his complaints to that body. Furthermore, it would appear that the possibility of legal action is available to Mr Conley because, through his solicitor, he has apparently submitted a claim for medical expenses

damages for personal injury arising out of the alleged incident.

I do not know what the police Commissioner has done about it. One cannot assume that there is inaction at this point. The best thing that I can do is refer that aspect of the question to the Minister responsible for the police and bring back a reply, whilst pointing out that Mr Conley has open to him the action of going to the Police Complaints Authority and, if he is alleging that criminal offences have occurred, he can make those accusations to that authority and it will be investigated in the normal way.

ROAD FUNDING

The Hon. PETER DUNN: I seek leave to make a brief explanation prior to asking the Minister of Transport Development a question on road funding.

Leave granted.

The Hon. PETER DUNN: On Tuesday I asked a question regarding the allocation and apportionment of funds from both the Federal Government and the State franchise contribution. After my question about South Australia getting a better deal, the Minister answered:

> It must also be borne in mind the overall amount of money that is being provided by the Federal Government is reducing. That is lamentable and, along with other State Transport Ministers, I will take up that point vigorously at a national level.

I applaud her for those comments. Will she lead by example to the Federal Parliament and attempt to increase the amount of the South Australian fuel franchise that the general public contributes to that fund and ensure that road funding gets more than $25.47 million out of a total of $129.9 million?

The Hon. BARBARA WIESE: These matters usually form part of the budget process each year and no doubt in the lead up to the next budget period there will be discussions as to how these funds should be distributed. I, along with other Ministers, who have various priorities that we would like to see funded and various cases to put, will put them to our colleagues around the Cabinet table and decisions will be taken as to how funding can be best distributed in the interests of the greatest number of taxpayers in South Australia. I expect the distribution of moneys collected by way of fuel franchise will be amongst the moneys deliberated upon in that way.

BAY TO BIRDWOOD RUN

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Local Government Relations a question on the Bay to Birdwood Run and parking.

Leave granted.

The Hon. J.C. IRWIN: During the Bay to Birdwood Run in 1990 numerous handwritten signs stating 'No parking' were put on trees and poles in Birdwood. I understand that to this day the Gumeracha council has never declared any of the parking areas in its council area and numerous illegal signs have been erected in the council area, particularly in Birdwood and Gumeracha. I understand that the President of the Bay to Birdwood Run was notified of the placing of plastic handwritten 'No parking' and 'One way' signs prior to this year's run. During this year's run time about 20 illegal hand-written parking signs and one way traffic signs were sighted and it was observed that society members and Army personnel were directing traffic. Numerous police were present and one was seen stopping traffic going east from Birdwood.

On numerous occasions I have raised similar matters with the former Minister for Local Government Relations and privately raised with the police the matter of police officers being trained and briefed about parking and traffic matters. I am constantly advised that nothing has improved. I have regular contact with the LGA on parking matters and, whilst I understand the new responsibility in this area, Parliament should demand that the Minister responsible for the regulations ensure that individual councils act in accordance with the law. No-one wants to put a dampener on the spirit of the excellent Bay to Birdwood Run or similar community activities, but other people have a right to protection from over-enthusiastic people and organisations. Will the Minister inform me how he intends to ensure that the LGA and all councils will fulfil their responsibility in relation to parking under the Local Government Act?

The Hon. ANNE LEVY: I would certainly hope that the honourable member in asking his question is in no way trying to detract from the Bay to Birdwood Run. It is an absolutely world class event known not only in South Australia and the rest of Australia but also overseas where it achieves considerable fame and is regarded by many people as a highlight on the South Australian calendar. It draws a vast number of people from all around Australia and elsewhere and is a magnificent event conducted by the committee responsible, with considerable assistance and cooperation from the Birdwood Mill where the participants gather at the end of the run. The Birdwood Mill, I am sure most people would know, is the national motor museum run by the History Trust of South Australia. There are festivities and appropriate activities to celebrate the end of the very successful Bay to Birdwood Run. I would hate anyone to think that questions about parking were in any way detracting from the great excitement, value and interest of the Bay to Birdwood Run, which occurred a few weeks ago.

For anyone who has not seen the Bay to Birdwood Run, I suggest that a point on Greenhill Road is an ideal place to see all the cars as they come up from the Bay and head up to the country. It is a magnificent and heartwarming sight to see those veteran and older vehicles making their way on this great occasion. However, I will refer the honourable member's question to my colleague in another place for a detailed reply. I point out to the honourable member that, prior to the change in portfolios, I had contact with the LGA regarding administration of the parking regulations and had received its complete cooperation. It advised that it was preparing a kit to assist councils in fulfilling their obligations under the parking regulations and it was working with councils to this effect.

GUNS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General, in his own capacity and representing the Minister of Emergency Services, a question about replica firearms.

Leave granted.

The Hon. J.C. BURDETT: On the front page of this morning's *Advertiser* under the heading 'Dying bank robber "forgave" police', there is a story relating to a coronial inquiry into the death of a bank robber who was shot by police. He had committed a robbery and he confronted police with a replica pistol. The story would indicate that the police genuinely believed that they were in danger and that a police inquiry had exonerated the police officers in question. So there is no query about that. But according to the report, the Coroner, Mr Kevin Ahern, criticised the availability of replica guns in South Australia. He said:

I for the life of me cannot see the use of them.

He questioned whether the easy availability of replica guns was contributing to an increase in armed robberies. There have been cases before the courts where it has been held that in certain circumstances threatening with a replica gun can amount to an assault. My questions are as follows. What controls, if any, are there on the purchase of replica guns and the possession of them? If there are not any, what existing mechanisms, if any, are there whereby they can be controlled? If not, will the Minister concerned investigate the possibility of putting such mechanisms in place?

The Hon. C.J. SUMNER: I suppose I can do the honourable member's research for him by attempting to get information on the first question. I cannot answer the question off the top of my head; however, I will attempt to get that information for him I suppose one of the problems in this area is how one defines what a replica gun is. There are many toy guns that are bought for children, and I assume the honourable member is not suggesting that they should be banned, although I suspect there are people in the community who would suggest that they be banned. However, given that they can be sold legally, and I suspect that the majority of the community would want that to continue, I suppose one of the big problems in this area is how we define what it is that we want to ban. However, I will take the question on notice, have the matter looked at in my office and bring back a reply.

AGENTS INDEMNITY FUND

The Hon. K.T. GRIFFIN: I understand that the Minister of Consumer Affairs has a reply to a question that I asked on 9 September about the Agents Indemnity Fund.

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

Leave granted.

1. Since 30 June 1992, no other fiduciary defaults have come to the attention of the Commissioner for Consumer Affairs.

The Auditor-General's Report makes reference to 'five pending cases of fiduciary default with expected claims against the Agents' Indemnity Fund (the Fund) of $5.7 million.' The 'five pending cases' relate to claims against the Fund that have been outstanding for a considerable period of time, that is, Swan Shepherd Group of Companies with potential claims of $5.06 million. In March 1992, the Commercial Tribunal handed down its decision in relation to a test case involving this matter. The remaining four cases are either subject to investigation or appeal to the Commercial Tribunal of the Courts.

2. The Land Agents, Brokers and Valuers Act 1973 (the Act) states that an agent who maintains a trust account is required to have the accounts and records audited by an auditor in respect of each audit period prescribed by the regulations and lodge a copy of the auditor's report with the Commercial Registrar.

The Act and regulations do not currently provide for the Commissioner to set the auditing standards in relation to an auditor engaged by individual agents. However, the Act requires that the auditor must be a person registered as an auditor under the Companies (South Australia) Code and the auditor would therefore be required to comply with the minimum professional standards.

The Commissioner has undertaken to review all future cases of fiduciary default to determine whether any liability can be attributed to the auditor. A review of auditing standards is presently not being undertaken by the department.

3. Since 1989 the Commissioner for Consumer Affairs has engaged consultants to advise on appropriate auditing practices and procedures and develop an effective standard audit program in relation to trust accounts maintained by land agents and land brokers. The consultants were also required to assist in the development of a system of educating people responsible for maintaining and preparing trust accounting records under the Land Agents, Brokers and Valuers Act.

The Commissioner also required the consultants to examine trust accounting records and provide a report on the state of any accounts or records subject to examination. The cost of the various consultancies is 1989-90 $145 480, 1990-91 $134 155 and 1991-92 $195 916. The effectiveness of the consultancy has been reviewed and it is proposed to continue with the present program, with some minor modifications in 1992-93.

4. The 'five pending cases' were not the subject of audit by the consultants.

5. During the 1991-92 program the consultants KPMG Peat Marwick reported a total of 688 alleged breaches of the Land Agents, Brokers and Valuers Act and regulations. Whilst the majority of these breaches were of a minor or technical nature, the Commissioner for Consumer Affairs considers the program has an important educational role in assisting agents to maintain their trust accounts in a proper manner. The program also acts as a deterrent to malpractice by agents and is supported by the various industry groups.

PUBLIC TRANSPORT

The Hon. I. GILFILLAN: I understand that the Minister of Transport Development has a reply to a question that I asked on 27 August about Noarlunga/Hackham transport services.

The Hon. BARBARA WIESE: I have that reply and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

1. The new Noarlunga busloop, route 726, is designed to serve much of the areas formerly served by three poorly patronised bus routes with only one bus. This bus is able to operate on a circular route from Noarlunga Centre Station thereby maximising the area which can be served in the hour between trains.

Normal weeknight patronage on the bus routes partly replaced by route 726 was as follows:

Average Passengers Per Bus Trip	
Route 722	9
Route 725	8
Route 743	3

These patronage levels did not justify the continued operation of all services, when resources are limited. Present travel times in the area can be reduced by increasing the number of buses in service to allow an increase in the number of bus routes, or by reinstating the former routes. However, this action cannot be

justified by the patronage offering. Nevertheless, the STA will give further consideration to alternatives which may improve the situation without increasing costs.

2. The Government will give consideration to the extension of the Transit Taxi system to other suburbs only after its effectiveness in the Hallett Cove area has been proved. At this stage it is too early to predict the outcome of the current evaluations.

The honourable member would know that the area served by the one bus route 726 is much larger than the Hallett Cove/Sheidow park area. It is likely therefore, that a number of taxis would be required to replace the route 726 bus. Therefore, it is possible that such a replacement could not be economically justified, that is, the cost of hiring the taxis may be more expensive than the cost of operating the bus.

OIL SPILL

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about oil spill reports.

Leave granted.

The Hon. DIANA LAIDLAW: The Government initiated two investigations following the oil spill at Port Bonython on 30 August, six or seven weeks ago. One investigation was conducted by an officer from the Department of Marine and Harbors and another officer was from the Attorney-General's Department, and they were appointed to investigate the cause of the spill and to determine whether appropriate action was taken to ensure that the spill was contained as much as possible.

According to advice I have received that report has been completed. There was a second investigation undertaken by members of the State committee of the national plan to assess the effectiveness of the response to the spill and how it may be improved if necessary. I am advised that that report has not only been completed but that it has been in Government hands for some time. When will the Minister be releasing these reports and taking action on the recommendations? If she does not intend to release them publicly, why not?

The Hon. BARBARA WIESE: I have not yet received the reports to which the honourable member refers and I am not sure whether or not they have been completed. But I am hoping to receive an update on those reports in the next few days and I will then be in a better position to know how long it will take for an assessment to be made of them and for public information to be provided. Certainly, though, I would like to have those reports made public as soon as it is possible to do so.

TAYLOR, MS JANE

The Hon. DIANA LAIDLAW: My question is directed to the Minister for the Status of Women. Can the Minister confirm that Ms Jane Taylor, Women's Adviser to the Premier (or she might be adviser to the Minister now), is in the United States to observe the presidential elections, and has this trip been paid for by South Australian taxpayers? Certainly that is the advice that I have received, but I wanted it checked. If so, what is the cost of the trip, how long will Ms Taylor be overseas and what benefits will accrue to South Australia as a result of the trip?

The Hon. ANNE LEVY: Ms Jane Taylor, previously the Women's Adviser to the Premier, and as from today to be known as the Women's Adviser to the Premier and Cabinet, is currently in the United States as part of a group which is observing the American presidential elections. Her trip has not been paid for by the taxpayer. She has taken annual leave and some days of unpaid leave to enable her to undertake this trip, for which approval was given quite some time ago. It is her annual leave that she has taken and I stress that there is no cost at all to the South Australian taxpayer.

APPROPRIATION BILL

The House of Assembly informed the Legislative Council that, due to the changes in the structures of the various departments contained in the schedule of the Appropriation Bill, it would be necessary to alter the schedule, and requested that the Legislative Council return the Bill to enable the alterations to the schedule to be made.

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

That the request contained in message No. 33 from the House of Assembly be agreed to and that the Appropriation Bill be withdrawn forthwith and returned to the House of Assembly.

As indicated in the message from the House of Assembly, the schedule to the Appropriation Bill currently before the Council does not reflect the new ministerial and departmental arrangements that were instituted by the incoming Premier, the Hon. Lynn Arnold, he having been appointed Premier, of course, after the Appropriation Bill was introduced by the former Premier, the Hon. J.C. Bannon. When there are changes in allocations and appropriations between the departments, it is usually possible, pursuant to sections 13 and 14 of the Public Finance and Audit Act 1987 for the Governor to reallocate appropriations between departments and purposes during the course of a financial year.

However, the advice that the Government has received is that there may be some problems in doing that if the original appropriations passed by the House do not relate to administrative units and ministries as they were at the time of the passage, and that, whilst the Public Finance and Audit Act could have been used had these ministerial rearrangements occurred after the passage of the Appropriation Act, it is not appropriate given that at this time, before the passage, there has been a number of changes to ministries and to administrative arrangements that are not reflected in the schedule.

In order to ensure that the Bill, when passed, does reflect the current arrangements and that the appropriations in the schedule relate to the new ministerial arrangements, after discussions with the Clerk and correspondence with the Opposition it was decided that the best way to achieve this objective was for the House of Assembly to request the Bill back. If this motion is agreed to, the Bill will be sent back. I understand that the House of Assembly will deal with it immediately and return the Bill to the Council with the

new schedule reflecting appropriations related to the current administrative arrangements so that the debate on the Appropriation Bill will proceed later today, as it was going to do. As I said, there has been correspondence with you about this, Mr President, discussion with the Clerks and advice to the Opposition. I appreciate the fact that the Opposition has agreed that this is the appropriate procedure to correct this difficulty, and I thank it for what I assume is its support for the motion.

The Hon. R.I. LUCAS (Leader of the Opposition): In speaking to the motion I want to make a number of comments, and I will just respond to the statement the Attorney-General has made. We have corresponded and spoken with the Attorney-General and, given the situation in which the Parliament fords itself, we believe that the course of action suggested is appropriate. However, I want to make some comments in light of the general position that the Liberal Party will adopt.

We need to acknowledge that this is an unprecedented action in relation to a budget Bill, an Appropriation Bill, that the Parliament is adopting. We understand that there is some obscure precedent back in 1882 in relation to a Bill other than an Appropriation Bill, something like the Port Augusta Wharves Bill, where similar action was taken. Also, I think in the same year, the Ocean Docks Bill was treated in similar fashion, although in reverse order between the Houses. I want to say, that, while it is unprecedented, in my judgment this is a source of embarrassment for the new Premier and the new Government that we in the Parliament should be treating in this fashion what is, I suppose, the most significant piece of legislation in the parliamentary year.

Clearly, the ramifications of the decisions the new Premier took on 1 and 8 October in relation to the restructuring of his departments, ministries and portfolios had not been properly considered at the time of the restructuring. As my colleague the Hon. Mr Griffin indicated by way of a question earlier this week, we have other examples of major problems and ramifications flowing from the restructuring, which had not been properly considered.

We still have documents in existence within Government departments that cannot be signed because we do not have a Minister of Agriculture any more, and we do not have various other statutory officers or a Minister of Lands, and significant problems are being caused within the department, within Government and within the administration of public services as a result of the restructuring. I place on the public record the fact that, if new Premiers and Governments are going to restructure Governments and departments, as is obviously their prerogative—it is a decision for the Premier to make—these major decisions need to be properly considered, managed and planned.

One cannot wake up one day and decide to restructure the whole of Government department portfolios without sitting down beforehand and planning and managing those major restructures and changes. We ought to be able to prevent many of the administrative problems my colleague the Hon. Mr Griffin has highlighted and, indeed, the unprecedented situation that we have here where the budget Bill has passed the House of Assembly, is being debated in the second reading here, and now goes back to the House of Assembly where, potentially, if the Opposition wanted to be mischievous—although it is not going to be—the whole budget debate could, I understand, be largely repeated and then, when it comes back here this afternoon, although we have had only two contributions so far, it could be repeated again. This is unprecedented. We acknowledge that, given the situation that we are in, this is really the appropriate course of action to be adopted, and we are prepared to support the motion.

The Hon. C.J. SUMNER: I understand that this has not happened previously with an Appropriation Bill, but the procedure has apparently been used before where, as I understand it, an error was discovered by one House and a request was made for the Bill to be returned to that House for the error to be corrected. This is not an error in the sense that at the time the Bill was introduced it reflected the existing governmental arrangements. However, if the procedure can be used in the circumstance of error, and I believe, on advice from the Clerk, that it has been on occasions, then neither I nor members of the Opposition see any problem in adopting the procedure in this case, and I thank them for their cooperation.

The only point that does need response is that this constitutes an embarrassment for the new Premier. In the mildest possible way I should like to suggest to members of the Opposition that I doubt whether they would have considered it reasonable for the Premier, having been appointed, to have just let the existing arrangements of the old Government stay in place for a month or so while the budget Bill went through.

The Hon. Diana Laidlaw: It should have been amended while it was down there.

The Hon. C.J. SUMNER: The budget Bill went through, and I doubt whether that is what members of the Opposition would be suggesting. The Hon. Ms Laidlaw interjects—

The Hon. R.I. Lucas: We would like him to resign and hand over to us.

The Hon. C.J. SUMNER: Well, I do not think that is likely in the near future. The Hon. Ms Laidlaw interjects and says that it should have been amended in the Lower House. That is a reasonable point I suppose except that the advice within Government has been somewhat different on this point and there was a view that the Public Finance and Audit Act could be used to make the reallocation after the Bill was passed, but that was not the view of the Crown Solicitor. To ensure there can be no argument about it, the Government wanted to adopt the cautious approach as indicated by the Crown Solicitor, and that is why we have decided to insert a schedule which provides appropriations reflecting the new arrangement.

I do not see it as an embarrassment for the Premier. The alternative was for the Premier to wait until the Appropriation Bill was through, and I do not think even the Hon. Mr Lucas would consider that to have been reasonable. Perhaps one day he might be the Premier and he might want to make some administrative arrangements very quickly, and I am sure he would want to do it immediately rather than have to wait four or five weeks.

The Hon. I. Gilfillan: You and I remember how accommodating he has been.

The Hon. C.J. SUMNER: Yes. Well, I probably won't be here. But the Hon. Mr Gilfillan may well be, because I understand he is trying to get preselection from his Party to contest the next election. He may well be here for a long time. Now that the age discrimination legislation is in place he might want to stay on forever: one never knows. Whether I will want to or not remains a moot point, and we will leave it at that for the moment.

Motion carried.

APPROPRIATION BILL

Order of the Day: Government Business No. 5:

Appropriation Bill.

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

That this Order of the Day be discharged.

Order of the Day discharged.

BOTANIC GARDENS (MISCELLANEOUS) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

Regulations made under the Botanic Gardens Act 1978 are due to expire on 1 January 1992 under the Subordinate Legislation Act 1978 regulation review program It became apparent to the board in the course of reviewing the regulations in conjunction with the Office of Regulation Review that certain amendments to the Act have become desirable.

The Botanic Gardens Act was enacted in 1978 and has not been amended to date. The legislation establishes the Botanic Gardens Board and the position of Director, sets out the functions of the board and creates a general offence of damaging the property of the board. The amendments proposed address a number of miscellaneous issues raised in the course of the regulation review.

The State Herbarium is an integral and important part of the botanic gardens operation and it is appropriate that it be given prominent recognition in the legislation governing those operations. The herbarium was re-established in 1955 and has grown in stature since that date. It houses a significant and well respected collection of specimens and is used extensively in the identification of species and in the course of many research projects.

It is proposed to alter the short and long titles of the Act to include reference to the State Herbarium. The functions of the board are also adjusted to give prominence and recognition to the function of establishing and managing a herbarium. The Bill specifically requires original specimens to be retained in the collection, although, as is the case with the museum legislation in this State, the board is not required to accept, accumulate or retain material if it does not consider collection or retention justified. In addition, it is proposed to alter the name of the board and the title of the Director to include references to the State Herbarium.

The functions of the board are altered in three further respects. First, references to zoological functions are removed since the board does not exercise such functions and it is not intended that it should do so.

Secondly, the board is expressly given functions relating to nature conservation. This aspect of the functions of bodies that oversee botanic gardens has gained increasing recognition in recent years both in Australia and elsewhere. The board has an important role to play in conserving plant species and this Bill reflects that role.

Thirdly, the participation of the board in commercial activities is recognised. The board acquires extensive knowledge and expertise in the course of its conduct of research. Hybrids of plants are cultivated or occur naturally in botanic gardens. The Bill promotes the use by the board of that knowledge and expertise in a commercial sense. It enables the board to provide consultancy services and to propagate and sell hybrids or cultivated varieties of plants, including by way of joint venture or partnership with a nursery business.

The board's ability to charge fees for entrance to various parts of the gardens and for other services and to waive or reduce those fees where appropriate are clarified.

The Bill brings the reporting obligations of the board into line with that of other agencies under the Government Management and Employment Act 1985. It also brings the employment provisions relating to the Director and other staff into line with the requirements of that Act.

The regulation-making powers under the Act are clarified and expanded to support the regulations proposed as part of the review program. New regulation making powers make it clear that powers to enforce the regulations may be given to Botanic Gardens employees and that fees may be imposed for permits for activities usually prohibited. The regulation-making power and sections of the Act relating to the regulation of parking of vehicles on land vested in or under the control of the board are replaced with powers that allow for a code of parking to be included in the regulations along the lines of the local government parking scheme. This will enable appropriate regulations to be made concerning the provision and enforcement of parking controls on behalf of the board.

The divisional penalty scheme is adopted. The maximum penalties for contravention of disclosure of interest provisions by a member of the board and for damaging the board's property are increased with a view to retaining them as effective deterrents. The maximum penalty that may be imposed under the regulations is also increased.

A schedule of amendments updating the language of the Act to modem standards is also included. I commend the Bill to members.

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 commencement on a day to be fixed by proclamation.

Clause 3 substitutes the long title of the Act. The new long title makes it clear that the Act provides for the establishment

and management of herbaria as well as public botanic gardens. The reference to the repeal of the earlier Act is removed as part of a statute law revision exercise.

Clause 4 substitutes the short title of the Act. The new short title is the Botanic Gardens and State Herbarium Act 1978.

Clause 5 amends section 5, the interpretation provision, by altering the definitions of 'the board' and 'the Director'. The board is to be known as the Board of the Botanic Gardens and State Herbarium and the Director as the Director of the Botanic Gardens and State Herbarium.

Clause 6 amends section 6 which establishes the board. The amendment provides for the establishment of the board under the name referred to above. Clause 13 is a transitional provision relating to this change.

Clause 7 amends section 13. Subsection (1) which sets out the functions of the board is substituted. The new subsection emphasises the board's functions in relation to the State Herbarium, includes within the ambit of the board's functions matters related to the conservation of the natural environment and gives the board commercial functions as follows:

- to undertake the commercial exploitation of knowledge acquired by the board in the course of conducting research;
- to sell or propagate and sell (whether alone or in partnership or joint venture with a nursery business) hybrids or cultivated varieties of plants that have been developed in the course of conducting research or occurred spontaneously in its gardens, and are not widely commercially available in the State;
- to provide consultant services.

A new subsection (1a) is inserted. It provides that the board is only required to collect and classify material where that is, in its opinion, justified under the Act.

Subsection (2) is amended to make it clear that the board has the power to lease out facilities for the provision of refreshment facilities.

Clause 8 amends section 20 to bring the title of the Director up to date as referred to above (see clause 3) and to bring the provision into line with the Government Management and Employment Act 1985. It sets out that the staff employed in connection with the administration of the Act may be public servants, persons appointed by the Minister (that is, daily paid gardeners) or persons appointed by the board with the approval of the Minister on terms and conditions from time to time approved by the Commissioner for Public Employment.

Clause 9 amends the penalty provided in section 21 (1) for contravention of the disclosure of interest provisions by a member of the board. The penalty is increased from $500 to a division 7 fine ($2 000). It also updates subsection (3) in line with the amendments to section 20—a member of the board who is a member of staff is not by reason of that fact to be taken to have a direct or indirect interest in any matter relating to the staff. Consequently, the member is not excluded from the board's deliberations on matters relating to the staff.

Clause 10 substitutes section 23. The new clause provides that the board's annual report is to be presented to the Minister on or before 30 September in each year and that the Minister must cause copies of the report to be laid before both Houses of Parliament within 12 sitting days.

Clause 11 amends the penalty provided in section 24 (1) for damage to property of the board. The penalty is increased from $1 000 or six months imprisonment to a division 6 fine ($4 000) or division six imprisonment (one year).

Clause 12 amends section 27, the regulation-making power. The following express powers are included:

(a) the regulations may confer powers on the Director and other members of staff for the purposes of the enforcement of the regulations;

(b) the regulations may provide for the waiving or reduction of charges by the board or Director;

(c) the regulations may confer powers on the board or the Director to approve (on payment of a fee, if any, determined by the board) any act or activity that would otherwise be prohibited by the regulations.

The regulation-making powers with respect to the control of driving and parking vehicles on land vested in, or under the control of, the board are expanded and allow for regulations of a similar nature to those that govern local government parking controls. The evidentiary and expiation provisions currently found in section 27 are removed with a view to them being included in the regulations. In addition, a new provision in inserted excluding the possibility of parking fees being imposed under the regulations for parking of vehicles on Sundays and other public holidays.

Finally, the penalty that may be imposed by the regulations is increased from $500 to a division 7 fine ($2 000).

Clause 13 is a transitional provision relating to the change of name of the board. It ensures that the board and its activities are not otherwise altered.

The schedule contains various amendments of a statute law revision nature.

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

POLICE (POLICE AIDES) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

This matter has been dealt with in another place, and I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Police Department has employed Aboriginal people as police aides for several years. Initially, several police aides were employed on an experimental basis in Aboriginal traditional areas. Both the Police Department and the Aboriginal communities concerned have been pleased with the overall success of the scheme.

Police aides are not recognised as such in the Police Act 1952 or the Police Regulations 1982. As an expediency they have been appointed as special constables under the Police Act, thereby acquiring limited police powers and immunities, and are employed on weekly contracts.

Police aides are now an established feature of policing in this State. Depending on funding, by the end of the 1992-93 financial year, it is proposed that there will be 32 police aides employed in traditional, country and urban locations. The advantages police aides have over white police officers is their acceptance by, and ability to liaise more effectively with, the Aboriginal community. Furthermore, it is hoped that some Aboriginal people will progress from being police aides to police officers, a desirable way of increasing representation within the Police Force of Aboriginal people.

I believe now is the time to give the scheme formal recognition in the Police Act. This is the wish of the Aboriginal people presently employed.

At present, police aides are not represented industrially by the Police Association because the rules of the Police Association prohibit membership by special constables.

The association supports the move to amend the Police Act as it would allow the association to represent police aides without alteration to its constitution.

It is considered desirable to recognise police aides in the Police Act because—

- police aides are respected members of their communities and their existence and special functions should be formally recognised;
- with the ongoing development of the police aide program, the number of police aides is becoming numerically significant;
- it will permit the Police Association of South Australia to represent them industrially.

The proposals will not alter their conditions of employment in the short term (except for bringing them within the Police Superannuation Scheme) but will pave the way for proper industrial representation which may lead to their current and/or improved conditions of employment being incorporated into an award.

The provisions of the Bill are as follows:

Clause 1 is formal.

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

Clause 3 inserts a new Part, Part 11A, into the principal Act. The new Part deals with the appointment, employment and powers of police aides.

New section 20a empowers the Commissioner of Police to appoint police aides by written minute. They can be appointed for the whole of the State or any part of the State specified in the appointment. The area for which an aide is appointed can be varied by the Commissioner.

New section 20b requires a police aide to take an oath or affirmation.

New section 20c gives police aides the same powers, responsibilities and immunities as a member of the Police Force subject to any limitations specified by the Commissioner in the minute of appointment or subsequently imposed (by notice in writing) by the Commissioner. Any limitations can be varied or revoked by the Commissioner.

New section 20d empowers the Commissioner (at his or her discretion) to suspend or determine the appointment of a police aide. The Commissioner can remove a police aide from office for misconduct, neglect of duty or inability to perform duty. This power is subject to the requirements in section 19a of the principal Act as to the procedures to be followed in the case of termination for disability or illness-

New section 20e empowers the Commissioner, with the approval of the Minister, to determine the conditions of employment of police aides. A determination must provide for payment in accordance with a specified scale and may be general or specific in its application.

New section 20f provides that, subject to that section and to the regulations, a reference in an Act (including the principal Act) or an instrument (whether of a legislative character or not) to a member of the Police Force extends to a police aide. However such a reference does not extend to a police aide if it concerns powers or responsibilities that lie beyond any limitations imposed on a police aide under new Part IIA. Those sections of the principal Act that are not applicable to police aides are specified.

Clause 4 amends section 22 of the principal Act by inserting new paragraph *(na)*, which empowers the Governor to make regulations concerning the training of police aides.

Schedule 1 contains a transitional provision. It provides that where a person is, immediately before the commencement of the amending Act, a special constable employed as an Aboriginal police aide, that person is to be taken to have been appointed as a police aide under new Part IIA on the commencement of the amending Act.

Schedule 2 makes a number of consequential amendments to other Acts.

The Children's Protection and Young Offenders Act 1979 is amended by removing two references, in sections 26 (2) *(ab)* and 27 *(b)* of that Act, to special constables employed as Aboriginal police aides.

The Police (Complaints and Disciplinary Proceedings) Act 1985 is amended by altering the definition of 'prescribed officer or employee' in section 3 to ensure that the provisions of that Act that are applicable to special constables are also applicable to police aides.

The Police Superannuation Act 1990 is amended by inserting a definition of 'member of the Police Force' in section 4 to make it clear that a police aide is a member of the Police Force for the purposes of that Act. It is also amended by inserting a transitional provision, new clause 8, in schedule I of that Act. That new clause provides that, subject to the regulations, the Police Superannuation Act 1990 applies to a person who was a special constable employed as an Aboriginal police aide at any time during the period between 1 July 1992 and the commencement of this amending Act as if that person had been a member of the Police Force (and had contributed as a contributor under the new scheme) for the time during that period for which the person was so employed.

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

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

In Committee.

(Continued from 15 October. Page 463.)

Clause 2—'Commencement.'

The Hon. C.J. SUMNER: Questions were asked by the Hon. Mr Griffin and the Hon. Mr Gilfillan to which I have attempted to obtain answers. The Hon. Mr Griffin in his letter of 9 October 1992 requested details of the number and value of outstanding fines imposed on companies in New South Wales. I am advised that the computer records in New South Wales are statistical and at there is no breakdown of fines imposed on companies or individuals. The computer would have to be reprogrammed to ascertain these figures, and I am advised that resources were not available to achieve this exercise.

With regard to the figures requested in relation to which the pill applies, the following figures were provided from 17 August 1990:

(a) Pecuniary fines (total)—number of fines, 3 706; value, $1 548 695.

(b) Pecuniary fines paid (in full)—number of fines, 2 308; value, $831 371.

(c) Pecuniary fine amounts outstanding—number of fines, 1 063; value, $443 771.

(d) Pecuniary fine amounts written off (in full)—number of fines, 335; value, $251 261.

I am advised that the last figure represents amounts written off due to company bankruptcy or lack of assets to seize to recover the amount due. The foregoing figures must be read in the context that they do not include speed camera fines. It is expected that such fines will result in a significant increase in the number of outstanding fines.

The Hon. Mr Gilfillan raised questions about comprehensive and third party insurance. I have had inquiries made regarding comprehensive and third party insurance policies in the event of suspension of registration. The Insurance Council of Australia has advised that this matter is covered by section 54 of the Insurance Contracts Act 1984, which provides:

> ...where the effect of a contract of insurance would, but for this section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured or of some other person, being an act that occurred after the contract was entered into but not being an act in respect of which subsection (2) applies, the insurer may not refuse to pay the claim by reason only of that act but his liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of that act.
>
> (2) Subject to the succeeding provisions of this section, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the contract, the insurer may refuse to pay the claim.

Most importantly, I am advised that insurers in New South Wales and the major insurers which underwrite commercial and fleet vehicles in South Australia do not have in their policies a provision which would allow them to deny indemnity in the event of a motor vehicle being unregistered. The rationale for this is that the insurer is concerned with behaviour that increases the risk of accident; for example, lack of a driver's licence or

intoxication. These factors would result in a denial of indemnity in an accident, but the lack of registration does not have any bearing on the risk assumed by the insurer.

The Hon. I. GILFILLAN: The information provided by the Attorney settles any concerns I had about that matter. Therefore, I put on the record that I do not have any concerns that the implementation of this measure would deny innocent parties insurance cover that they could normally expect. On that basis, I withdraw any reservations I had.

Clause passed.

Clause 3—'Suspension of motor vehicle registration for default by a body corporate.'

The Hon. K.T. GRIFFIN: I also acknowledge the responses of the Attorney-General. It is interesting to note that in answer to the questions which I raised with him by letter on 9 October 1992 the value of pecuniary sums outstanding in the name of companies to which this Bill would apply amounts to about $440 000. In the scheme of things, that is not a large amount, although I understand the desire to collect it. However, I would not have thought that it was of such significance to warrant the sort of legislation that we now have before us.

This information affirms my view that my proposed amendment ought to be carried. The Attorney indicated that inquiries in New South Wales brought the response that the information that I sought was not available there. It would be interesting to know how, in his second reading response, the Attorney-General was able to make an assertion that under the New South Wales scheme 54 to 55 per cent of collection of outstanding fines has been reported.

It may be that some other statistical information with which he was provided at an earlier stage is available, but it was in relation to that particular fee that I was interested to have the other information which I understand from his response is not maintained on the New South Wales computer.

Notwithstanding that, I want to proceed with my amendment, which limits the operation of the scheme to the vehicle in respect of which the fine or the pecuniary sum was imposed rather than the whole fleet of vehicles of a company. There is still a good reason for limiting it, although I understand the response of the Attorney-General that it may be capable of avoidance if a company were so minded to take that course.

Proposed section 61b provides that where there is a default by a body corporate arising out of the use of a motor vehicle and the default has lasted for one month or more the court may suspend the registration rather than initiate other enforcement proceedings. That suspension may be of all motor vehicles of which the company is the registered owner.

The fact that the court makes the order is not something to which the owner of the vehicle may be a party. Enforcement proceedings will flow virtually automatically, so the company may not get notice that that is what is happening. It may not have even received notice of the initial pecuniary sum if the matter came before the court and proceedings were served by post. So, no notice of default may be received by the company, and there may be no notice from the Registrar of Motor Vehicles that the court has made an order suspending registration or, if there is a notice, it may not have been received, because all that is required is that it be served by post.

If it is received by the company, it may be that if it is a big operation it may have gone not to particular officers responsible for the payment of these sorts of accounts. There are all sorts of possibilities in the chain which might mean that ultimately a company will have the registration of all its vehicles suspended without it actually having received the notice or it being received in the office of the company which has responsibility for processing that information.

I think that is likely to create hardship within the company, although I appreciate that the insurance and registration aspect from the driver's point of view is covered, although it is not covered from the point of view of the corporate owner of the vehicle.

There is also the problem that the registration details of the motor vehicle are not up to date. I drew attention during the second reading speech to an instance which was drawn to the attention of the Chamber of Commerce and Industry where a person was still receiving notices relating to speeding penalties some nine or 10 months after a vehicle had been transferred. What I suggest this Bill does not do is accommodate that possibility. It is with that background that I move my amendments, as follows:

Page 1, lines 23 and 24—Leave out 'all motor vehicles of which the company is the registered owner' and insect 'that motor vehicle (if the company is still its registered owner)'.

This amendment and the other amendments are related to each other and seek to provide the suspension may occur only for one vehicle in respect of which the penalty has been imposed. I indicate that because of the very significant concern which has been expressed by the road transport industry and other groups in the community it is an issue upon which I intend to divide.

The Hon. C.J. SUMNER: The Government opposes this amendment. As previously stated, an amendment to limit suspension of registration to the vehicle in respect of which the fine has been imposed will defeat the intention of the scheme.

A company which has other vehicles registered in its name will simply not use the vehicle the subject of the suspension or else sell the vehicle. I have mentioned in my second reading response that Victoria has a scheme in operation which limits suspension in the manner proposed by the Opposition and that the scheme has not come into operation because it is anticipated that it will be easily avoided and therefore not effective.

I am advised that the Sheriff in Victoria will be seeking to have the relevant Victorian Act amended in order that the scheme allow for the suspension of registration of all vehicles registered in the name of the company.

My note says that in New South Wales the scheme operates as proposed in our Bill and has been shown to be extremely successful, with 54 per cent to 55 per cent of outstanding fines collected since the scheme has been in operation. This compares with a collection rate of 10 per cent prior to implementation of the scheme.

The Hon. Mr Griffin then said, 'Well, if you can provide that information, why can't you provide information—

The Hon. K.T. Griffin: I was not pointing the finger.

The Hon. C.J. SUMNER: I know. The Hon. Mr Griffin asks why they could not provide a further breakdown of that information. All I can say is that those and figures were provided to the officer in the Attorney-General's Department handling the matter and, when she made inquiries as to whether the information sought by the honourable member could be obtained, we were advised that it could not be, for the reasons that I have already outlined earlier on this clause.

The other thing I can mention which I think should allay most people's fears about this problem is that apparently in New South Wales, where there are companies with more than five vehicles registered, the New South Wales Registrar of Motor Vehicles, or the equivalent in that State, as a matter of courtesy rings the company and advises them that there are fines outstanding, and gives them the opportunity to pay the fine before the registration is cancelled.

We have been in touch with the Motor Vehicles Department here in South Australia and they are prepared to implement a similar scheme, and I will confirm that by writing to the Minister to ensure that that occurs once the legislation is in place. When that occurs, I am advised that in New South Wales the overwhelming number of outstanding fines are then fixed up. I think that ought to overcome the problems outlined by the honourable member. It will give companies the opportunity to pay.

The Hon. I. GILFILLAN: I indicate opposition to the amendment. I do not have great enthusiasm for it as a measure, I must say, but on balance we will support it. The amendment really does minimise the impact and the usefulness of it in extracting unpaid fines. I did toy with the idea of giving some flexibility but, that seems even more messy. So, as the least of what seemed to be some relatively unexciting options I am choosing to oppose the amendment and support the Bill as it is currently drafted.

The Council divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), J.C. Irwin, Diana Laidlaw, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill and Barbara Wiese.

Pair—Aye—The Hon. R.I. Lucas. No—The Hon. R.R. Roberts.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

New clause 4—'Amendment of Motor Vehicles Act 1959.'

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

Page 2, after clause 3—Insert new clause as follows:

4. The Motor Vehicles Act 1959 is amended—

(a) by inserting in section 9 after its present contents (now to be designated subsection (1)) the following subsection:

(2) Subsection (1) does not apply to a person who drives a motor vehicle registered in the name of a company while the registration of the vehicle is suspended pursuant to a court order made on default in payment of a fine imposed on the company, if—

(a) the person did not know and could not reasonably be expected to have known that the registration was so suspended;

and

(b) the person was driving the motor vehicle with the express or implied authority of the company.;

and

(b) by inserting in section 102 after subsection (3) the following subsection:

(3a) Subsection (1) does not apply to a person who drives a motor vehicle registered in the name of a company while no policy of insurance is in force in relation to the vehicle in consequence of its registration having been suspended by a court order made on default in payment of a fine imposed on the company, if—

(a) the person did not know and could not reasonably be expected to have known that the registration had been so suspended;

and

(b) the person was driving the motor vehicle with the express or implied authority of the company.

This amendment has been inserted to deal with the matter of an employee who unknowingly drives an unregistered and uninsured vehicle in the course of his or her employment. In those circumstances sections 9 and 102 of the Motor Vehicles Act 1959 would come into play and the employee would be guilty of driving an unregistered and uninsured vehicle. The possibility exists of the common law defence of honest and reasonable mistake of fact in this case, but it is not clear on the decided case law whether this defence will operate. Accordingly, the Government proposes that this amendment be made to the Motor Vehicles Act 1959 to provide a defence for a person driving a motor vehicle while the registration is suspended pursuant to a court order if the person did not know and could not be reasonably expected to know that the registration was suspended, and if the person was driving the motor vehicle with the express or implied authority of the company. An identical amendment has been made to section 102 of the Motor Vehicles Act to address the offence of driving while uninsured.

The Hon. K.T. GRIFFIN: This amendment meets the difficulty I raised in the second reading debate and does provide appropriate protections for innocent drivers. I therefore indicate support for it.

New clause inserted.

Title.

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

Page 1, line 6—After '1988' insert 'and the Motor Vehicles Act 1959'.

Amendment carried; title passed.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: To maintain the consistency of approach that we have adopted in my amendment to clause 3, I indicate that we do not support the third reading. It is obvious from the previous indication of the Hon. Mr Gilfillan that sufficient support exists to carry the third reading. I therefore indicate that, if it is carried on the voices, notwithstanding my position I will not divide.

Bill read a third time and passed.

FINANCIAL TRANSACTION REPORTS (STATE PROVISIONS) BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 478.)

The Hon. C.J. SUMNER (Attorney-General): I thank members for their contributions and support of this Bill. In relation to the specific queries raised by the Hons Messrs Griffin and Gilfillan, I provide the following information. The Hon. Mr Griffin asked about the progress of legislation in other States. Victoria and Queensland have legislation in place. New South Wales expects to introduce a Bill next week while Tasmania has a Bill drafted but not yet to be introduced. The Commonwealth has in place amendments that it has made to the Cash Transactions Report Act and the Commonwealth Attorney-General is in the process of trying to secure a common commencement date for the State and Commonwealth legislation. The date of 6 December is the target being aimed for.

On the question of review of this legislation, after a period of, say, three years I advise that I have no objection in principle to such a review taking place. I understand that a Commonwealth parliamentary committee is to review the operation of the Commonwealth Act and it may be appropriate for the Legislative Review Committee to undertake this task in South Australia. I am not convinced of the need for this to be provided for in the Act. It could be referred to by appropriate resolution, if this was thought appropriate. It may be in any event, if the Commonwealth parliamentary committee, the appropriate one, reviews the operation of it, that there may not be the need for it to be done in South Australia, but obviously if the need exists to review it it can be done by the Attorney-General's Department with officers in that department using the information that they can obtain from the Commonwealth parliamentary committee, or alternatively the Legislative Review Committee could be given the task.

The Hon. Mr Griffin also raises the question of whether clause 7 gives cash dealers adequate protection. Clause 7 provides that a proceeding does not lie against a cash dealer, an officer, employee or agent of a cash dealer in relation to anything done as required by the Act or in the mistaken belief that it was required by the Act. This is a broad protection which applies in civil and criminal proceedings and I consider that it provides all the protection that is required.

In relation to clause 9 (3), the Hon. Mr Griffin suggests that the effect of the subclause might be that the information collected under the Act is not available under subpoena for civil actions. This is a correct interpretation of the clause. It is quite clear that the information will not be available in, say, an action for defamation or breach of contract. The information will be available where enforcement of the law of a State or Territory or the Commonwealth is concerned—it does not matter whether the breach of the law is styled criminal, or regulatory. The information will be available for the prosecution of the breach of the Corporations Law, and the Criminal Law.

The Hon. Mr Gilfillan has a number of concerns relating to use by the police of the 'further information' they will be able to request. I advise that the Commonwealth Cash Transaction Reports Agency, which now styles itself AUS-TRAC, has a 'Suspect Transactions Advisory Group'. This group consists of AUS-TRAC officers, representatives of cash dealer groups (including banks, credit unions, etc.) and representatives from the Australian Federal Police. This group is presently formulating an agreed protocol or code of conduct as to how the police and the cash dealers will be expected to deal with requests for further information. This code of conduct is virtually in its final draft form. AUS-TRAC is proposing that this code of conduct will be the model for all other law enforcement agencies and the Australian Taxation Office in their dealings with cash dealers who have reported suspect transactions. AUS-TRAC will be requesting that the South Australian Police agree to be bound by the protocol. The protocol is designed to ensure that requests for further information are properly focussed and not just fishing trips.

It must be remembered that all suspect transaction reports are channelled through the Director of the Commonwealth agency. The Commonwealth is in the process of reviewing its Standard Suspect Transactions Reports forms to take account of the new grounds for reporting suspect transactions under the State law. The initial report is on a standard form setting out the reportable details contained in schedule 4 to the Commonwealth Act. Obviously requests for further information cannot be in a standard form simply because such a wide variety of offences may be being investigated, but the setting out of an agreed protocol will focus the requests for further information.

The penalty for breach of the secrecy provisions of the Act is two years imprisonment, $8 000 fine or both. Given the facts that-

1. 'Further information' can only be requested after an initial suspect transaction report is received;

2. The further information must be relevant to the investigation or prosecution of a person for an offence against the law of the State or may be of assistance in the enforcement of the Crimes (Confiscation of Profits) Act;

3. That a code of conduct is being developed to regulate these requests;

4. Penalties apply for breach of secrecy provisions;

I am satisfied that the provisions will be used in a proper and appropriate manner.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: I thank the Attorney-General for the answers that he gave to the various questions that I raised during the second reading debate. The only observation I want to make is that, during the second reading debate, after having considered the question of a three-year review, I indicated that I was contemplating an amendment to that effect. I did discover that in relation to the Federal legislation an undertaking was given in the Senate, in the consideration of cash transactions legislation, and that in fact that has gone to the Commonwealth Standing Committee on Legal and Constitutional Affairs, which has to report by 1993. That was a review of the first three years of operation, which I understand is expiring in June 1993.

In the light of that, I have taken the view that it is probably not appropriate to include the requirement for a three-year review of the State-based legislation, although I want to be confident that, notwithstanding who is in Government, that review is undertaken. One should not allow this sort of legislation to continue without some review periodically to determine the advantages which are gained from the requirement of all the information, as opposed to the costs of providing it. So, I do not intend to proceed with an amendment for a three-year review; but from the Attorney-General's answer it seems that we are both on the same track in terms of the mechanism for review, and I am comfortable with that.

The Hon. I. GILFILLAN: I want to take this opportunity to make a comment or two, in response to the assurances that the Attorney gave in his second reading summing up, about my concerns on confidentiality and the potential for abuse of the information gleaned by police officers from cash dealers. I was particularly drawn, as a result of this Bill, to an article in the *Financial Review* of Tuesday 20 October, which stated, under the heading 'Inquiry draws on ICAC':

> The Commonwealth Government is examining the huge illicit sale of confidential Government information which was uncovered by the New South Wales Independent Commission Against Corruption, as part of its own inquiry into the protection of such information. Assistant Commissioner, Mr Adrian Roden QC, who headed the ICAC inquiry, will give evidence about his findings at the first day of the public hearings tomorrow of the House of Representatives Standing Committee on Legal and Constitutional Affairs. Mr Roden has also been asked to help the committee's review of safeguards for confidential information held by the Government.
>
> The House of Representatives Committee is reviewing the safeguards and will consider proposals to develop a more stringent regime to protect confidential information, punish offenders and recompense victims. After a two and a half year investigation, ICAC found that many of Australia's largest Government agencies had been selling information to the country's leading banks, insurance companies and finance groups.
>
> The Committee's Chairman, Mr Michael Lavarch MP, said in August when the ICAC released its report that Mr Roden's findings supported the concern that the Commonwealth's safeguards were 'inconsistent, inappropriate and not entirely effective'. Mr Lavarch said yesterday that the ICAC's findings had clear implications for Commonwealth legislation and departmental practices in handling confidential information.
>
> 'This hearing is part of the Committee's broader inquiry into the adequacy of existing safeguards and penalties against wrongful release of confidential information,' he said.
>
> 'We will also be considering the issue of possible compensation.
>
> 'The inquiry will not be investigating individual cases of leaked information documented in the ICAC's report, but we do expect to be advised by individual Commonwealth departments as to the actions they are taking in response to the activities documented by the ICAC.'

I listened with interest to the Attorney's comments regarding an agreed protocol that was being drawn up. I have not had a chance to study his answer, so I am only commenting on what I recall of what he said. However, bearing in mind that the Commonwealth Government is in fact having an inquiry of its own into the protection of confidential information and the general recognition that there is a big market for the sort of sensitive information which could easily be acquired from cash dealers, I still remain very concerned that the potential is there for abuse.

I do not intend to delay—because for one thing I do not think it is justified or possible—the passage of this Bill, but I would like the Attorney to indicate when the agreed protocol is likely to be finalised. Will it be made available to members of this place? Will the Attorney undertake to make it available to members of this place? I ask this as much from my own curiosity as anything else, but I am concerned whether the committee that was referred to in the article, the House of Representatives Standing Committee on Legal and Constitutional Affairs, should or could be asked to comment on what it sees as the adequacy or otherwise of the agreed protocol when it is finalised.

The Hon. C.J. SUMNER: Obviously the Federal parliamentary committee, the Senate Legal and Constitutional Committee, could comment on the protocol. It would have the authority to do so, if it felt that that was necessary. My officer has indicated to me that she has been advised that the protocol is expected to be finalised in a couple of weeks, so long as there are no hiccups, I suppose. If they are happy to make a copy available to me, I will be quite happy to make it available to the honourable member, provided there is not some confidentiality requirements in relation to it. I cannot see that there would be any, but obviously it is not my document so I cannot give an undertaking that I can make it available to the honourable member or to the Hon. Mr Griffin. However, as far as I am concerned the honourable member can have a copy. I shall seek to obtain it and provided there are not any difficulties with making it available I will make it available at the earliest opportunity.

The Hon. I. GILFILLAN: I must emphasise that as far as I am concerned this is a key issue in this procedure. I appreciate the Attorney offering to make it available to me. From my own personal point of view, if I were not satisfied that a satisfactory protocol had not evolved I would continue to have very grave misgivings about the potential abuse of this Bill.

Whilst acknowledging that the Attorney has undertaken to obtain a copy for me, subject to what he thinks is unlikely to be some confidential aspects, as it concerns the security of the information dealt with by this Bill, quite frankly, I cannot conceive of any area that ought not to be made available to a member of Parliament debating it. Secondly, I would ask quite specifically whether the Attorney will request the department drawing up the protocol to refer it specifically to that committee, the House of Representatives Standing Committee on Legal and Constitutional Affairs, to seek its assessment as to its effectiveness?

The Hon. C.J. SUMNER: I will write to the Minister, the Federal Attorney-General, and draw his attention to the honourable member's comments. It will then be up to him whether he feels that the protocol should be referred to the Senate committee. I can see no problems with the Senate committee's looking at it, in any event.

The Hon. I. Gilfillan: It was a House of Representatives committee.

The Hon. C.J. SUMNER: I thought that the Hon. Mr Griffin said it was a Senate committee.

The Hon. I. Gilfillan: I can only say that, reading from the article I quoted earlier—

The Hon. C.J. SUMNER: That is from the press?

The Hon. I. Gilfillan: Yes, from the *Financial Review.*

The Hon. C.J. SUMNER: Enough said.

The Hon. K.T. Griffin: It was the Commonwealth Standing Committee on Legal and Constitutional Affairs which, I think, is a Senate committee.

The Hon. C.J. SUMNER: The Hon. Mr Griffin thinks that it is a Senate standing committee; my adviser thinks that it is a Senate standing committee. Frankly, I do not know but, whatever it is, I am happy to write to the Federal Attorney-General with the proposition put by the Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I acknowledge that with gratitude but, at the risk of further confusing the multitude of advice coming from the committee, whether it is of the House of Representatives or of the Senate, it is chaired by Michael Lavarch MP, who is unlikely to be chairing a Senate committee.

The Hon. C.J. SUMNER: I am advised that the honourable member is talking about a different committee, and the one that will be considering this Bill is the one mentioned by the Hon. Mr Griffin, the Senate committee chaired by Senator Barney Cooney. Whatever it is, we will draw that to the attention of the Federal Attorney-General and let him decide which is the appropriate committee to be looking at it.

Clause passed.

Clauses 3 to 8 passed.

Clause 9—'Secrecy.'

The Hon. K.T. GRIFFIN: I want to take up with the Attorney-General the issue I raised on this clause. In clause 3 there is a definition of 'protected information' which provides:

'protected information' means information that is obtained under this Act.

Clause 9 (3) provides:

A person is not required to divulge or communicate protected information to a court unless it is necessary to do so for the enforcement of a law of the State, the Commonwealth, another State or a Territory.

What the Attorney-General was arguing generally answers my concern, but I wanted to make doubly sure. I want to ensure that, if information is collected, subclause (3) does not prevent that information in its original form from being the subject of subpoena in this scenario: if information is gathered by the agency or by the police, which therefore becomes protected information, I can appreciate that it should be an offence to hand on information that has been collected by the police and by the agency in that context, but what I would not like to see is this provision preventing the original information that subsequently becomes protected information from being available on subpoena in, say, civil proceedings.

The Hon. C.J. SUMNER: Clause 9 (1) provides:

This section applies to a person who is or has been the Commissioner of Police or a member of the police force.

It is the police officers who cannot pass on the information unless it is necessary for the enforcement of the law of the State, the Commonwealth, another State or a Territory. But that does not mean that someone who is in litigation with the Commonwealth cannot bring the information before a court.

Clause passed.

Title passed.

Bill read a third time and passed.

BUSINESS FRANCHISE (PETROLEUM PRODUCTS) (FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 527.)

The Hon. J.C. IRWIN: Before I sought leave to conclude my remarks last evening I had run through a number of statistics relating to the tax take from fuel by both the Federal and State Governments and briefly outlined the impact on motorists and producers, both primary and secondary. I indicate again, in support of my colleague the Hon. Diana Laidlaw, the anger being expressed by motorists and producers about having to pay more and more for their fuel when they observe that very little of that fuel tax take is spent on our roads.

I had just started to refer to the local government component of this Bill, where the proposal is that fuel tax money should go to local government. In fact, I had just started to talk about the memorandum of understanding that was signed by the Government and local government.

One of the prime aims of the review of local government relations, quoting from the review document which accompanied the memorandum, was to 'reduce the cost to Government and the community of the local government related functions'. The first three points that were agreed in the document 'Memorandum of Understanding made on this day of October 1990 between John Charles Bannon, Premier of South Australia, and Malcolm Leslie Germein, President of the Local Government Association of South Australia' are as follows:

1. The State Government and Local Government Association on behalf of councils in South Australia desire to establish new relationships effecting a cooperative approach to the development of the State and the productive and effective provision, planning, funding and management of services to the South Australian community.

2. That in so doing the State and Local Government Association agree to the establishment of a negotiating process which will:

2.1 Consider and determine the allocation of responsibilities and financial arrangements for existing and new State and local government functions.

2.2 Review all existing financial transfers between State and local government including on-passing Commonwealth funds with a view to reducing total costs to the community.

2.3 Review the adequacy of revenue sources available to the local government in carrying out its range of functions.

2.4 Consider and recommend the legislative framework for the operation of local government which will give the most appropriate expression to the intent of this agreement.

3. The parties agree that the negotiation process will observe the attached set of principles and will be concluded no later than 30 June 1992.

I indicate that I have not read points 4, 5, 6 and 7. I emphasise paragraph 2.2. I for one question very seriously where the total costs to the community will be reduced. No-one has tried to argue that they have been or will be. I have read the debates in the other House and the introductory speech in this place, and I can see no assurance to this Council and the Parliament that what is proposed here will in fact finish up as a reduction in total costs to the community.

It appears on the surface, in the absence of any other documented argument, that both the Government and the Local Government Association, on behalf of its councils, have broken the agreement so seriously entered into two years ago, almost to this day. They may have together conspired against an unsuspecting public. The Opposition, as I have said before in this place, has played no part in the negotiation process and has constantly called for an audit of the process to see for itself and on behalf of the public exactly what is going on behind locked doors in the negotiating process. I have to ask: where is the justification for raising more public money?

My colleague the Hon. Diana Laidlaw alluded to a letter from the Local Government Association which sets out a range of functions and costs which local government could, will or may take on. The ballpark figure quoted was $60.864 million. With the proposed tax for local government bringing in $32 million this financial year and $42.7 million estimated in a full year, I expect the transfer of agreed functions will be progressive. The tax could be increased to fully fund the $60 million which is expected to be transferred in a full year. We certainly want to know up front whether it will in fact transfer that full $60 million worth of functions and therefore next year raise the appropriate amount in the tax levy on petrol to fund that. In fact it could come out of the process that some functions will not be transferred at all. I am very firmly of the view that local government should demand a signed watertight contract with the Government for each function it takes on. Again that is not to my knowledge going to happen, but it may well happen.

From my experience in local government some time ago now in the early stages (and I can allude to the library agreements and others that have happened since), I believe that local government should demand that when these functions are sent over to them not only will there be the money but a signed contract for the carrying out of those functions so that it is perfectly clear right from the start what those functions are, what is expected of local government, and what the arrangements will be for funding on a long-term basis. I expect in the light of a State election some time late next year that the Opposition would certainly be interested in this process because hopefully we will be in a position to have to decide whether or not to honour those contracts and I doubt whether there would be any question of honouring or not: it would be a fact that we would honour those contracts.

If local government calls itself bipartisan, then again I call on it to include the Opposition in all the discussions on this because I believe we have a right through our spokesperson Diana Laidlaw to keep us in touch as a Party and as a Party room with exactly what the contracts are, signed or unsigned, between local government and the Government. I believe it would be irresponsible for local government not to insist on that because it knows full well that the word of this Government cannot be trusted. Where is the justification for this tax from the former Minister of Local Government Relations? The recent Estimates Committee does not unfortunately clarify that matter. In answer to a question from Dr Bruce Eastick during the Estimates Committee the Minister said:

It will be a question of transferring $42 million worth. Just what that will entail has not be decided. There will be negotiations with the Local Government Association as to what functions should be transferred with those resources. It will take a while to sort it out.

That alone should be enough for any responsible Opposition, and I very much include the Democrats in that, to defeat or hold up the relevant part of this Bill until it is sorted out and this Parliament does know what that money is being raised for, even though I understand that the excise money already being collected has been collected for the last month and until this is sorted out will be held in a special account, I expect gaining interest until it is ready to be transferred to some unknown function in the future. How dare any Government say to the Parliament, 'We want the money; we don't know yet how it will be used but we want it now.' I hope the Democrats have a very good, hard think about what is their responsibility to the electors they represent before jumping into bed with the Government on this sort of nonsense.

One must question why we have budgets and why we spend weeks going over Estimates in minute detail. If they have no use then why spend millions of dollars on paper producing them each year, as well as the time of individual members that they devote to both questioning the Ministers in Estimates Committees and the Minister's time in answering the questions. I put it to the Council that the public have a right to know: it is their money. It is not the Government's money, it is the motorists' money that it is spending. Let me give a simple exercise to illustrate the point (I underline that it is a pretty simple exercise).

Let us say that certain functions amounting to $34 million are transferred to local government. The petrol tax will raise $34 million to pay for these functions that will be carried out by local government. The Government will be left with $34 million less of functions that it has to carry out and $34 million worth of cash. Where will this money go? Dare we ask how this exercise can or will reduce what the memorandum of understanding said was the total cost to the community.

The $34 million has already been raised; it is already part of the collection of, for instance, petrol tax. If you do not like to use petrol tax as an example, then use any other tax. I believe that local government may well carry out the transferred functions better than the Government—I think that is 100 per cent certain—so how can the Government sustain an argument that there will be a reduction in the total cost to the community?

The only honest, upfront way to do this exercise is to give local government 3c. I am being simplistic in saying that, because I realise that there is a whole range going down to is of the collection, and that includes distillate as well as unleaded and leaded petrol. So, I am simplifying it by saying that the only honest, upfront way in which this can be done is to give 3c of the petrol excise that it already raises and not add a further 3c thereto. The Government cannot explain in detail what this money will be used for, and it has not even tried to do so. It should seriously attempt to put that in document form before this legislation is passed by the Parliament.

It is easy to see what the Government will do with the $34 million. Again, I am talking about this financial year in approximate dollar terms: it will spend it on popular

promises in the next State budget. We already heard a Minister in here today talk about the next State budget which will be delivered prior to the next State election. There will be an attempt to sweeten up all the nasty things that are happening now so that this Government will look like Father Christmas in the lead-up to the next State election late next year.

I conclude by addressing the local government factor in this debate. I have no argument with local government taking on new functions or with its being given a new revenue raising capacity to fund those functions. Indeed, nothing that I have said in my contribution either yesterday or today has anything to do with having a shot at local government and what its responsibility will be.

Local government has done very little, if anything, to create the problems which it is now negotiating to take over. Those problems have been caused by the increasing imposition of Federal and State Governments into the lives and productive capacity of people. The way in which local government operates on its base rate system, its grants system and its fee-for-service system, means that it has not created welfare problems and some of the other problems that are outlined in the area of functions in the letter alluded to yesterday by the Hon. Ms Laidlaw.

The principle of a petrol tax to fund local government is fundamentally wrong. The basic principle of local government funding, apart from fee-for-service and Government grants, etc., is for a council's local community to identify a local need or service and to fund it by striking a rate in the dollar and applying that rate to the valuation of property. So, the principle is clear and has been for many years: identify a service and a whole range of perceived community needs and fund them.

Most importantly, the council members stand accountable. That is a word that has gone right out of the thoughts, memory or vocabulary of this Government. However, it is of fundamental importance to local government, which is held in high esteem in the community because it is easily accountable. We should maintain that basic principle for local government.

As I have said, council members stand accountable for what they fund, the rates they strike and how effectively their functions are carried out. They are usually easy to see—the community knows about them. Councillors are accessible, and the accountability comes that way on a day-to-day basis rather than waiting for two, three or four years for the holding of a local government election to enable a person or group of persons to be held accountable in a collective sense. It is as simple as that, and it has stood the test of time for almost the whole of the history of this State.

That does not mean that everything stands still. It does not happen and it has not happened in local government, with some communities moving at a different pace from others. There are innovative communities, conservative communities, ones in the middle and ones combining a mix of both. So, however one looks at it, I am not suggesting that local government should stand still. In fact, I applaud it for the initiatives that it has taken.

In many cases there is a double whammy for the residents and the ratepayers as opposed to the electors who have to fund local government: they pick up many of the tabs for the community's disadvantage or for what it wants to do within its own community, as well as funding other areas of the State. It does not matter whether the argument can be sustained, although I think it can: both Federal and State Governments have not passed on to local councils by one means or another a big enough proportion of the Federal personal tax or any other tax and charge collected by it.

I think this is a separate point for debate, but I have often made it: we saw it during the 1970s when it was started by Prime Minister Whitlam and increased by Prime Minister Fraser into the mid to early 1980s, when an attempt was made to tie grants to local government to the area of personal income tax and then, in a sense, to the total tax take of the Federal Government. I say that because with the States giving the taxing powers to the Commonwealth Government, it has been collecting the total personal tax and a great proportion of other taxes. I believe we can without too much trouble sustain an argument that a certain percentage of that should in one way or another come back to local government.

I have said often enough in this Chamber that if, hopefully some time in the future, the Commonwealth Government takes less tax out of the system to fund its monster government local government should be prepared to take less because the people in their communities will have some more money in their pocket and will be able to use that to fund any local project, if that is what the local people decide.

In this debate we do not know what functions are being negotiated for transfer. We do not know how the petrol tax money will be distributed to local councils, and we do not know if this part of the tax will be indexed.

I have already alluded to whether the whole $60 million will be raised from this petrol tax, and whether we can look forward to an increase of 1 or 2c later. No accountability is attached to this tax for the Government or the local government sector. That is the other fundamental principle of local government, and it adds on to what I have already said: there is no accountability to local government. The tax will be raised through the petrol bowser at, for instance, Port Adelaide, and some of it will be spent in the South-East. I use that as an example. There is no way that the local council, which will spend the money on behalf of the transferred function from the State Government, will be able to be held accountable, because the whole picture will be so fuzzy that no-one will be able to identify who is responsible for any bad spending, if that is the way in which it is seen; and no-one will be able to be held accountable for it.

The functions are certainly not driven from the community, and that is another fundamental area of local government where the functions that are demanded from the local council usually come from the community rather than from the council saying, 'We think you need a rest home,' or 'We think you need a shelter of some sort, a kindergarten, or something to which we can contribute.' That usually comes from the community asking the council to do it.

Rather, they are being pushed towards local government from on top so that the Government can go on to some other popularist activity with the money that it has already raised in the system. All I can say to local government is *caveat emptor:* let the buyer beware. If

local government wants to fund or find a new revenue source, why does it not argue that this Government vacate the whole area of capital property taxation and to leave that area totally and solely to local government? That surely then combines all the principles to which I have briefly alluded, where the capital property tax already funds local government in part. However, the Government is muscling into that area, anyway, with land tax and other taxes on the capital value of property.

There is some question whether capital taxes are a sustainable way to tax people. Capital value used to mean an ability to pay, and we now know that with small businesses, farmers and others it does not mean an ability to pay. There is then some question about the capital tax area, but I am suggesting that local government ought to argue that it have that area for itself and for the State Government to vacate it; that would allow local government almost the same revenue, if not more. They can then make their own local decisions about the industry, which is most hit by this, because houses are exempt from that.

Local industry can then be judged on a community to community basis rather than by Big Brother Government whacking a tax right across all property no matter what. At least that would keep that area for local government alone..More importantly, it would allow us a source of income based on the needs of local people and businesses and would allow the people to judge the performance of the council and hold it accountable. So, all those areas to which I have alluded more than once are easy to sustain. I have outlined a whole range of areas where this legislation is ill-conceived, regressive and wrong. It is wrong in principle, and I strongly suggest that it should be opposed.

The Hon. M.J. ELLIOTT: The Democrats support the Bill. I suppose it is one of those Bills, when you see a tax increase, to which one does not give wholehearted support. I have not heard anybody say they think a tax increase is a wonderful idea; nevertheless, I do support this piece of legislation.

The Government has been dishonest when it talks about the reason for raising the money by suggesting that a part of it is allocated to the EPA, as that is a very small part of the money raised, with a more substantial part of it going to local government for unidentified roadworks.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: I had the impression it was for roadworks.

The Hon. Diana Laidlaw: No, no roadworks at all.

The Hon. M.J. ELLIOTT: Nevertheless, by suggesting that the money is being raised for particular purposes they have tried to take some of the heat out of the raising of the tax. I suppose they hope that by saying it is going to the EPA, which most people support, although the form of it is highly questionable, and to local government it is somehow given a little more credibility. I know local government is concerned that it will cop a lot of the blame for it; I know that concern rests there. I think that is a rather dishonest thing to do. No real reason has been given why that tax should be earmarked in the way that it has been, although I suppose vehicles are a significant polluter. As I say, the EPA allocation is a relatively small part of the overall increase.

It is dishonest. The real reason why the tax is being raised is that the Government has budgetary problems: it is because the State Bank, SGIC and other decisions, or non-decisions in many cases, made by them have created severe problems. So, to that extent it is dishonest, and only a fool would suggest that there would not be some pain caused by the raising of this fee in some areas.

But, recognising that the Government does have a budgetary problem, albeit of its own making, there are only three options with which one can confront budgetary problems. The first option is to allow the deficit to grow further but, considering the size of the deficit we have and the cost of servicing it, to allow a further increase therein is clearly not an acceptable option. The second option is a reduction in Government expenditure, and that invariably means in Government services. People talk about efficiencies, but frankly I do not believe there are efficiencies to be gained, and what we are seeing because of cutbacks already is hospital queues, schools being closed, etc.

The third option is the unpalatable increase in taxes. As I said, option number one is not an option, and it gives us some sort of mix of the latter two. Cutbacks have continued to happen in this budget. Indeed, I have been severely critical of many of them. I accept that there is a need to raise some additional revenue. It then becomes a question as to how you go about raising it. So, one should start looking at the significant options that we have. We have a Government getting an extra $50 million odd out of poker machines. I have clearly taken a stand against that. We have options such as taxes on employment, which have been criticised in this place on any number of occasions. I do not think anyone will accept increases in taxes which are directly linked to employment. One would therefore explore the other options.

As I said, no tax increase is palatable, and all of them will have some adverse consequences. However, I think any reasonable person would say that if extra money has to be found it does spread across the community, perhaps not as evenly as we would like. While it does affect employment, it will not do so as directly as some other taxes could have done, and in those circumstances it is probably what I would call a least worst option.

So, I find myself in the dubious position of saying that I would rather not see a tax increase but, if there is going to be one, I think this option is a little more palatable than a lot of the others.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: They have to make hard decisions. If you look at the options I think you people would be glad in some ways that you are not in Government now.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That is correct, but the fact is that the mess is there. At the moment they are the Government, and they are coping with it. Indeed, the Liberal Party may get its chance after the next election. We are in a mess and, looking at this one tax measure, I have to ask myself whether in the scheme of things I am willing to have this tax measure thrown out.

The Democrat record has been pretty clear. Yes, we will stand against tax measures, and there was an earlier one in this Council with which we threatened the

Government, but it backed down. It was not a large amount of money, but we could see that a clear wrong was involved. Here, we are talking about a substantial sum of money, and the wrong is not a tax itself; the wrong is what the Government did to our budget over the past couple of years by not looking after the State instrumentalities properly.

It would have to be an extreme inequity before we intervened. I should imagine that if the Liberal Party were in Government and we started knocking off significant tax Bills it, too, would be very upset. As I said, we do it rarely. The only case I can see on the horizon at the moment is the GST. Any tax on basic foodstuffs is something that we will always oppose. It is something that we would do rarely, and we would have to be pushed to the limit; this is not such a case. As such we support the Bill with reservations, but being realistic about the situation that we are in.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I have a few points to make on behalf of the Attorney-General in response to points made by the Hon. Ms Laidlaw. She suggested in her response that the increase in petrol tax was being imposed retrospectively. This I categorically refute. The amendments to the Business Franchise (Petroleum Products) Act—

The Hon. Diana Laidlaw: No wonder our State is in a mess if you can't see—

The Hon. ANNE LEVY: Mr President, I understand that when the honourable member made her contribution to this debate it was listened to in silence.

The PRESIDENT: Yes, I would expect the same courtesy while the Minister is on her feet. The Minister has the floor. We are going into Committee and, if there are any questions, they can be raised then.

The Hon. ANNE LEVY: The amendment provides for the higher licence fees to come into effect from and including the November licence fee, which is due at the end of October. That is when—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —the higher fee will operate from—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The honourable member will have the opportunity in Committee to question the Minister. The honourable Minister.

The Hon. ANNE LEVY: The Bill was introduced to the Parliament on 27 August and it was and still is expected that there will be plenty of time during October for Parliament to deal with the Bill and to have the new legislation in place by the end of the month, when it comes into operation.

The Prices Surveillance Authority has agreed to increases in the wholesale price of petroleum products, and that the increase in the wholesale price will operate from 1 October to reflect the proposed higher fees which the licence holders will have to pay at the end of October. They will have the benefit of collecting the higher amount during the month of October before they have to pay the higher licence fee at the end of October. This comes about because the Prices Surveillance Authority has a longstanding policy—

The Hon. L.H. Davis interjecting:

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

The Hon. ANNE LEVY: The Prices Surveillance Authority has a longstanding policy that changes in State charges should be passed on in a revenue neutral fashion, that an increase in a State charge should be revenue neutral as far as the licence holders are concerned. The Prices Surveillance Authority has generally found it preferable to allow collection of State tax increases prior to the date of payment by the licence holder so that the licence holder is not out of pocket as a result of the increase.

I can inform members that, should there be any delay beyond 1 November in implementing the proposed increases in licence fee, the Prices Surveillance Authority will take action to offset any over-recovery of tax that has occurred in the meantime. This will be an action by the Prices Surveillance Authority whereby, if there has been over-collection of tax, it will take the appropriate action to correct it so that in effect it will be revenue neutral.

The honourable member also complained that the revenue raised is not being transferred to the Highways Fund. It needs to be recognised that very few of the State's taxes are earmarked for particular expenditures. If taxation measures were to be constrained to financing expenditures where the prime beneficiaries were the same taxpayers, the Government would have no means of financing social justice objectives or programs that are not revenue raising. The Government certainly is not prepared to do this nor, I suggest, would any responsible Government.

The Hon. L.H. Davis: You do not claim that you are a responsible Government, surely?

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

The Hon. ANNE LEVY: The Hon. Ms Laidlaw also raised a question suggesting that the petroleum franchise fees are not the right and proper approach in relation to the Government transferring funds to local government. In this regard the increase in petrol tax for local government purposes has the intention of providing local government with a greater degree of financial independence. Local government had long requested access to another source of revenue that was a growth area and that council rates should not be its sole source of revenue, which could in any way be considered a growth area, and where it would be independent of handouts from State and Federal Governments. This additional petroleum tax was chosen as a source of revenue for local government and will be earmarked for it. It can be regarded as a growth tax.

As I indicated in the Estimates Committee debates, further negotiations will be undertaken so that at the same time as local government receives the proceeds of the additional levy on petroleum it will take on financial responsibilities for various expenditure programs which so far have been a State responsibility, supported from the State's general revenues. The fact that these have not yet been negotiated does not in any way resile from the fact that this money is earmarked for local government. The issue of which program is still under negotiation. I would be surprised if such negotiations were concluded quickly as it is not a simple matter. No doubt exists that

State Government programs, which can be regarded as being of benefit to local government, amount to a much greater sum than the amount that this additional petrol tax will raise. There is no question but that some programs will remain with State Government which could legitimately be regarded as local government, but they will not be transferred to local government because the revenue source will not be adequate.

The levy will definitely supplement rate revenue as far as local government is concerned and will be used to finance the total operations of local government. I need hardly remind members here that roads expenditure is the single most important item for local government in this State. So, this extra petroleum tax certainly will be going where a great deal of money is spent on roads.

Another point raised by the Hon. Ms Laidlaw concerns her suggestion that interstate tankers will be encouraged to fill up over the border with enough fuel for the round trip to Adelaide rather than refuel in Adelaide. This is totally erroneous. The tax rate on diesel fuel, which is what most tankers operate on, in zone 3 in South Australia will remain, despite this increase, below the tax rate over the border. It is therefore difficult to understand why, either presently or in the future, drivers should refuel over the border in preference to refuelling in zone 3 towns in South Australia.

The Hon. Diana Laidlaw: Which border are you talking about?

The Hon. ANNE LEVY: The Victorian border would be the one that the vast majority of interstate tankers cross.

The Hon. Diana Laidlaw: Through the Riverland?

The Hon. ANNE LEVY: Through the Riverland or down in the South-East. But there is no doubt that it will not be to their financial advantage to refuel in Victoria. It will remain as it is at the moment to their financial advantage to refuel in South Australia. Ms Laidlaw also suggested that the large differences in tax rates between zone 1 and zone 3 will encourage distributors to transfer fuel between zones and so evade tax.

The legislation provides that petroleum products will be assumed to have been destined for consumption in zone 1, that is, the one with the highest tax rate, unless the Commissioner is satisfied that they were destined for consumption in zones 2 or 3. So, the legislation is currently quite adequate to deal with zone hopping. I can assure honourable members that the Commissioner will be monitoring closely any changes in the patterns of consumption that are reported by oil companies and will take adequate steps to ensure that the proper rate of tax is paid, as they do at the moment. The Hon. Ms Laidlaw also stated that taxes are highest in Adelaide. I understand that, in fact, the taxes throughout most of South Australia are the lowest of all States except for Queensland.

The Hon. Diana Laidlaw: Are you referring to the average?

The Hon. ANNE LEVY: It says that the taxes throughout most of South Australia are the lowest of all States bar Queensland.

The Hon. Diana Laidlaw: I think they mean the average.

The Hon. ANNE LEVY: I have here figures on interstate comparisons. First, in relation to leaded motor spirit: in New South Wales the franchise fee is 6.70c per litre; in Victoria it is 5.07c per litre; in Western Australia it is 5.67c per litre; in South Australia it will be 8.94c per litre in zone 1, 6.65c per litre in zone 2 and 4.40c per litre in zone 3; in Tasmania it is 6.15c per litre; in the Northern Territory it is 6c per litre; and in the ACT it is 6.53c per litre. The figures for unleaded motor spirit are as follows: in New South Wales, 6.70c per litre; in Victoria, 5.7c per litre; in Western Australia, 5.67c per litre; in South Australia, 8.79c per litre in zone 1, 6.5c per litre in zone 2 and 4.25c per litre in zone 3; in Tasmania, 6.15c per litre; in the Northern Territory, 6c per litre; and in the ACT, 6.53c per litre. Interestingly, we are the only State where unleaded motor spirit has a lower franchise fee per litre than leaded—surely a desirable environmental move, which has not been picked up by any other State.

I also have the figures for distillate: in New South Wales it is 6.74c per litre; in Victoria, 7.1c per litre; in Western Australia, 7.45c per litre; in South Australia 10.3c per litre in zone 1, 7.8c per litre in zone 2 and 5.5c per litre in zone 3; in Tasmania, 6.11c per litre; in the Northern Territory, 6c per litre; and in the ACT, 6.57c per litre.

The Hon. Diana Laidlaw: What about New South Wales zones? You only gave figures for one zone.

The Hon. ANNE LEVY: New South Wales does have a discounted rate which applies in areas north from Nambucca Heads, as far as the Queensland border. Of course, that is done deliberately because there is no such franchise fee in Queensland and so as not to disadvantage New South Wales retailers south of the border a lower fee applies there.

The Hon. Diana Laidlaw: So of all those figures you have read out, Adelaide zone 1 is the highest of all in the nation.

The Hon. ANNE LEVY: That is certainly true, but Adelaide is not the whole of South Australia, as I am sure many members opposite would agree.

The Hon. L.H. Davis: It is only 72 per cent of the population!

The PRESIDENT: Order!

The Hon. ANNE LEVY: I have discussed many of the points raised by the Hon. Ms Laidlaw in her second reading contribution; if there are further matters that have been overlooked they can probably be taken up in Committee.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. DIANA LAIDLAW: It was quite clear from the Minister's reply to the second reading debate that the Government was aware that this fee would be collected during October, and it is unacceptable that this measure was designated to start on 1 November, knowing that this Bill would never get through Parliament until about that date. While I disagree with the whole of the measure, it would have been more considerate for people in this State if 1 December had been the nominated date, especially as the Government has made no progress to date with its negotiations with local government.

The Hon. M.J. ELLIOTT: The Hon. Ms Levy in her comments said that the fee was not being applied

retrospectively, but that plainly was wrong—it is already applying through this month. The price of petrol has already gone up because the fee applies to the previous month's sales. That being the case, it is already being applied and I believe that, to be kind to the Minister, someone misled her, because she gave this Council wrong information. The Government should not be assuming that a Bill will be passed and be applying its provisions before the passage of that Bill in these circumstances. The fact that the tax is already being collected, of course, complicates matters tremendously, but I believe that the Government has misbehaved, to be generous to it, on this matter.

The Hon. C.J. SUMNER: Whilst this is not a tax Bill in the normal sense of the word, it is not uncommon for taxes to operate from a certain date.

The Hon. M .J. Elliott: Usually to stop avoidance.

The Hon. C.J. SUMNER: For whatever reason. That may be the case, but with Bills dealing with an impost, that is what occurs. In this case, it is a licence fee based on sales.

The Hon. Peter Dunn: A licence fee?

The Hon. C.J. SUMNER: That is what it is. It is called a tax in the broader sense of the word, but it is actually a licence fee, for constitutional reasons. The State Government does not have the power to impose an excise, that is, to impose a tax on the production or subsequent sale of goods. One of the major problems with State finances is that you cannot impose a tax on these sorts of transactions. What happens is that all the States become involved in what are called licence fees.

This has been sanctioned by the High Court and applies in the areas of petrol, liquor licensing and cigarettes. The fee is a fee that is paid by the sellers of petrol, liquor or cigarettes to enable them to sell the goods. It is a licence fee or, as the Hon. Mr Burdett described it, a franchise fee, and it cannot be directly imposed but must be a fee related to previous sales. That is why the fee will operate from 1 November but is based on sales for the previous period and from collections that began on 1 October 1992. I do not know whether one would describe that—

The Hon. R.J. Ritson: But that means they need to start collecting before there is a legal basis for it.

The Hon. C.J. SUMNER: The legal basis for it is the Prices Surveillance Authority's agreeing to increase the price of petrol to enable them to collect it. If members wanted to complain, I suppose they could go along to the PSA. and say that it should not increase this as the Bill has not passed. It might be a point. As I understand it, this is the procedure adopted around Australia with respect to Bills such as this. The PSA agreed the increase on the basis that the Bill would pass. If it did not pass, no doubt it would then act to introduce it.

The Hon. M.J. ELLIOTT: I do not have a problem with taxes being levied retrospectively in cases where avoidance may occur. There are cases such as that where, if the Government says that it is about to increase a tax, particularly on motor vehicles, a massive number of cars will be sold and a number of fees may be avoided. In those cases, a Government needs, to some extent, to apply the tax retrospectively. However, I recall that last year in another piece of legislation the Government did this, although I cannot remember which Bill we were dealing with.

However, it did happen and I warned the Government that it should not take for granted that it can get away with this, and all I can do is reiterate that. The Commissioner of Stamps is here, and I hope that he may take notice that the Government cannot take for granted that Parliament is going to pass these measures.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: The Hon. Ms Laidlaw ought to be aware that there was a piece of legislation handled a couple of weeks ago in which the Government was told that it would not, and the Government actually amended it. I think that the honourable member is unfair there, because there is already one case in which I am on record with that happening. I heard across the floor a question as to why we do not amend clause 2 so that this Act comes into operation on 1 December. It creates the complication as to how you would return money that has been raised from consumers.

You could suggest that people go back with their Mastercard credit, or whatever, and say that they bought this petrol and they want some of their money back. Practically, that cannot happen. It creates a great deal of complication. I think that this is rather an untidy thing to do. It might be a nice windfall, although I am not sure for whom—perhaps the station owners. However, the money would not be returned to the consumers.

The Hon. DIANA LAIDLAW: I did suggest across the Chamber that the Democrats might like to support an amendment I would move on my feet to have this come into operation on 1 December, but I think that their bark is worse than their bite. They have protested loudly about the retrospective aspects of this but, when given an opportunity to put their rhetoric into action, they are not prepared to do so.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: I had no idea that you would be on your feet so outraged about this, and this is one of the reasons why the Liberal Party said in this place that it would oppose the whole measure, as we will not be taken for granted—although the Government appears to be able to accept the Democrats' support on this measure.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: We have poker machines now, and that will raise more, apparently. I will not labour this point but I hope that, next time the Government seeks to do this, the Democrats will put their bold statements into action and insist that this Government not proceed to introduce such retrospective measures again.

Clause passed.

Clause 3 passed.

Clause 4—'Fees.'

The Hon. DIANA LAIDLAW: The former Premier in his financial statement and in the delivery of the Government's budget made a lot of play about the fact that all this money is to go to local government, but there is no reference in this Bill that the 3c from zone 1 (to be indexed hereafter), 2c from zone 2 and 1c from zone 3 are to be hypothecated to local government.

I make this statement because I think that local government has been fooled on this measure. It believes

very strongly that this will provide it with a degree of financial independence and a source of funds that has a growth factor. The Minister for the Arts and Cultural Heritage, in summing up the second reading debate, said that very few States' taxes were earmarked for particular functions, and well do motorists and local councils know that the Government, since it has been in power for the past 10 years, has progressively cut funds to roads that were earlier hypothecated from fuel franchise fees through the Highways Fund.

Having seen the experience of the Government's cuts in fuel franchise fees to the Highways Fund for road purposes, I am surprised that local government would have any faith in this Government and believe that, in the longer term, there will be the hypothecation of the extra funds collected through this Bill for the other transfer of functions that the Government proposes to negotiate in the next few months.

The Hon. C.J. SUMNER: It is true that there is no specific hypothecation in the Bill. The commitment has been made by the Government and that will have to be monitored by the usual political processes.

Clause passed.

Clause 5—'Application of amendments.'

The Hon. DIANA LAIDLAW: Can the Attorney advise whether any progress has been made in determining the transfer of functions and funds to local government and say how these funds raised through the business franchise fee are in turn to be transferred to local government? It is a matter of some concern to local government, particularly the administrators.

The Hon. C.J. SUMNER: The Minister in another place said:

> We have asked local government to enter into discussions to determine in which areas it is appropriate to supply this money. I hope those discussions accelerate because they have tended to drag and I think it is about time we got on with it. The money is there: all that is required is an agreement with local government.

I understand that discussions are proceeding.

The Hon. Diana Laidlaw: No progress has been made since that time?

The Hon. C.J. SUMNER: None beyond what I have indicated.

Clause passed.

Title passed.

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

That this Bill be now read a third time.

The Council divided on the third reading:

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

Noes (8)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw (teller), Bernice Pfitzner and R.J. Ritson.

Pairs—Ayes—The Hons Carolyn Pickles and R.R. Roberts. Noes—The Hons R.I. Lucas and J.F. Stefani.

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

LAND TAX (RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October. Page 466.)

The Hon. L.H. DAVIS: This is yet another example of a Government desperate for revenue, another example of a Government which is increasing taxes in a sneaky fashion under the guise of being fair to everyone concerned. But the truth is far from that. What we see here is a Government that is quite happy to take savage increases in land tax when site values are appreciating dramatically as they did in the second half of the 1980s. Of course, this reflected increases in land tax following the Valuer-General's annual assessment.

However, with the diminution in value of commercial properties in the city of Adelaide, metropolitan Adelaide and regional centres of South Australia, site values have diminished. If this Government were consistent, it would have accepted the diminution of site values and realised that revenue from land tax would decrease. If it is fair enough for Governments to take money on the way up, surely they should be consistent and accept that when values deteriorate they should not increase the take on the way down—but not this Labor Government.

In the financial statement attached to the State budget papers for the financial year 1992-93, the Government announced that it would make an adjustment in land tax rates in the top two brackets. In respect of land ownership where the site value was greater than $300 000 but below $1 million, the marginal rate was increased from 1.5 per cent of the site value to 1.65 per cent, and where the site value was in excess of $1 million the marginal rate increased from 2.3 per cent to 2.8 per cent. That followed an increase in land tax in the 1991-92 financial year for site values in excess of $1 million.

I will illustrate the gravity of the situation that this Government has created, particularly in the case of retail shopping centres. This Government has sought to argue that site values have reduced across the board because of a fall in land values over the past 12 months. The Minister in his second reading explanation claims that land values fell significantly in the 12 months to 30 June 1992, particularly in the higher value range, and that the tax scale has been structured to reflect these movements and to minimise the extent to which the liability for land tax of any particular owner changes between 1991-92 and 1992-93.

The following example illustrates clearly that some people will be, and indeed were last year, dramatically affected by this change in land tax scales. In 1990-91, on the scale existing at that time, a regional shopping centre with a site value of $30 million would have paid an aggregate of $562 270 in land tax. With the changes that flowed from the 1991-92 land tax scales, the increase in land tax payable was significant, rising from $562 270 to $701 270 for 1991-92.

In accordance with the proposed changes in the Land Tax (Rates) Amendment Bill that is now before us, the aggregate land tax payable for that regional shopping centre would soar to $852 320, an increase of 52 per cent over the past two years. That is a pretty hefty increase when one remembers that over the past two years inflation has been, in aggregate, far less than 10 per cent.

It is an outrageous increase when one remembers that over the past two years retail sales in South Australia have declined in real terms. Of course, it is an outrageous

increase in the sense that those hikes in land tax rates will be borne either by the landlord or the tenant. There is no escape: one or the other must bear those rates.

As I will explain, since 1990 landlords have been required to meet the cost of land tax, and many tenants with long-term leases entered into before that time are still paying their land tax bill. However, the fact is that, whether the landlord or the tenant pays the land tax, that hike of 52 per cent over the past two years is inequitable and quite clearly it is a disincentive to employment and severely cuts into profitability.

So, I argue on the ground of equity that the decision to increase land tax for buildings valued at over $1 million discriminates unfairly against retailers who happen to be located in such a building. For instance, a person with a retail store in a strip shop will not suffer that massive increase in land tax either directly or indirectly as would occur in respect of the Westfield Shopping Centre, which is one of the most successful shopping malls in Australia.

Westfield Marion site values have remained unchanged. Clearly, the landlord and the tenant at Westfield Shopping Centre will be badly affected by this latest land tax grab. It is an extraordinary grab and a further example of the former Bannon and current Arnold Labor Governments taxing retailers out of business at a time when there has been a dramatic slump in retail sales and profits are hard to come by.

So, I make the point that, although the second reading puts it very gently that there has been no real increase in land tax receipts (indeed, it is argued that, in aggregate, land tax rates have fallen in real terms), I would argue that, if the Government had not adjusted the land tax scales at all, we would have seen the take from land tax for the 1992-93 year fall from $78 million to, arguably, something like $65 million to $68 million. In other words, if there was a 20 per cent reduction in site values across the board, that would have been more or less reflected in the land tax take for the current financial year, and the land tax take from the Government would not have been steady at $78 million; rather, it would have been adjusted downward to $68 million.

This Government is in desperate trouble. It has a huge black hole to fill as a result of the State Bank debacle and the effective bankruptcy of the SGIC, which was filled by a $350 million bail-out from the South Australian Financing Authority. However, the Legislative Council Liberal parliamentarians accept that this is a budget measure. We are very unhappy about this measure, and we have said so publicly and consistently in press releases since the measure was introduced in the State budget two months ago. So, that is one aspect of the Bill.

The second aspect of the Bill, which is less controversial and to which we do not object, is that the land tax legislation will be amended to give the Government more flexibility to declare areas on which shack sites are situated.

There are amendments which enable the Government to declare an area to be one where the occupiers of shack sites may be treated as owners for land tax purposes. This is a minor measure to which the Government does not object. It relieves a land tax burden, for example, on the River Murray, where shack owners belong to associations which have been assessed as being under a single ownership. And, of course, the aggregation for land tax purposes effectively means that some of those shack owners have been paying very much higher rates than shack owners who are paying for rental simply on Crown leases.

So, I indicate that the Opposition reluctantly accepts the measure to increase land tax rates yet again for a second year in succession in a sneaky fashion which has a much more dramatic impact, particularly on hundreds of retailers throughout Adelaide—an impact which simply is not recognised in the second reading. I believe that this is yet another indication of a Government with little regard for the plight of small business in South Australia.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his reluctant support for the Bill. He did make a point about land tax going up under the Bill in some circumstances, but the commitment which the Government gave was that in the 1991-92 budget promised land tax receipts would be zero and no more than estimated CPI growth in 1992-93 and 1993-94. The 1992-93 land tax estimates keeps that commitment. In other words, overall they are only going up by CPI.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. L.H. DAVIS: It should not be believed by the public of South Australia that the only people who are affected by this increase in land tax rates are those in retail shops. One can give an example, for instance, of the AMP building at 1 King William Street which is one of the city's major buildings and which has in fact faced a 25 per cent increase in land tax in just two years, well in excess of the rate of inflation. It reflects on the fact that site values are adjusted very unevenly throughout the city.

Will the Government undertake in the next 12 months to look at the Valuer-General's valuation of site values, particularly in the CBD, in view of the concern expressed by many members of the commercial community that there seems to be some inconsistency in site valuations?

The Hon. C.J. SUMNER: I cannot answer that question. It is a matter that concerns the Valuer-General, who is, of course, involved in independent valuations of land in South Australia. The best thing I can do is undertake to make the honourable member's comments available to the Minister of Lands for transmission to the Valuer-General.

Clause passed.

Remaining clauses (2 to 6) and title passed.

Bill read a third time and passed.

ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND OTHER PURPOSES) (IMMUNITY FROM LIABILITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 492.)

The Hon. PETER DUNN: This short but important Bill has been brought about because local government has changed its mode and has now set up the Local

Government Mutual Liability Scheme, under which it can legitimately cover those employees who work for them in the case of animal and plant control boards, and people who are related with those boards, or who have been consulted by the commission. If we go back a little further, we see that clause 70 of the original Bill covered them. The Government covered those people who worked for the commission: its staff, authorised officers, etc.

However, we now have local government taking a more important role in the animal and plant control in the area. That is important, because agricultural products in Australia have very good sales overseas, mainly because they are low in pests, whether that be animal or vegetable. While they are low in pests, we do not have to use high rates of fumigants and poisons. However. we do need to use some of those things; we use fumigants for grain and horticultural material. We use poisons, for instance, 10-80 (sodium chloro-fluoroacetate), which is a by-product of the Gidji tree in Queensland. We use that on rabbits and dingoes.

The employees of these boards must take certain actions as well as applying fumigants, poisons, chemicals, etc., to stop people from introducing different things, such as wogs or whatever, that we in this State do not want. This applies also to the introduction of horticultural materials that may cause infection. Because the officers must handle those dangerous chemicals, and indeed because of the actions that they need to take, it is important that they be protected in the form of a liability cover in case something goes wrong. The local boards need protection because they give instructions to these people to carry out the cleaning up of weeds, pests or whatever. So, there is necessity for control, for the cover of the people who carry out that control, and for the cover of the people who give the instructions. Whether that comes from the State Government Authority or the local government authority, it is covered in this Bill in both cases.

So section 70 of the old Act is still retained, but there is a new component to it, namely, that the Local Government Mutual Liability Scheme will pick up those people who have been given instructions from the local government control boards, pest plant control boards, etc. The Opposition therefore has no problem in supporting this Bill and think that the Bill is advantageous to the rural sector, to the State Government, and to the Federal Government and its employees.

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

AMBULANCE SERVICES BILL

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

SUPPORTED RESIDENTIAL FACILITIES BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this Bill is to ensure that any premises providing, or offering to provide, personal care services to residents in addition to accommodation and board, are licensed and meet minimum standards of care and accommodation. Personal care services include toileting, dressing, management of medication and the handling of personal finances.

Since the mid-1980's there has been a growing emphasis on catering for the needs of frail elderly people and people with disabilities in a community setting, rather than in institutional care. For many people this entails care being provided in their own homes with the co-ordination of home based services. Until recent years, when most people thought of care, and aged care in particular, nursing homes came readily to mind. Increasingly though a range of community based services and supported residential options are becoming available.

The Government is aware of the growing number of types of supported residential facilities which offer accommodation with some form of supportive care for which no regulatory mechanisms are currently in place. The aim of this Bill is to provide safeguards for residents where personal care is offered in the different types of residential settings.

Supported residential facilities providing care at different levels to residents include premises such as nursing homes, hostels, rest homes, mental health hostels, boarding houses and guest houses. The residents of such facilities are increasingly, elderly people who are frail or persons with an intellectual, physical or psychiatric disability. Their quality of life is clearly a matter of interest to the Government, and to the community as a whole.

The Health Act 1935 has provided some protection for the well-being of residents in nursing homes and rest homes. However, over the years the Act has been seen to be limited by its focus on physical standards of accommodation, and by not adequately addressing standards related to the provision of care or quality of life of residents.

A 1988 South Australian Health Commission Review of the Needs of Disabled Persons in Boarding Houses found that the role of boarding houses has changed significantly from one which provided accommodation for an able, independent population to one which provides supported accommodation to people with varying levels of dependency. In this transition no mechanism has existed to provide and ensure a minimum standard of care for residents. The Review indicated a need for closer regulation of boarding houses to ensure a minimum standard of care for residents.

At present there are different arrangements for the licensing and regulation of facilities by Commonwealth, State and Local Governments. Since 1988 there has been a significant change in the level of Commonwealth involvement in nursing home and hostels. The Commonwealth regulates through its standards monitoring activities, the standard of facilities and quality of care in Nursing Homes and Hotels. The State regulates Nursing Homes and Rest Homes through licensing by Local Government under the provisions of the Health Act.

The Health Act has been replaced by the Public and Environmental Health Act which addresses broad public health concerns. However, the Public and Environmental Health Act has no provision for the licensing of supported residential facilities such as rest homes.

Mental Health Hostels are licensed by the Health Commission under the Mental Health Act. Some Local Councils licence boarding houses through by-laws made under the Local Government Act.

The development of the Supported Residential Facilities licensing legislation has proceeded on the basis of thorough and extensive consultation with the wide range of interests which may be affected by it.

A discussion paper on the Licensing of Supported Residential Facilities was widely distributed in the community from September-December 1989. The paper outlined current licensing arrangements across all forms of supported accommodation, and discussed options for the future. These options were:

(1) the removal of all licensing;

(2) maintenance of the status quo; or

(3) the introduction of a single piece of legislation covering all supported residential facilities.

There was overwhelming support to pursue the third option. Current controls available under the Health Act were seen to need updating to resolve duplication between State and Commonwealth monitoring requirements, and to broaden the focus to include standards of personal care as well as standards of accommodation.

A working party comprising representatives from the South Australian Health Commission, the Local Government Association of South Australia and chaired by the Commissioner for the Ageing was established to develop the details of the legislation. A Reference Group of consumer and key agency representatives was established to advise and assist the Working Party on the development of the legislation.

A draft Bill was widely distributed for community comment during the period March to end of May 1991.

As a result, sixty-five written submissions on the draft legislation were received from a broad range of industry, consumer advocacy and Local Government interests, from both metropolitan and country areas. There was widespread support for the Bill, and many of the comments received were incorporated in the legislation.

Local Government was identified by most commentators as the preferred licensing vehicle for supported residential facilities. Local Government has an existing infrastructure in place for the regulation of several types of facilities. Authorised officers with appropriate expertise are already engaged in the inspection and assessment of physical standards of these facilities. Enhancing their role to take on care standard monitoring procedures offers a practical and locally-responsive method of administration, and streamlines regulatory powers by enabling inspection of public health and personal care standards to be undertaken by a single responsible agency.

There is a need to ensure consistency in the assessment of standards and this will be achieved through:

- the capacity for individual licensing authorities to adopt a regional approach to inspection and licensing across council boundaries;
- training in assessment procedures for authorised officers;
- preparation of guidelines in order to assist with the interpretation of legislation;
- the establishment of a Supported Residential Facilities Advisory Committee to provide advice and guidance to the licensing authorities on the administration of the legislation, and a vehicle for the preparation of guidelines.

Local Government has had a significant role throughout the development of the legislation. As a member of the Working Party, Local Government has had direct involvement in developing the details of the legislation. Throughout 1991 regular consultation with Local Government representatives occurred on particular aspects of the draft Bill.

The Bill aims to safeguard the interests of residents in supported residential facilities by defining standards for personal care services, and by improving the access of residents or their representatives to information about these services, and about the terms and conditions under which they are to be provided.

The accommodation market for older people and persons with disabilities is of course growing in complexity, with new options and products offering accommodation with care constantly emerging. It is important to emphasise therefore, that the legislation provides one consolidated piece of legislation for all supported residential facilities where personal care services are offered or provided, irrespective of the chosen title of the facility or the clientele accommodated.

A licence will be required by any supported residential facility that offers or provides accommodation and personal care services to persons (other than members of the immediate family of the proprietor of the facility), for fee or reward.

Exemptions to licensing arrangements may be declared in relation to a specified agency or person, or class of person or agency, so long as this exemption does not affect the interests of residents. It is not intended to duplicate adequate inspection and monitoring procedures for facilities where these already exist.

The Working Party has recommended exemption from the legislation for Commonwealth subsidised aged care facilities on the basis that the Commonwealth extensively monitors nursing homes and hostels in terms of outcome standards for residents and a monitoring system by State and Commonwealth requirements would be duplicatory. Exemptions will also be considered for facilities accommodating people with disabilities where alternative monitoring mechanisms exist through conditions of funding or where the existence of operational procedures and principles reflect the Objects and Principles of the Bill.

As the licensing authority, Local Government will be responsible for inspecting, assessing and licensing standards related to the provision of personal care services and physical accommodation as they affect the quality of life and safety of residents in a particular facility. Where it is assessed that a prescribed offence has been committed against the Regulations, the licensing authority may place conditions on, or cancel the licence.

The licensing authority will be able to issue default notices to the proprietor where a proprietor has failed to comply with a provision of the Bill.

The licence will be issued to the proprietor of a supported residential facility whether the proprietor is the sole proprietor or a body corporate.

Disputes between a proprietor and resident will be conciliated by the responsible licensing authority. Where attempts at dispute resolution fail, both the proprietor and resident will have access to an external appeals mechanism.

The Government is keenly aware of community concern for residents who may require personal care, but who live in facilities such as boarding houses which are willing or able to provide nothing more than board and lodging. These facilities will not be required to be licensed. However, provision has been made for proprietors of both regulated and unregulated premises to notify a representative or relative or a resident, or an appropriate government agency, when the resident's care needs cannot be adequately met in the facility.

A transitional provision permits existing facilities to apply within three months of enactment of this section to be granted a licence for a period of one year. Where such a facility had been granted an exemption under another Act that exemption will continue to apply for the duration of that year.

Serviced apartments in some retirements villages offer residents a limited range of services to assist with daily living, such as the provision of meals, personal laundry, and cleaning services. Few villages in South Australia are currently offering more intensive personal care to residents at a level which would bring them within the ambit of the legislation. However, the Government recognises that with an ageing population and a growing preference amongst older people to remain living independently in the community, it is likely that market demand over the next few years will encourage administering authorities in retirement villages to extend the range of services to include personal care for their residents. As and when this occurs, villages will need to be licensed according to requirements of the Supported Residential Facilities Act.

The Bill moves the focus away from physical inspection of facilities and creates a more balanced approach to address standards related to the provision of care of residents.

The Bill updates the present system, protects the rights of residents, and resolves much of the duplication and inconsistencies between State and Commonwealth monitoring requirements.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 sets out the various definitions required for the purposes of the legislation. Particular note is made of the definition of 'personal care services', being the provision of nursing care, assistance or supervision in undertaking certain activities, the provision of direct physical assistance, the management of medication, substantial rehabilitative or developmental assistance, or assistance with personal finances. However, this definition will not encompass such things as the provision of routine advice or information, certain short-term help, or any other matter of a prescribed kind. The definition is particularly important for the purposes of the definition of 'supported residential facility', being premises at which, for monetary or other consideration, residential accommodation is provided or offered together with 'personal care services'.

Clause 4 relates to the application of the legislation. The Act will apply to facilities established before or after its commencement. However, it will not apply to educational institutions or colleges, to premises that form part of a recognised hospital or private nursing home under the South Australian Health Commission Act 1976, to facilities established under the Community Welfare Act 1972, or to premises where not more than two persons are cared for. The Minister will also be empowered to grant exemptions under the Act.

Clause 5 provides that the Act will bind the Crown.

Clause 6 sets out the objects of the legislation. These are as follows:

(a) to establish standards for the provision of personal care services in supported residential facilities in the State;

(b) to protect the rights of persons who reside in supported residential facilities;

(c) to ensure that a resident or prospective resident of a supported residential facility has ready access to information about the scope, quality and cost of care within the facility;

(d) to regulate the responsibilities of service providers in supported residential facilities;

and

(e) to ensure accountability in relation to supported residential facilities.

Clause 7 sets out various principles that are to be applied under the Act. These principles provide an important 'key-stone' to the purpose and application of the legislation and are to be applied to the administration of supported residential facilities. The principles are as follows:

(a) residents are to be entitled to high quality care, to their choice of health services, and to an informed choice in the provision of appropriate care;

(b) residents are, having regard to their needs and the type of service offered at the particular facility, entitled to receive reasonable levels of nutrition, comfort and shelter,

(c) services should be provided in a safe physical environment;

(d) residents are entitled to be treated with dignity and respect and afforded reasonable degrees of privacy;

(e) residents are entitled to independence and freedom of choice (so long as they do not infringe the rights of others);

(f) residents are entitled to manage their own affairs and to be free of exploitation;

(g) residents should be allowed freedom of speech.

Clause 8 describes the role of the Minister under the Act.

Clause 9 describes the role of councils under the Act. In particular, councils will be responsible for the administration and enforcement of the legislation in their respective areas. The Minister will be empowered to take action in relation to a council that does not fulfil its legislative responsibilities.

Clause 10 provides for licensing authorities under the Act. In most cases, the licensing authority will be the council for the area in which a particular facility is situated.

Clause 11 establishes the Supported Residential Facilities Advisory Committee.

Clause 12 provides for the appointment of a presiding member of the committee.

Clause 13 relates to the conditions of office for members of the committee.

Clause 14 provides that a member of the committee is entitled to such allowances and expenses as the Minister may determine.

Clause 15 sets out the procedures to be observed at meetings of the committee.

Clause 16 provides that a member of the committee who has an interest in a matter before the committee is disqualified from participating in the committee's consideration of the matter.

Clause 17 sets out the functions of the committee. These functions include the provision of advice on the administration of the legislation and on supported residential facilities generally, the formulation of policies, the preparation of codes and guidelines for the purposes of the Act, and the provision of information to members of the public.

Clause 18 requires the committee to prepare an annual report that is to be laid before the Parliament.

Clause 19 relates to the constitution of the Administrative Appeals Court for the purposes of this legislation. It is proposed that the court sit with assessors, who will be selected from a panel established by the Advisory Committee. A person will be eligible to be a member of the panel if he or she has extensive experience in—

(a) the provision or supervision of personal care services;

(b) acting as an advocate for people who are elderly or disabled;

(c) developing or implementing policies that relate to the control or development of supported residential facilities within the State;

or

(d) monitoring or inspecting supported residential facilities.

Clause 20 sets out various provisions that are relevant to the exercise of the jurisdiction of the court under this Act. The court will be empowered to convene a conference of the parties to proceedings under the Act if it appears that the matter can be resolved by conciliation. The court will be required to act expeditiously.

Clause 21 provides for the appointment of authorised officers by the Minister or by a council.

Clause 22 sets out the various inspectorial powers of an authorised officer under the Act.

Clause 23 will require that premises must not be used as a supported residential facility unless licensed under the Act. The proprietor of the facility will be guilty of an offence if the provision is not observed.

Clause 24 relates to the making of an application for a licence.

Clause 25 sets out the matters that a licensing authority must take into account when considering an application for a licence. These matters will include—

(a) the suitability of the applicant to be granted a licence;

(b) the suitability of the premises;

(*c*) the scope and quality of personal care services to be provided in pursuant of the licence;

(d) any relevant guideline published by the Advisory Committee;

and

(e) any matter prescribed by the regulations for the purposes of this provision.

The licensing authority should not grant a licence if it appears that the facility will not be administered in accordance with the principles set out in clause 7.

Clause 26 provides that a term of a licence will be for a term of up to two years.

Clause 27 relates to the renewal of a licence.

Clause 28 provides that a licensing authority may refuse to renew a licence or on any ground upon which a licence may be cancelled (see clause 31).

Clause 29 relates to the imposition of licensing conditions.

Clause 30 will allow a person to apply for the transfer or surrender of a licence.

Clause 31 will empower a licensing authority to act to cancel a licence in specified circumstances. These circumstances will include a breach of the Act or of a condition of a licence, a failure to administer the particular facility in accordance with the principles set out in clause 7, a failure to provide appropriate care to a resident, the fact that the holder of the licence is no longer a fit and proper person, or the fact that the premises are no longer suitable to be used as a supported residential facility. If necessary and appropriate, a licensing authority will be able to appoint a person to administer the relevant facility. Such an appointment will be for a period not exceeding six months.

Clause 32 create a right of appeal against any decision or order of a licensing authority to the Administrative Appeals Court.

Clause 33 is a transitional provision that will allow facilities that are operating at the commencement of the new legislation to obtain a licence for one year. Any exemption that was granted under other legislation will continue during that period.

Clause 34 requires that a person must be specifically appointed as the manager of a facility if the proprietor of the facility is not directly involved in the management of the facility.

Clause 35 provides for the continuation of a licence in the event of the death of the licensee.

Clause 36 will require a prescribed notice to be displayed at each licensed facility.

Clause 37 requires that a prospectus be prepared for each facility, and made available on request.

Clause 38 provides for, and regulates, the creation of a resident contract between each resident and the proprietor of a facility. A resident will be entitled to receive a statement containing prescribed information before he or she enters into the contract.

Clause 39 regulates the ability of a proprietor to terminate a resident contract. In particular, the proprietor will be required to give 28 days notice before exercising any right of termination, unless the proprietor is acting with the agreement of the resident, or under another Act or the regulations.

Clause 40 will require that a service plan be prepared for each resident. The plan will set out the services to be provided to the resident on a day-to-day basis and will be required to be reviewed on a regular basis.

Clause 41 will require the person in charge of a facility to take certain action if it appears that a resident is in need of care that is not provided at the facility.

Clause 42 is a similar provision to clause 41, but will apply to residential-only premises (defined to mean boarding-houses or lodging houses that are not required to be licensed under the Act, or premises otherwise prescribed by the regulations).

Clause 43 will empower a licensing authority to act to resolve certain disputes within a supported residential facility. The authority will, in certain circumstances, be able to make orders to resolve a dispute.

Clause 44 sets out a right of appeal to the Administrative Appeals Court against a decision or order of a licensing authority under clause 43. The Court will be able to affirm, vary or quash the relevant decision or order, make its own decision or order, or remit the matter back to the licensing authority.

Clause 45 ensures that the preceding provisions do not derogate from other civil remedies.

Clause 46 will allow a person to act as the representative of a resident for the purposes of this Act.

Clause 47 empowers a health service provider, social worker, or other approved person to enter any facility, or residential-only premises, to visit or attend on any person residing there.

Clause 48 requires the person in charge of a facility or residential-only premises to take steps to prevent a resident from causing unreasonable disturbance to other residents or to persons who live in the locality of the relevant facility or premises.

Clause 49 allows a person to complain to a licensing authority about the management of a facility or residential-only premises, or about the conduct of a resident of such a facility or premises.

Clause 50 prevents a person arranging for the Act not to apply to particular circumstances.

Clause 51 provides for the protection of confidential information acquired in the performance of official functions under the Act.

Clause 52 relates to prosecutions under the Act. A penalty for an offence against the Act initiated by a council or council officer will be payable to the council.

Clause 53 relates to continuing offences.

Clause 54 will empower an authorised officer to issue a default notice where the officer considers—

(a) that the holder of a licence, or any other person involved in the management of a supported residential facility, has contravened, or failed to comply with, a provision of this Act;

(b) that there has been a failure to administer a supported residential facility in accordance with the principles prescribed by clause 7;

(c) that the holder of a licence has contravened, or failed to comply with, a condition of the licence;

or

(d) that irregularities or difficulties have otherwise occurred in the management of a supported residential facility, or in relation to the care of any resident.

Clause 55 will allow offences prescribed by regulation, or under the regulations, to be expiated if an authorised officer considers that the issue of an expiation notice is appropriate.

Clause 56 provides for the creation of a special fund under the Act. The fund will consist of money provided by the Treasurer, and a prescribed percentage of fees and fines paid or recovered under the Act. The fund will be available for use if a proprietor defaults in making payments to an administrator appointed under the Act.

Clause 57 is the regulation-making provision. A licensing authority will he able to exempt a facility from a requirement of the regulations in appropriate cases.

Clause 58 and clause 59 set out consequential amendments to the Mental Health Act 1977 and the South Australian Health Commission Act 1976 respectively.

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

ADJOURNMENT

At 6.8 p.m. the Council adjourned until Tuesday 27 October at 2.15 p.m.