LEGISLATIVE COUNCIL

Wednesday 11 August 1993

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the committee's ninth and tenth reports.

Reports received and ninth report read.

QUESTION TIME

SCHOOL DISCIPLINE

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

Leave granted.

The Hon. R.I. LUCAS: This week the New South Wales Minister of Education, Mrs Virginia Chadwick, announced a range of new measures designed to crack down on violence within that State's schools. The measures include the expulsion, on the recommendation of a principal, of any students caught with a weapon on school premises, or at school activities conducted off school premises. Also, they include giving principals the right to refuse enrolment to a student with a known history of violence.

Among other measures included in the anti-violence package is the restriction of students' movement during school hours—students will now require the permission of a school staff member before they can leave school grounds. School gangs and gang colours will be banned in schools and any behaviour which threatens other students or teachers will be reported to the principal and the matter then reported to police for their action. Unwanted intruders, or those with no good reason for being on school property, will also be reported to police.

While the Education Department announced with some fanfare last September that it would pilot in 1993 new policies supposedly giving principals greater say in the suspension, exclusion or expulsion of students with behavioural problems, the reality is different. The problem with these so-called initiatives is that they do not give principals the power to expel the small number of students who show violent tendencies, or carry weapons that place at risk the safety of fellow students and school staff. Another problem with this Government's policy—

The Hon. C.J. Sumner: Where are you going to expel them to?

The Hon. R.I. LUCAS: Well, to the alternative learning centres, which your Government is sadly under-funding at the moment. Are there any more questions?

Another problem with this Government's policy is that the principal does not have the final decision to expel a student as that decision rests with a senior departmental bureaucrat.

Earlier this year I sought details from the Minister's office of the total number of students expelled or suspended from Government schools during the past three years. Incredibly the Minister replied that she could not provide statistics on suspensions and that there had been only one expulsion in three years, and that occurred in 1991. This amazing admission comes at the same time as the Government provided information showing there were 1 365 assaults on other students or other persons in 1992, assaults that were significant enough to be recorded in the department's accident/injury report forms. My questions to the Minister are as follows:

1. Does the Minister believe that principals should be given the power in certain defined circumstances to expel students when they are found to be in possession of weapons at school?

2. Does the Minister believe that principals should be given the right to refuse enrolments to students who have a history of violence within schools and, if not, why not?

3. Has the Minister directed that her department implement a better reporting system for collecting statistics on the number of expulsions, exclusions and suspensions each year in Government schools and, if not, why not?

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

STATE BANK

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the State Bank legal team and task force.

Leave granted.

The Hon. K.T. GRIFFIN: On 22 July this year the Attorney-General announced the formation of a high-powered legal team to examine litigation over the State Bank as well as a task force to examine the possibilities of civil litigation and criminal prosecutions. As I understand the Attorney-General's press release at the time, the legal team has the task of litigating in an effort to recover some part of the losses on behalf of taxpayers. The task force, as I understand it, is to focus on possible criminal prosecutions following the royal commissioner's final report.

Subsequent to the press release, or perhaps concurrently, it was suggested that the costs of the process would amount to about $3 million, although it is not clear whether this is to be paid by the Government or the State Bank Group. Payment, if made by the State, may not then be properly brought to account in the books of the bank, and that could have the effect of distorting its profit figures for the year in which the costs were incurred. There is no detail as to how the $3 million figure was arrived at and whether it relates to the legal team working on civil proceedings or to both the legal team and the task force.

One other curious aspect of the Attorney-General's press release is the statement that the legal team will take into account the commercial disadvantages for the sale of the bank of protracted litigation. I would suggest that that seems to be sending a signal to encourage potential defendants to litigate and to prolong the litigation. My questions to the Attorney-General are as follows:

1. Is the estimated cost of the legal team $3 million, and if it is can he indicate upon what basis that figure has been arrived at?

2. Can he indicate what is the rate of fees payable to the new royal commissioner, which I presume is not part of the $3 million, and also the rate of fees payable to the two QCs who will be both the leader and part of the legal team?

3. Is the State Government or the bank paying the costs? If the bank is not paying the costs, does the Attorney-General agree that that can have the effect of distorting the bank's

profit figures in the year in which the costs are incurred, and can he indicate, if the bank is not to pay the costs, why that is the case?

4. Are there any more comprehensive terms of reference for each of the legal team and the task force, and in respect of the legal team is there a timetable for reporting? If there is a timetable, can the Attorney-General give some indication of what that timetable may be?

The Hon. C.J. SUMNER: The $3 million referred to is the amount set aside in this year's budget to deal with the civil legal team. It was considered that that was a reasonable amount to include in the budget for this financial year. That is the only basis upon which that figure is arrived at. It was not possible to be more specific about what the costs might amount to. Obviously, it will depend on whether or not a decision is taken to pursue legal proceedings, but the $3 million which I think was mentioned in the press interview that I gave on this topic is the amount that Cabinet agreed to allocate to this task in this financial year.

The new Royal Commissioner, Mr Mansfield QC, is being paid the same rate as he was paid as counsel assisting the royal commission: that is, $1 800 a day, which is the going rate and the rate which the Hon. Mr Griffin's counsel before the royal commission was also paid. No doubt Mr Lawson, having been paid $1 800 a day for a couple of years before the royal commission, will be in a good financial position in the future, depending on what his political career turns out to be.

As to the two Queen's Counsel, at the present time, Mr Gray is on an hourly rate of $300 with a maximum of six hours per day—that is, for the period that we have at the moment of assessing any legal action that might be taken—and Ms Branson is on the going rate for Queen's Counsel of $1 800 a day.

The Hon. K.T. Griffin: So, Gray works out at the same amount.

The Hon. C.J. SUMNER: Yes, but he is not on a daily rate; he is on an hourly rate. I understand that Mr Gray will supervise the team but that it is more likely that Ms Branson will be engaged on a daily basis rather than on an hourly basis, which is Mr Gray's agreement.

The fees will be paid by the Government. The amount that has been set aside in the budget is, as I said, $3 million. The proceedings that would be taken will have to be assessed, of course, by the legal team, but it is clear that State Bank, Beneficial Finance, the Government and GAMD all have an interest in pursuing this matter. I do not think that, given the amounts involved, it will distort the profit figures of the bank to any great extent, and in any event the initial stage of this is to determine whether or not any legal proceedings can be issued. At that time, the question of who will fund those legal proceedings will have to be examined again. However, for the moment $3 million has been set aside in this financial year.

The press release said that the team would begin work in mid-August and give some indication of the prospects of success of litigation by the end of the year. So, that is the timetable. There are no additional terms of reference other than those that were set out in the press release that I issued on 22 July.

The Hon. K.T. GRIFFIN: I have a supplementary question. I take it from what the Attorney-General has said that the $3 million relates to a somewhat arbitrary assessment of what the cost may or may not be in the current financial year, but of course there is the prospect of further costs in subsequent financial years if litigation is finally pursued.

The Hon. C.J. SUMNER: I do not think anyone should put any particular significance on the amount of $3 million. When this matter was considered by Cabinet it was decided that the legal team should be established, and it was necessary in the budget for this year to allocate an amount to enable that legal team to pursue its work. As the honourable member has said, it is a somewhat arbitrary estimate because one cannot say precisely how much would be spent, but for budget purposes in this financial year $3 million was set aside.

We will have to assess how much of that is used when the legal team has completed the first part of its task. I wish to emphasise—I am sure this is the Opposition's position as well, although they seemed a bit confused when I made my statement—that I would expect the Parliament and the community to want the Government to take all possible action to ensure that legal proceedings are taken against those responsible for the losses in the State Bank if there is evidence upon which to do that.

That is what this team has been established to look at. The membership and task of the team have been fully set out in my press release, and in addition to that there is the task force that will be looking at the issue of criminal proceedings, although I should emphasise, as I did in my press release, that the decision on whether or not there should be any investigations and criminal proceedings issued in this matter will remain a matter for the appropriate authorities—either the Director of Public Prosecutions at the State level or Federal level, or the Australian Securities Commission.

STATE TRANSPORT AUTHORITY

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

Leave granted.

The Hon. K.T. Griffin: Is the STA going overseas?

The Hon. DIANA LAIDLAW: I am not too sure where the STA is going. I have been advised that Cabinet has given approval for the General Manager of the State Transport Authority plus five other officers to travel to the USA to promote software systems—the systems being called Matrics, Daisy and Pets—at an international public transport exhibition in New Orleans. I have also been told that in the past week John Brown, the General Manager, has been in New Orleans, or at least he was on Sunday.

A similar group trip was made to Sydney earlier this year which was reported to have cost the STA $250 000. Both trips are associated with the activities of a business unit known as STATIS (State Transport Authority Information Systems) which was established by the STA in 1991 to commercialise software systems developed by the STA. Incidentally, on the latest available figures STATIS recorded a substantial loss of $469 000 for the STA in 1991-92 after generating income of $178 000 and expenses of $647 000. I ask the Minister:

1. What is the proposed cost of the trip by the General Manager of the STA and others to New Orleans, including the cost of shipping and staging the software display?

2. Can she confirm that a similar trip to Sydney earlier this year cost the STA about $250 000, and will she provide me with a breakdown of the cost of this trip?

3. Were any software contracts negotiated during the trip to Sydney or since that time, and if so with whom, and what was the value of such contracts?

The Hon. BARBARA WIESE: Mr President, first let me make it quite clear that Cabinet has not approved any travel for the General Manager of the State Transport Authority and officers of the STA to travel overseas, and it would be fairly unlikely that a matter of that sort would come before Cabinet in any event.

The Hon. Diana Laidlaw: Have you approved the travel?

The Hon. BARBARA WIESE: I have not been asked to approve any travel for such an overseas visit.

The Hon. Diana Laidlaw: So they are going, anyway.

The PRESIDENT: Order!

The Hon. Diana Laidlaw: So they are going, anyway.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: So, whether or not there are plans to undertake such a promotional visit I am not sure. It certainly has not been brought to my attention as far as I am aware, and I would expect that such a proposal would be brought to my attention if it was a serious and intended proposal.

What I can say about the work that is being undertaken by the State Transport Authority with respect to the development of various computer technologies is that the work is being undertaken and developed in a very acceptable way. The work that is being undertaken with respect to some of these projects is in fact leading the pace not only within Australia but internationally. If the honourable member has been following media reports in recent months, she will be aware that I recently announced that at least two contracts have been secured by the STA for the Matrics technology that has been developed in-house within the STA, and it is hoped that those contracts, particularly the one which was successfully tendered for in Edinburgh, Scotland, will lead to the sale of the technology to other public transport authorities within the United Kingdom. Discussions are also taking place with public transport authorities in parts of Europe, which we are hopeful will also lead to contracts in the near future.

So, the investment that has been put into the development of technology in the STA in recent years not only has been extremely useful in improving the delivery of service for South Australians through the State Transport Authority but has already led to the sale of such technology to a couple of public transport authorities in Australia and several overseas. As I said, we are hoping that not only Matrics but Pets and other software packages will also be taken up by other public transport authorities. Discussions are taking place with bodies in South-East Asia, as well as those discussions to which I referred that are taking place in Europe.

If it is true that the cost of the promotion that took place in Sydney was $250 000, as the honourable member suggested, then I can say to her that my knowledge of the amount of existing contracts that have been secured thus far for Matrics alone have well and truly covered the investment that was made in putting on a display at the Sydney exhibition, and I am very hopeful that the exposure that these new technologies were given at the Sydney congress will lead to many more sales which will well and truly justify any promotional expenditure that has been undertaken in the past in bringing these new technologies to the attention of other public transport system operators.

It should be said that the congress that was held in Sydney some months ago was an international congress for public transport organisations from around the world. There were organisations represented from in excess of 70 nations worldwide. It was the first time that such a congress had been held in Australia, and I understand possibly even in the southern hemisphere. So, Australia had the opportunity—an unprecedented opportunity—to present any new wares that it had to offer the public transport services of the world.

It was a unique opportunity, and we will never have an opportunity to present our wares in such a situation at such a relatively low cost. When I say 'relatively low cost', I refer to the cost that would be involved in mounting anything anywhere near similar in any congress that might be held in, for example, Europe, where most of these things take place. So, it was certainly worthwhile having a presentation of new technologies at the UITP in Sydney. As I say, a number of leads have come from that, and discussions have been initiated with public transport authorities, and I am hoping that that will lead to new contracts in time.

As to the question of cost of the Sydney congress and the other matters relating to costing that were requested by the honourable member, I do not have that information with me, but I will seek a report on those things and bring back a reply on those as soon as I am able to.

HEALTH COMMISSION

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Health a question about chaos in enterprise agreements in the Health Commission.

Leave granted.

The Hon. I. GILFILLAN: I recently received several letters from full-time occupational therapists working with Southern Domiciliary and Rehabilitation Service at Parkholme, detailing what can only be described as an act of gross managerial incompetence by executives within the State Health Commission. One person wrote to me on behalf of 28 other therapists who were informed on 19 July that their application for reclassification to a higher grade had been successful and that they were to be back-paid from October 1991.

However, just 15 days after receiving written notification, their reclassification was withdrawn, much to the anger and disappointment, understandably, of the 29 therapists involved. I have a copy of a letter from the Executive Director of Human Resources in the Health Commission, Mr Paul Case, sent to the Chief Executive Officer of Southern Domiciliary Care, Ms Cathy Caust, on 19 July this year. I am advised that Mr Case has been in this current position for approximately four years, has looked at approximately 9 000 reclassifications, and this is the first time that an approval, having been granted, has later been withdrawn. His letter, in part, states:

> The following classifications have been approved, effective from 1.10.91. . . You are requested to advise the applicants, in writing, of the above approved classifications.

On 3 August, however, the Executive Director of Metropolitan Health Services (Mr Ray Blight) wrote to Ms Caust stating in part:

> I am writing to advise that approval for the classification of Case Coordinator is withdrawn pending further discussion between your service and executive management of Metropolitan Health Services Division and the Human Services Division.

There appears to be total confusion operating at the higher levels within the Health Commission management, and the anger and distrust of that management is spreading rapidly through the ranks of the staff over the incompetent and poor handling of this particular award restructuring process.

A letter that I just received today from another of those concerned said, regarding Mr Case, Director of the Human Resource Division:

> It is our understanding that the Director of the Human Resource Division is the person with the delegated authority to make decisions concerning classification issues. We are puzzled about how it is possible for this decision, once made and confirmed in writing, can be subsequently withdrawn. I believe this to be highly unjust and ask you to draw this matter to the attention of the Minister of Health requesting that he support the original approval of the classification at PSO2.

It is held by the staff who have contacted me that the Health Commission decision was reversed on the grounds of ruthless cost cutting at the expense of fairness and honesty and the treatment of highly valued commission staff. Those people had been involved for an extensive period of time in discussions, interviews, and submissions with a review panel for this position, and it is very difficult to see any other plausible explanation for this sudden and cruel aboutface.

I ask the Minister:

1. Does the Minister agree that the handling of this issue by Health Commission management has been callous and totally unacceptable?

2. Will the Minister give an undertaking to investigate this incident, in particular reassessing the validity of the reclassification, and report back to Parliament as a matter of urgency?

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

BENEFICIAL FINANCE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about Beneficial Finance, which is a wholly owned subsidiary of the State Bank.

Leave granted.

The Hon. J.F. STEFANI: On 25 March 1993 I raised some questions about Beneficial Finance and its involvement with Benpac Ltd and Investpac Australia Ltd and the Luxcar lease and tax evasion schemes. In his reply the Treasurer has confirmed that Beneficial Finance has settled with the Australian Taxation Office the tax liabilities which arose from its involvement with Luxcar's tax scam and which were a result of a global tax audit of Beneficial Finance.

Last week, by an order of the Supreme Court of Victoria, which dissolved the limited partnership of Benpac Ltd and Investpac Australia Ltd, notice was given to all creditors to lodge their formal proof of debt. In view of Beneficial Finance's previous involvement with these companies, my questions are:

1. Will the Treasurer advise Parliament of the amount of tax paid to the Australian Taxation Office by Beneficial Finance as a result of the global tax audit and further advise the separate amount of tax paid by Beneficial Finance as a result of its involvement with the Luxcar leasing tax scam?

2. Will the Treasurer advise the amount, if any, which Beneficial Finance might be entitled to claim as a creditor from Benpac Ltd, Investpac Australia Ltd or any other partners in the group?

3. Can the Treasurer confirm if any future liability will be incurred by the State Bank as a result of the involvement which Beneficial Finance had with the promotion and possible underwriting of the resource guarantees involving the debt factoring and tax evasion scam promoted by Benpac Ltd?

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

RURAL SCHOOLS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Education, Employment and Training, some questions about rural schools.

Leave granted.

The Hon. M.J. ELLIOTT: I have been contacted by the Loxton High School council, which is concerned that country students continue to be adversely affected by current education policy. Of particular concern to the school council's secretary, Mrs Bernice Mattner, is the 10-year placement scheme, which is currently under review by the Education Department. In a letter from Mrs Mattner, she says this scheme does not take into account the needs of country areas where communities give value to teachers who work in the town in which they live. Her letter reads, in part:

> The potential of teachers who live in nearby towns to contribute and support local activities is severely curtailed because of time constraints. We believe that we have lost many teachers to the city as a direct result of this limited placement lottery.

She goes on to say:

> Similarly, employable teachers who have given many years of valuable contract service to the local community appear to be discriminated against in gaining permanent employment, because they are not mobile due to family and property commitments.

Mr President, I know from personal experience teaching in the Riverland that you find that many of these country schools have a core of teachers who stay on for a long time, whilst there is a very high turnover of many of the others. Whilst in the city it is a problem that many teachers do not move on, the big problem in country areas is that too many continue to move on. This is the very problem that Mrs Mattner is alluding to and they are concerned that some very important teachers are being lost at this stage because of the 10 year scheme.

Mrs Mattner has also raised concerns about the inability of the placement process to attract teachers to fill vacancies at her school in some subjects. She says that this problem has been further exacerbated by the lack of officers in the department to deal with staffing matters. The school council is also concerned that rural poverty is an issue which has not been addressed by the department in its allocation of resources. The council feels that, while the rural recession is hitting the Riverland hard—something of which we are all aware—the area's schools may be disadvantaged because the percentage of students enrolled as school card holders is not as high as some metropolitan areas, which means that they may take away funds from country areas.

Mrs Mattner says that many local families in need work hard to make ends meet and resist enrolling on the school card. In the country it is a matter of pride that causes many people not to do so. There is a direct concern that in areas of resourcing, particularly in personnel, a social justice index should not be the main criteria for decision making on resources, as it disadvantages some country schools such as Loxton. I ask the Minister the following questions:

1. Will the Minister take special consideration of the particular needs of rural schools in the Education Department's ongoing consultations about current staffing policy?

2. Will the Minister investigate the effect of rural poverty on the educational needs of our country students and whether or not the index they now use in relation to the number of school card students accurately reflects the economic situation in an area?

3. Will she review whether a social justice index should be the main criterion for decision making on resource issues?

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

INFLUENZA

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Transport Development, representing the Minister of Health, a question about the HIB (haemophilus influenza type B) immunisation for children.

Leave granted.

The Hon. BERNICE PFITZNER: It is with relief that I note that the Federal Government has finally decided to extend the funding of the HIB immunisation program from 0-6 month old infants to 0-5 year old children, after much delay. This delay was caused by the Federal Health Minister awaiting the decision of an American authority, in spite of the fact that the two Australian authorities, as well as that particular American authority, had already made the statement 18 months ago that an immunisation program should include the whole of the age range from 0-5 years and not only those 0-6 months old—as the Federal Government initially proposed.

However, I understand that this change of heart has caused confusion with the parents and even the health care workers. This confusion stems from, first, there being three types of the vaccine: the 'prohibit' vaccine for the older children, 18 months and older; the 'HIB titar' for younger and older age groups 0-5; and the 'pedrax' vaccine for younger and older age groups and also more effective for Aboriginal children. The confusion also stems from there having to be a re-tendering process for the newer type of vaccine.

It must be emphasised that, if the program is to be effective, the HIB disease can be totally eradicated. However, confusion does not help promote effectiveness. Further, this confusion could have been avoided had the Federal Health Minister made the initial decision of providing the HIB immunisation program for all children five years and under. My questions to the Minister are:

1. The last tendering process took nearly six months. As the States are awaiting vaccine supplies, how long will tendering for this new vaccine take?

2. How will the Federal and State Governments handle the three types of vaccine? For example, will the Federal Government go for the three types for the three groups of children, or will the Federal Government use one vaccine (admittedly more expensive) that covers all the vulnerable children?

3. Do the States, with their different mix of population, have a say in the choice of the vaccine that they can use?

4. With the increase of funding for this program, it has been put to me that immunisation for the measles, mumps and rubella program will be cut: is this correct?

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

SUPERANNUATION

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about superannuation.

Leave granted.

The Hon. PETER DUNN: As you, Mr President, and many others in this Chamber would know—then again the Government members may not know because they have not ever employed anybody—on 14 August this year the Federal Government has deemed that a compulsory 3 per cent superannuation levy will be paid by employers to cover part of the employees' retirement.

This scheme is praised by some and cursed by others, including some employees. It appears that the cursing is becoming louder on the basis that the workers are getting very little return from the investment of 3 per cent of their salary, so little in fact that they are becoming quite cross. The case that I have had brought to my attention involves a farmhand who at shearing time shed-hands away from the property on which he is employed and as a result is paid by a number of farmers at the completion of their shearing operations. Just recently, this farmhand received from his insurance company a reconciliation of the funds invested by his numerous employers over the past 12 months. Much to his surprise most of the money, admittedly relatively small amounts, had been used in administration. He rang to see whether I could help him. Perhaps the Treasurer can assist me in answering him.

The amount invested on the employee's behalf was $61.98. The administration costs were $61.64. In other words, he gets 34¢ for 12 months' work. That was all that was left for his future. Is this the normal return for itinerant workers and can they expect that in the future? If so, will the Minister lobby his Federal counterpart to see that a better return can be provided for those employees?

The Hon. C.J. SUMNER: I do not think it is appropriate for this matter to go to the Treasurer. I suggest that the honourable member take it up with his Federal colleagues.

ADELAIDE INTERNATIONAL AIRPORT

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General as Leader of the Government a question about the Adelaide Airport.

Leave granted.

The Hon. L.H. DAVIS: At the recent Labor Party State convention a Mr Paul Noack, Vehicle Division Secretary of the powerful Automotive Metals and Engineering Union, argued that a new international airport should in time replace the Adelaide International Airport. Mr Noack described the Adelaide International Airport as doomed because it was not linked to rail services and was restricted by curfews. Mr Noack argued that the cost of developing an airport at Gillman could be at least partially funded by the sale of the West Beach airport land for housing. The Arthur D. Little report emphasises the importance of an airport upgrade.

My question to the Attorney-General as the Leader of the Government is: does he as a Government Minister and Leader of the Government in this Council agree with the views that Mr Noack expressed at the convention?

The Hon. BARBARA WIESE: I think it is probably appropriate that I respond to this question on behalf of the Government, as I have some responsibilities in the area of aviation under the Transport Development portfolio. The

Government does not share Mr Noack's view that the Gillman site should become the site for further airport development and does not support the view that the West Beach airport should be sold to raise funds for redevelopment of the Gillman site as the Adelaide International Airport.

However, the Government does share the concern that Mr Noack has expressed that we should be improving our airport facilities in Adelaide. As members would be aware, the State Government has been working very closely with the Federal Airports Corporation over a number of years to develop proposals that will lead to an upgrade of the facilities at Adelaide Airport and has also, through the commissioning of the A.D. Little study and other consultancies, identified what improvements ought to take place over the next few years.

That work is ongoing and the lobbying required to bring about a change in attitude on the part of the Federal Airports Corporation with respect to its investment policies and possibly also a change of approach on the part of the Federal Government is proceeding. We hope that in future years—and not too far away—we will be able to achieve some of those improvements to the Adelaide Airport that we all agree are essential if we are to develop our tourism industry and also our export industries.

ROAD CLOSURES

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Housing, Urban Development and Local Government Relations, a question about road closures.

Leave granted.

The Hon. J.C. IRWIN: Some part of this question has some relevance to the Minister for the Arts and Cultural Heritage's responsibilities, but the main part of the question really relates to local government relations and the Local Government Act. I refer to a notice placed in last Wednesday's *Advertiser* by the City of Happy Valley and the City of Noarlunga. The notice states:

> Temporary Road Closure
>
> Notice is hereby given that the above councils have, pursuant to the provisions of sections 41 and 359 of the Local Government Act as amended, authorised the exclusion of vehicles generally from portion of the public road between sections 716 and 717 Hundred of Willunga and known as Elliott Road, from the McLaren Vale-Kangarilla Road to the road running eastward through the said section 717; and also the said road through section 717, during the hours of 5.30 a.m. and 6.30 a.m. on Thursday, 5 August 1993 [the day after this notice was published], to enable the SA Film Corporation to undertake filming.

The notice is signed by the City Managers—J.D. Christie and C.A.C. Catt. Section 41 of the Act is the power to delegate, and I do not know how a council can delegate a power when a majority of its members is required to make a decision.

Section 359 is the temporary control of prohibition of traffic or closure of streets and roads. The resolution of the council and/or the use of the delegated power must be published in the newspaper and in the *Gazette*. It was published in the newspaper, as I have just indicated, on the day before the closure. Presumably it was published in the *Gazette* the day after. The closure was set for 5.30 a.m., so I do not imagine that too many people in South Australia would have got the *Gazette* by that time in the morning if they were going to look up a closure notice. Will the Minister advise whether the notice in last Wednesday's *Advertiser* was in order and does the Minister believe the public has had proper notice of this temporary road closure?

The Hon. ANNE LEVY: The two specific questions that the honourable member has asked do, of course, relate to the Minister of Housing, Urban Development and Local Government Relations, as they refer to procedures undertaken under the Local Government Act. I will certainly refer them to the Minister for him to provide a response.

I can point out that the filming to which the honourable member refers relates to the production of the movie *The Battlers*, which is currently being undertaken by the South Australian Film Corporation. I can inform the honourable member that everyone who is associated with the movie is full of praise for the enormous cooperation and assistance they are getting from everyone in South Australia with regard to the filming of this movie.

The production requires many and varied locations, and the film crew is moving around many different places in South Australia, many of them in the Adelaide Hills and adjacent areas, although some are further afield. When I visited the set one day everyone stressed to me the great cooperation and assistance they were getting. They mentioned specifically local government, and stated that the local councils in the areas where they were filming were doing their utmost to help with the production.

Assistance such as the provision and lending of equipment was being provided in all sorts of ways. With any queries they had, the locals were helpful. They were full of praise for the cooperation they were getting; so much so that they stressed to me—and I refer particularly to some of the people who are not South Australians but who are from interstate—that they felt that this was very much to South Australia's advantage as a film location and that we should indicate to interstate people who were interested in seeking locations for film production that South Australia was an admirable place in which to make films not only because of the wide variety of scenery and locations that can be used, most within close distance from Adelaide, but particularly because of the friendliness and helpfulness of everyone they had encountered. They felt that this was a great plus for South Australia on which we should try to capitalise in film production. With regard to the two local government questions, I will refer those to my colleague in another place and bring back a reply.

PRIMARY INDUSTRIES DEPARTMENT

The Hon. J.F. STEFANI: I seek leave to make an explanation before asking the Minister representing the Minister of Primary Industries a question about Government resources.

Leave granted.

The Hon. J.F. STEFANI: I have been informed that recently the Government renewed its lease arrangement for the office space occupied in the Grenfell Centre by the Department of Primary Industries. Members would be well aware of the plight of our farming community and the hardships they have endured both as a consequence of Government policy and through the effects of rural causes such as the recent mice plague.

I have been advised that part of the policy which the Department of Primary Industries was implementing to assist the rural people was to locate senior staff from each section of the department in regional areas. Will the Minister advise the Parliament:

1. What is the annual cost of the lease of the office space in the Grenfell Centre?

2. For how long is the renewed period of the lease?

3. When will the first senior staff placement occur in a regional centre? and

4. How many senior staff members are likely to be deployed, and in what areas will placement occur?

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

CABINET SOLIDARITY

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about Cabinet solidarity and the Cabinet handbook.

Leave granted.

The Hon. R.I. LUCAS: Last week the Premier said in another place that 'the Minister of Primary Industries knows the rules of Cabinet solidarity and actively works within that.' The Minister of Primary Industries, as the candidate for Napier, is circulating a parliamentary report to what he hopes will be his future constituents in that electorate. In that parliamentary report the Minister of Primary Industries announces that 'as an Independent member I am not tied to any strict Party line. I am not the captive of any Labor faction, being free to make up my mind on issues in the best interests of local people'.

Does the Attorney-General believe that the principle of Cabinet solidarity and other similar guidelines outlined in the Cabinet handbook are consistent with the statement by the Minister of Primary Industries that he is free to make up his mind on issues in the best interests of local people?

The Hon. C.J. SUMNER: They are consistent in the sense that he is an Independent candidate running in Napier, and obviously he is free to take up issues as he sees fit. Whether or not he chooses to is a matter for him. However, as I have previously indicated and as he and Mr Evans have indicated before, he also accepts that they are bound in those cases where Cabinet makes a decision in relation to a matter by the principles of Cabinet solidarity.

The Hon. R.I. LUCAS: I ask a supplementary question. Is the Attorney-General indicating, therefore, that in an instance where Cabinet has a collective view on a particular issue his understanding is that the Minister of Primary Industries is not free to make up his own mind in the interests of local people?

The Hon. C.J. SUMNER: I have answered the question.

TRANSIT SQUAD

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

Leave granted.

The Hon. DIANA LAIDLAW: Since November last year—nine months ago—when the Minister introduced two Bills to address the issue of STA security the Minister has consistently said that the fate of the Transit Squad is under discussion. In the meantime, there has been increasing concern about safety on STA trains. A couple who came to see me earlier this week were furious because they were told they had to wait 15 minutes for a train while the graffiti paint on the seats dried. They were quite upset about this because they missed connections and therefore missed appointments.

It is clear that this problem of vandalism and graffiti is not being satisfactorily addressed. In the meantime, the Minister seems to be having some difficulties with unions or some other trouble in sorting out what she is going to do with the security arrangements and, in particular, the fate of the Transit Squad. The Minister advised me the last time I asked this question in May that she was having discussions on this matter. Can she now indicate when this matter will be resolved or whether she is still pursuing the matter and when she can advise that the Transit Squad will be transferred to the responsibility of the Police Commissioner?

The Hon. BARBARA WIESE: The discussions to which I referred in May have continued. I understand that final resolution of all issues is imminent. I expect that the agreed position will soon become publicly known. However, to suggest that any change in arrangements with respect to the administration of the Transit Squad will eradicate vandalism and graffiti—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —is to wish for miracles; it would not matter what arrangements were put in place for the administration of the Transit Squad, because there will never be sufficient numbers of people travelling on the 10 000 connections that we run every day to enable us completely to eradicate vandalism and graffiti.

However, I am pleased to report that improved policing of our buses and trains and STA property in recent times has led to a significant reduction in the amount of money spent during the past financial year on cleaning up graffiti. I think also that many passengers would report that some of the disturbances that were taking place on trains, in particular since the Transit Squad decided—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —to raise its profile and become more prevalent in the system has led to an improvement. So if the honourable member is patient—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —she will find that we will have in place a system that has the support and endorsement of all relevant parties, and the improved work of the Transit Squad can be improved even further.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS: I move:

That the first annual report for the Environment, Resources and Development Committee for the period February 1992 to June 1993 be noted.

Members interjecting:

The PRESIDENT: Order! The honourable member will come to order.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! I suggest that the honourable member continue the discussion outside the Chamber if she wants to do that. The Hon. Mr Roberts has the floor.

The Hon. T.G. ROBERTS: Thank you Mr President. In speaking to the noting of the report, I would like to make a few brief comments. The first annual report that we tabled some time ago has now been operating for 16 months, and that report contains an overview of this year's activities together with an assessment of this year's achievements. I understand that the Hon. Mr Dunn is going to supplement the report that I make to the Legislative Council.

I think members would agree that the committee itself has worked reasonably well on some of the difficult issues that we have had to canvass. The committee's report on the redevelopment of the Waite Campus, the University of Adelaide and the Mount Lofty Ranges development included two reports on procedures for supplementary development plans and an individual plan for Craigburn. The Craigburn report and matters implicated therein is still reverberating around inside the political arena, and hopefully an outcome will be settled shortly. There is certainly a lot of community interest in that report.

The issues that arose particularly out of the Craigburn and the Mount Lofty Ranges report were the problems that the committee was having in dealing with supplementary development reports and their processes, and I raised before in noting the previous report that it is very difficult for the committee to come to terms with a lot of the problems associated with supplementary development reports, because in a lot of cases that we are trying to address in applying some principles to planning, and particularly in relation to the environment, the damage has already been done.

In relation to the principles that we would like to apply in a big picture assessment of planning, development and the environment, we are constantly making compromises to take into account many of the issues that have prevented us from pulling what would be regarded as our best position on those three issues. So, it is a matter of trying to assist all those people who are trying to bring about outcomes that have favourable outlooks in relation to planning, development and the environment.

The committee is currently looking at the problems associated with the Port Bonython oil spill. We went over to Geelong to have a look at some of the equipment that AMOSC (the Australian Marine Oil Spill Council) has situated in Geelong, as they are the national centre for the southern Australian region.

The Hon. G. Weatherill interjecting:

The Hon. T.G. ROBERTS: The Hon. Mr Weatherill said it was a junket. It was nothing of the sort. It was a one day trip where we were up very early in the morning, worked right through until 7 o'clock at night by memory, had a quick meal, were into bed and had an early flight in the morning back to Adelaide. I think that those who attended the inspection were impressed by the equipment storage program that AMOSC had, but some concerns were being expressed by members as to the ability of AMOSC to get the equipment out and in place in difficult stormy circumstances, particularly in relation to some of South Australia's waters.

There is an acknowledgment by everybody in the industry that you can have millions and millions of dollars worth of equipment readily placed for clean-ups but, if the conditions do not suit the types of equipment you have, then you will have difficulty in containment and clean-up. The general presentations given by AMOSC and the Geelong Harbor Authority were very helpful to the committee. We did learn a lot, and hopefully the recommendations we make inside our committee will help South Australia put together a program for prevention, clean-up, containment, etc.

The committee is still addressing the legal issues of responsibility, and in taking evidence from the oil companies and from marine and harbor authorities, the legal aspects associated with responsibility in some cases mitigate against good, sound, effective clean-up procedures. However, where there has been cooperative assistance of an informal nature over a period we are now evolving to a more formalised structure where responsibility and the steps that need to be taken are much clearer, because it is very difficult to integrate all the services that are required in a clean-up process without some people looking at their legal responsibilities and, hence, what their financial responsibilities will be in association with their legal responsibilities.

I think Australia, and South Australia particularly, has developed an informal process that has served us quite well, and that the Port Bonython oil spill was probably as good a signal that you would require to make sure that we have our act together for a spill that may be much larger in the future. I think it was a good sounding board and a good warning for us to get everything in place before any major disaster occurs. It alerted people to the inefficiencies that are inherent in the whole process, and it sharpened the focus of a lot of people associated with prevention, assessment, clean-up and monitoring to improve their services in all those areas, and it has allowed all those people in those areas to maintain contact with each other so that the informal evolutionary process of clean-up can occur more effectively.

We visited the Port Stanvac site and spoke to the people down there. They were very helpful and mindful of some of the problems that could exist from a potential spill, particularly in bunkering oil down at Port Stanvac. I think that the process they have in place down there was as efficient and effective as one could possibly wish for but, again, the effectiveness of any organisation to contain, clean up and monitor potential oil spills is determined basically by the weather patterns and the size and nature of the potential tragedy.

The waters of South Australia are very sensitive; the gulfs are very sensitive, and the livelihoods of many people and a lot of beaches potentially could be damaged, so it is important that the clean-up process is able to be swung into action as quickly as possible using State and Federal resources to achieve that. I know that there is a lot of cooperation between the State bodies, and hopefully now that AMOSC has been around for some time there will be further cooperation between State and Federal bodies. It is one area, I must say, that leads me to believe that Federal control or having one controlling body over large oil spills is the way to go, and that the confusion between States' boundaries, borders and the Federal jurisdiction needs to be looked at closely.

The committee's reports were received quite favourably by many of the community groups and organisations that we spoke to and took evidence from. I think they understood the recommendations that we were able to make in a bipartisan way on the Mount Lofty Ranges development plan and the Craigburn report. The community groups and organisations felt that in many cases the bureaucratic machinery which put a lot of the programs into place needed to be mellowed a bit by contact from local communities, and we were getting a lot of information basically that many community groups and organisations could not tap into or have their voices heard in

the preparation of many of the recommendations. They saw that the committee allowed for that forum. They allowed them to place on record their views about the development of recommendations for those plans as they affected them in their local community.

Politically, more people want to be empowered at a local level. They want to move around central bureaucratic control in a lot of areas and in many cases they really do not now how to influence the bureaucratic nature of decision making at State and Federal levels. Some of the Parliamentary committees allow them that freedom and that process. As long as the committee's investigations and recommendations are listened to by the departments and by the Ministers, that faith in the committees being able to represent their points of view will remain. But if the committee's recommendations are continually ignored and/or ridiculed (I am not saying that the committee's recommendations or their assessments are right every time) and if the committee loses the confidence of people in the community, then the committee will have lost a function it can serve usefully.

The relationships that we have been able to build up with the agencies in the time that we have been set up are quite healthy. There was a bit of a stand-off in the early stages between the committee and some of the departmental officers, but once the committee's and the departments' roles were assessed and confidence was built up by people in the agencies and by members themselves in assuming their new roles in the committee's operating procedure a lot of that was broken down and a better relationship is now starting to develop.

One of the problems that we have is that we are grossly understaffed, and I do make an apology to the people who are awaiting the outcomes of the Port MacDonnell breakwater and the Southend erosion problem. We have not had time because of the priorities that are set by Parliament; we must consider the parliamentary referrals before we can consider the referrals from the committee or from local groups and organisations. In a lot of cases we are just taking a snapshot.

The problems tend to be handled by the department while the committee is actually making its assessment. Programs are already being put in place to try to slow down the Southend erosion problem, and the Port MacDonnell breakwater problem has been further exacerbated by a couple of wild storms down there. So, by the time we come to make our report, the process that we go through will have taken a new life, unless we continually keep on taking more evidence.

All in all, I think the process that we are going through, the makeup of the new committee structure and the new roles that we have are starting to work. However, we certainly need more support within the committees, particularly a research officer. We need to have a research officer working in conjunction with our other two principal officers on particular referrals, which would allow us to complete some of our reports in a better time frame. It is a matter not of building up a bureaucracy around a committee but of the committee being able to function as an arm of Parliament more efficiently and more appropriately and of our getting in our reports in a time frame that is appropriate to those people out in the community who are wanting the committee to act as a watchdog or a mellowing influence on those departments. So, I hope that the application for a research officer gets a favourable answer from the Government, and I thank the hard working secretary that we have for the work that she does in putting together the reports—

The Hon. M.J. Elliott: Our research officer, I think she is.

The Hon. T.G. ROBERTS: Yes—and doing all the work that could be expected of probably two people in some cases. Anthony does a very good job as well in coordinating all our witnesses and in making all the preparatory requirements for public meetings. Many of the public meetings have been handled quite successfully, both internally and those held out in the community. Probably the largest one we had was the Goolwa public meeting on the Hindmarsh Island bridge—

The Hon. Diana Laidlaw: It's not a very popular bridge, is it?

The Hon. T.G. ROBERTS: Well, it has its supporters and its detractors. Of the 300 people at the public meeting, probably 80 per cent were opposed to the building of the bridge, for all sorts of reasons. But the building of the bridge had become a secondary issue in relation to many other issues that were floating around inside the agendas that were carried by many of the speakers in opposing the development program that had been put in place on the island. There was a multitude of submissions that you could not separate out from the development project. It did not appear to me to make too much difference about whether people got over there on another ferry or whether the increased activity came from another bridge. The real issue was a development plan for the island so that there is an environmental plan that protects the island from over-development and that all the people in the Goolwa-Hindmarsh area have some say in being able to put that development plan together. That is all happening at the moment, but as I said we have not brought down our report on Hindmarsh Island; that should be done in the near future. That is one of the outstanding matters that this report that I am tabling now does not cover because it has not been finalised.

The Hon. M.J. ELLIOTT: I rise to speak in support of the tabling of this document. It is most unfortunate that this committee has spent a great deal of its time reacting to issues rather than being in a position to be proactive, to set the scene. When we first started we hoped to look at a number of issues, amongst which was the future development of the Riverland, and do it in a very holistic fashion: we were going to look at the economic development, the environment and the social infrastructure. We have still not got to that, yet it was one of the first things we decided to look at when the committee was formed.

Unfortunately, we have been looking at issues that have caused great heat in the community and having to react to those. I must say that in almost all of those cases, they are a consequence of bad handling by bureaucrats, particularly in what is now the Office of Planning and Urban Development (OPUD), although some of the errors were committed under the old Department of Environment and Planning. It is quite clear that we have a community now that expects to be involved in decision making and that we have bureaucrats who are not particularly keen in involving the citizens of this State in the making of decisions or, if they do, it is in a very tokenistic fashion. There has been a tendency, I believe, for these people to ride roughshod over citizens.

I suppose the two most glaring examples were in relation to the Mt Lofty Ranges management plan and the SDP associated with that and the Craigburn Farm SDP. Both of those were issues that in fact the department had been involved in over a long period of time. In the first one there had been consultation but it appears that it was largely ignored. In relation to Craigburn Farm, the consultation had

been virtually zero. In fact, the development plan came out without even the responsible local government knowing it was on the way. That form of behaviour is totally unacceptable.

The Waite development is another issue which showed bureaucrats at their very worst—in this case it was the bureaucrats of the Department of Agriculture, rather than the bureaucrats from the planning section of E&P and later OPUD. They set about putting an office development at Waite which was clearly contrary to the local development plan. They thought they could get away with it, simply because the Government does not have to comply with development plans. Once again, we had bureaucrats there who were clearly willing to ride roughshod over the interests of the local people and over the wishes of local government.

It is my belief that, if Government and its bureaucrats wish to make decisions which are contrary to the will of the local people, and I do not mean just action groups, but contrary to what local government itself wants, that should not be done by ministerial discretion, but if there is a greater State good to be achieved it should be ratified by this Parliament. That is not the way things are currently structured, but I believe our legislation should be set up in such a way that planning is a local issue unless there is an overriding State interest, and that State interest should be expressed via Parliament.

It was not my intention to spend a great deal of time speaking to this report. I must say that, as an individual member of this committee, I have been pleased with how the first 12 months have gone in terms of the high level of cooperation there has been. The decision making has not been along Party lines. In fact, almost everything we have done has been achieved by consensus. Government members have been willing to question at times what has been done by Government, and I must say we can only expect these sorts of committees to work when there is that level of goodwill operating within the committee.

I do look forward to the day when the committee can be more proactive and forward looking in issues, that we could pick up, as we first proposed, future development options for the Riverland, something which is long overdue, something in which I think a committee such as ours could play a vitally important role. Other issues such as salinisation of the Upper South-East, I suspect we will see it after it has been decided, after there has been a ruckus, whereas it is the sort of issue in which we should have been involved very early. I think we will be involved in that issue at the wrong end, and be involved with people who are involved in all sorts of rearguard actions, for whatever reason.

The committee I think is still defining its role. I understand that we have a role defined by legislation, but the way in which the committee works is something which is in part defined by tradition. We are still establishing tradition and still defining our role in that sense and I think we are still finding our way. Certainly, one question that has been raised in the committee is whether we are spending too much time on development plans. I for one believe that development plans need to come past our committee, but I also believe that almost all of them should not require the committee to spend any real amount of time on them. That has been largely the reality, anyway.

I would say that probably 95 per cent or more of the development plans that have come before the committee have had no issues of great significance that have required our attention and they have passed us by. What is disturbing is how many have had significant problems within them that have required our attention. In each case, our attention was warranted. We have, I believe, made constructive recommendations and the grave disappointment is that the same people who in many cases were responsible for the mess, some of the senior bureaucrats, chose to again ignore advice.

It is interesting that we cannot claim this committee to be all knowing about these things, but if you take the Mt Lofty Ranges development plan as an example, the recommendations made by our committee were welcomed by local government, conservation groups and farming groups, and when that cross-section welcomes them and for a long time the Government bureaucrats decide to ignore them, you would really wonder just which planet some of the senior bureaucrats are coming from. We will continue to bring them to task and I hope eventually that they will learn that this committee is serious, that we will not be messed around with, and that we will stand up for what we think is right and continue to play a constructive role. I support the tabling of the document.

The Hon. PETER DUNN secured the adjournment of the debate.

PETROL

The Hon. DIANA LAIDLAW: I move:

That this Council—

1. supports a differential in the price of leaded and unleaded petrol as a means to encourage more motorists to use unleaded petrol in their vehicles and to reduce both lead emissions and airborne lead levels;

2. deplores the Federal Government's proposal to impose an extra tax on leaded petrol recognising that such a move will disadvantage people who are least able to afford the tax or who cannot afford to replace their older vehicles, namely young people, the unemployed, low income earners, struggling small business and farmers and people living in outer metropolitan areas who do not enjoy access to a strong network of public transport services; and

3. urges the Commonwealth Government to pursue alternative environmental strategies which also take account of social justice issues, for example reducing the excise on unleaded petrol or cutting the sales tax on the purchase of new cars and do not simply amount to another revenue raising tax.

This motion supports a differential in the price of leaded and unleaded petrol as a means to encourage more motorists to use unleaded petrol in their vehicles and to reduce both lead emissions and airborne lead levels. We also must deplore the Federal Government's proposal to impose an extra tax on leaded petrol.

I am then urging that the Commonwealth Government pursue alternative environmental strategies that would take account of social justice issues and at the same time take account of economic considerations. Those strategies would include reducing the excise on unleaded petrol or cutting the sales tax on the purchase of new cars.

The motion overall addresses the issue of lead in petrol and the environmental health concerns about air-borne lead levels. The motion is prompted by a Federal Government proposal to increase the excise on leaded petrol in the forthcoming Federal Budget following a meeting convened late last month by the Federal Minister for the Environment, Sport and Territories, the Hon. Ros Kelly, to canvass options available to reduce the use of leaded petrol. It appears that the Government is currently considering an increase of 2¢ in the price of leaded petrol. Earlier proposals suggested that the additional tax would be 5¢. Whether it is 2¢ or 5¢, or anywhere in between, I would argue that the proposal is totally unacceptable.

I, together with my Liberal Party colleagues at State and Federal level, am keen to push for a marked reduction in the atmospheric pollution arising from fuel emissions and from lead. Indeed, I recall that it was during the Fraser years in the 1970s that action was first taken nationally to introduce emission controls. So it can be seen quite clearly that the Liberal Party has a long-standing commitment and a credible record on this issue of atmospheric pollution.

The concern with lead is essentially that it is not biodegradable. Once released into the atmosphere it settles and stays, softening into ever finer particles, which can be readily ingested by young children. Epidemiological studies have linked blood lead levels to the congenitive development of children. While lead does not maim the body, it can be fatal in massive doses, but this is the exception. At lower levels, as is more commonly recorded, lead does impair the central nervous system and, as a consequence, can have impact on the intelligence and IQ of children in particular. Currently it is estimated that up to half of Australia's children may exceed the internationally accepted level for concern about lead levels, and world-wide, I understand, the official triggers of concern about lead levels are being revised downwards.

Mr President, there is, however, reason to be cautious about any tendency to be alarmist about the issue of lead and environmental health. Certainly, my reading of the issue identifies that there is little consensus among health experts about the real risks. Dr Ian Calder, the Director of Environmental Health with the South Australian Health Commission, is also the co-author of a major national review of lead exposure in Australia—and in fact it is the only national and comprehensive report to date. Dr Calder concedes that there are major deficiencies in our data base in respect to lead levels because of different methodologies. His colleague, Mr Edward Maynard, is a co-author of this study. He is even more outspoken in his concern about any drama in relation to lead levels and he says there are 'lots more issues in public health that are bigger than the lead issue'.

Mr Maynard's view is shared by senior policy makers in the Victorian Health Department. They, too, maintain that there are more important issues to worry about, and it is this reason, in terms of environmental health priorities, that helps to explain why State Governments at the conference convened by the Hon. Mrs Kelly in Canberra late last month were reluctant to agree to her proposal that the States and Territories levy an additional impost upon leaded petrol. Indeed, some of the State and Territory Governments maintained—as the Liberal Party does in this State and federally—that there are alternative and far fairer strategies that can be adopted to realise the same end, namely, the reduction in lead levels in fuel and also in the atmosphere. These alternative strategies, I would argue strongly, are equally as environmentally sound as the Government's proposal but are not so regressive in social justice or economic terms. I want to elaborate on that in a few minutes.

It is important to note, Mr President, that unleaded petrol was introduced in Australia in 1985 when it became mandatory for all new cars in Australia to have compatible engines. This move was designed to eliminate lead from automobile exhaust gases and to cut other pollutants. Originally it was forecast that unleaded petrol would become the dominant transport fuel by 1993—this year. It is a fact, however, that around Australia unleaded petrol accounts for just over 40 per cent of total petrol sales and a little more than 50 per cent of petrol sales in major capital cities. So it can be seen quite clearly that within the original time frame of 10 years, ending this year, we as a nation have not been very successful in replacing leaded petrol with unleaded petrol.

As a result of advice I have received from the Australian Institute of Petroleum it is apparent that industry experts now believe that they will cease production of leaded petrol in Australian refineries by the year 2002, and that is also a matter that I would like to address a little later. So we are way off the date at this time and certainly well over the mark as originally set for completely phasing out leaded petrol and replacing all sales with unleaded fuel. From speaking with motoring organisations, petroleum companies and environmentalists on this matter, I gather the main reason is that the recession is the reason why we have been so slow in adopting unleaded fuel in Australia. The recession certainly has substantially slowed the sale of new cars in Australia. I am not sure how many members are aware of this, but it is interesting that the car population in Australia is now the oldest in the Western world, and the average life of Australian cars is 16 years.

The Hon. M.J. Elliott: Built to last.

The Hon. DIANA LAIDLAW: Well, they are built to last, and there certainly is a lot of affection among some people for the vehicles that they have had for many years, but that does come with other problems, which we will discuss in a moment. So the average life of Australian vehicles is about 16 years, which is well above the life of cars in OECD countries.

Again, there will be many explanations for the high average age of Australian vehicles. The high cost of purchasing such a vehicle is one issue and that was most recently debated during the last federal election in relation to the issue of tariffs. There is, of course, the high sales tax that the Federal Government also levies.

I would also argue very strongly that there has been a lack of promotion and effort to educate Australian motorists about the benefits of moving to unleaded petrol and also a lack of promotion and explanation for those who own cars built pre-1985. There are in fact in Australia today 130 types of cars, motorcycles and commercial vehicles manufactured pre-1985 which could be using unleaded petrol at present but which are not doing so. That is almost one-third of all vehicles manufactured pre-1985. So, immediately we could be doing a great deal more in educating the Australian population to make that conversion.

The slowness in both the sale of new cars and in people understanding the situation and converting pre-1985 vehicles to the use of unleaded petrol has led to this current debate of how to speed up the change. I know the Australian Institute of Petroleum in correspondence with the Federal Government has argued for a differential, as has the Federal Chamber of Automotive Industries. The Australian Institute of Petroleum argued for a 2¢ levy and the FCAI argued for a 5¢ levy or differential.

It is important to note in this context that already motorists in Australia pay 26.57¢ per litre irrespective of whether they buy leaded or unleaded petrol. In promoting these differentials, these organisations are suggesting that for the first time we should have a price incentive in favour of unleaded petrol. I would agree that that is a very positive and long overdue exercise. In fact, it would be very similar to the exercise that we have in South Australia in respect of high alcohol and low alcohol beer. Certainly, there is a differential in licence fees in favour of low alcohol beer in South Australia and in other States and we should have the same incentive in terms of fuel. Arguing for—

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: That is another argument.

The Hon. M.J. Elliott: I am serious.

The Hon. DIANA LAIDLAW: I know you are serious. Arguing for a differential does not mean that the excise of 26.75¢ per litre for leaded fuel should be increased by 1¢, 2¢, 3¢, 4¢ or 5¢. I would argue very strongly that if the Government were genuinely interested in environmental measures, and also social justice and economic measures, it would not be imposing an extra tax on top of the fuel excise that it reaps already: it would be lowering the excise on unleaded fuel.

Of course, there is also another incentive to encourage people to purchase new cars and that would be to reduce the sales tax from 15 per cent as currently applies. The irony of this whole saga is that in the Federal Budget the Government is not only proposing to increase the excise on leaded fuel but is also proposing to increase the sales tax on new vehicles from 15 to 20 per cent. The two measures in the one budget would suggest that the members of the Government are not talking amongst themselves, finding out what one arm of Government is doing and what the other proposes. But, at the same time, it may be that the Federal Government—and this has been suggested to me by many sources—is simply only interested in revenue raising measures and it believes that one way to make such revenue raising measures more conducive is to paint them as environmentally sound. It thinks the electorate will swallow that or find it more palatable.

I would argue that if the Government is really 'green' and really concerned about environmental health and also if it had any regard for its social justice principles, which it endlessly expounds, and really wanted to do something to help the economy in all States and Territories, but particularly economies such as South Australia's which is so distant from markets, it would not be increasing the price of fuel at this time. Certainly, it would not be aiming to increase the sales tax on new vehicles.

I believe that with the differential, one that aims to reduce the excise on unleaded fuel, the Government can make a positive move in environmental, health and social justice terms and assist the general business sector in this State. However, if the Government increases the excise on leaded fuel, we will see that the people who can least afford such an impost will be hardest hit. They are the people who are unemployed at present, people on low incomes, people who are struggling in small business, farmers and people who are living in outer metropolitan areas who do not enjoy access to a strong network of public transport services. That is certainly the case for people living in the outer metropolitan area of Adelaide.

I would argue that the Federal Government's tax is discriminatory and that it lacks any understanding of the disadvantage that people are facing in outer metropolitan areas and any understanding of the pressures that low income people are experiencing. If it understood those pressures it would not be suggesting exacerbating financial hardship within families—families who cannot afford to purchase a new car, because they will find that even more expensive after the Federal Budget because of the increase in sales tax. They will also find it increasingly difficult to operate their existing car because of the increase in the excise on leaded fuel.

Certainly, there are other ways to promote the use of unleaded petrol. A differential would be one way to do that. Those examples have been proved in countries overseas, particularly the UK and Europe. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

EVIDENCE (PROTECTION OF CONFIDENTIAL INFORMATION) AMENDMENT BILL

The Hon. I. GILFILLAN obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

The Hon. I. GILFILLAN: I move:

That this Bill be now read a second time.

I will briefly describe the content and intent of the Bill and spend some time on an analysis of what are commonly called shield laws for the protection of journalists from disclosing their sources in other nations such as the UK, the USA and New Zealand. I indicate at this stage that I will look for the indulgence of the Council to seek leave to conclude my remarks because, as members would realise, although it may appear to be a simple measure, it is wide in its ramifications in relation to the whole conduct of the press, freedom of speech and the investigation and prosecution of offences. So, it is far from a simple matter.

The Bill that I have introduced quite simply seeks to protect a journalist from being cited for contempt of court for refusing to disclose the identity of a person who has provided that journalist with confidential material. Under clause 3, the Bill seeks to insert after section 25 of the principal Act (the Evidence Act 1929):

> If a professional journalist receives information or documentary material in confidence, the journalist cannot be required, in proceedings before a court, to breach the confidence by disclosing the source of the information, or producing the documentary material, to the court. In this section 'professional journalist' means a person engaged in collecting information for publication in the print or electronic news media.

There are interpretations and understandings of those words that can be drawn out in further debate and possibly in Committee. The issue of when one becomes a professional journalist is probably involved with people identified as preparing material that is or is intended to be published. The question of whether the protection should go to just the identification of the source or the documentary material that was received by the source is an open one. Certainly, in the Bill I have introduced that material itself is protected.

I put to the Council that the best justification for the journalist to be able to protect the material is the scope for identifying the source from the original material itself. I say quite simply that my aim in the Bill is to protect the source of information from public identification. This measure is so timely because in recent years (since 1990) we have had virtually a rash of journalists who have been cited for contempt. In 1990 Tony Barrass was gaoled and fined; in 1992 Joe Budd was gaoled; and in 1993 Chris Nicholls has been gaoled, David Hellaby fined, John Synnott is facing contempt proceedings and Debra Cornwall has been found guilty of contempt. There have also been raids on newspaper offices and on the offices of the ABC around the country.

In quite simple terms, if one looks at the situation as it currently applies—that is, that a journalist is susceptible to imprisonment for not disclosing a source or, in fact, does reveal the source—these are the likely consequences. If imprisonment is suffered, the State pays for the imprisonment and the source is still not disclosed. If the source is revealed the deterrent is such that important information will not come forward from people who have it but who wish to remain

anonymous. So, I put to the Council that it is a lose/lose situation for the public of South Australia in this instance and for the public of Australia in general terms that we still have this liability for gaoling a journalist who does not reveal his or her source.

At any time when I have discussed or been questioned on this matter I have never hidden the fact that I believe that the media itself requires independent surveillance. I am not satisfied that either the Press Council or the Media, Entertainment and Arts Alliance, an actors' association and the union that covers journalists, is competent to assess an act in the best interests of the people of Australia or South Australia when dealing with aberrations by the media of their ethics in principle. It is indisputable that the media in today's society plays a role so dominant that it can no longer argue that it ought not to be under the purview of the Parliaments of this nation. It, more than any other entity, is responsible for the knowledge and opinions that are held by the people of this country and, therefore, it has a professional obligation and duty to comply with the gravity of this task.

I believe that many in this profession and industry hold those high ideals, but we cannot leave it to the goodwill of the organisations themselves, nor do I believe we can leave it to be assessed by organisations such as the Press Council and the relevant unions which comprise in the main people who are involved and engaged in the media industry itself. So, I have instructed Parliamentary Counsel to draft a separate Bill that will provide an entity with statutory authority to supervise the operations of the media. The draft Bill is entitled the Media (Regulation) Bill 1993, and I intend to consult with interested parties and to introduce this Bill into this Parliament as soon as I can complete those consultations. If I am successful in that it will certainly be before the end of this session, and I hope it will be shortly after the Estimates Committees sit in September. I may need to introduce the Bill prior to that so that members can have the chance to consider it through the month of September.

I intend to take some time to look at certain aspects of shield legislation, as I said before, and to pick the arguments for and against certain variations to my particular shield law. I am indebted for much of this material to Professor David Flint, the Dean of the Faculty of Law and Legal Practice at the University of Technology in Sydney.

He is also the Chairman of the Press Council, and he has spent some time looking at and studying this particular matter of protective legislation for sources to the media. In the UK section 10 of the Contempt of Court Act 1981 relates directly to the matter with which I deal in my Bill. It provides:

> No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

As honourable members will note, there are qualifications there, and it is those qualifications that I argue virtually discount the value of section 10 as a meaningful protection to journalists. The Contempt of Court Act 1981 in the UK began with the Phillimore committee report in 1974. One of the main objects of the Act was to bring English law into line with the interpretation of Article 10 of the European Convention on Human Rights. The effect of the section is:

> . . . to recognise and establish that in the interests of a full and effective press it is in the public interest that a journalist should be entitled to protect his sources, unless some overriding public interest requires him to reveal them. The section is so cast that a journalist is *prime facie* entitled to refuse to reveal his source, and a court may make no order that has the effect of compelling him to do so, unless the party seeking disclosure has established that it is necessary under one of the four needs of public interest identification in the section.

Professor C.J. Miller, writing soon after its enactment, observed that although the press welcomed the provision it was doubtful whether it would have much practical significance. The savings on national security, disorder and crime were, he said, fairly specific, but that relating to the 'interests of justice' was much more open ended, and no doubt would continue to require disclosure on the facts of such cases as *British Steel Corporation v. Granada Television Limited 1981*.

So, that is spelling out the fears that I have that some of these qualifications are so wide that they cancel out the original intention of protection for the journalist. I have some other comments on the UK section 10, where disclosure may be ordered. These are cases where disclosure was said to be necessary in the interests of national security or for the prevention of disorder or crime. In *Secretary of State for Defence v. Guardian Newspapers Limited 1985*, an order for disclosure was requested on the grounds that it was necessary in 'the interests of national security'. In 1983 Sarah Tisdall had obtained a copy of a document—a minute marked 'Secret'. It was a communication from the Secretary of State for Defence to the Prime Minister. It revealed the intention of the UK and US Governments to bring cruise missiles into England, and to locate them at Greenham Common. She left a copy of the document anonymously with the *Guardian*. The newspaper published the minute in full. Twelve days later the Crown demanded its return. The document was marked in such a way that its return could assist in identifying the informant.

It was common ground that the document itself was not of military value, although it may have caused political embarrassment. In the application for an order for disclosure the Crown merely alleged the fact that a document marked 'Secret' found its way into the possession of a national newspaper was of gravest importance to the continued maintenance of national security. It was also alleged that the leak represented a threat to relations between the UK and its allies, who could not be expected to continue to entrust Her Majesty's Government with secret information, and that the identity of the informant had to be established in order that national security be preserved.

In an appeal from the Court of Appeal, the House of Lords agreed that the risk to national security lay in the possibility that whoever leaked the document might do so again. There were dissenting judgments, but that was the one that prevailed.

The other exception that has been considered is where disclosure is necessary for the 'prevention of crime'. Does this mean the prevention of a specific crime only? Thus, were a journalist to know that a specific crime was to take place, say, a bank robbery, the section might compel disclosure of the source in that case. In the case of Jeremy Warner in 1988 the House of Lords upheld an order for disclosure where it was held to be necessary for the prevention of crime generally.

Jeremy Warner, a financial journalist, had written articles in the *Times* and the *Independent* in which he had accurately forecast the result of inquiries by Government agencies into takeover bids. Government inspectors believed that the articles were based on information leaked by official sources. They alleged that there existed a ring of people involved in

insider trading using information from an official source. They believed that the source was the one who directly or indirectly supplied Mr Warner with his information. The inspectors had no evidence to suggest that Mr Warner was involved as a member of the ring, or involved in insider trading. They believed that his evidence, as a disinterested person, would be crucial to their investigations.

Mr Warner's counsel argued that the words 'prevention of crime' were limited to a situation in which the identification of the source would allow steps to be taken to prevent the commission of a particular identifiable crime or crimes. The evidence tendered was not sufficient to show that the identification of Mr Warner's source was necessary to prevent some future act of insider trading taking place.

However, a broader approach to the issue of the prevention of crime was adopted, and that led to an order for disclosure being made. Lord Griffiths observed:

> The phrase 'prevention of crime' carries to my mind very different overtones from 'prevention of a crime' or even 'prevention of crimes'. There are frequent articles and programs in the media on the prevention of crime. The subject on these occasions is discussed from many points of view, including the social background in which crime breeds, detection, deterrence, retribution, punishment, rehabilitation and so forth. The prevention of crime in this broad sense is a matter of public and vital interest to any civilised society. . . I am satisfied that Parliament was using the phrase in its wider, and I think, natural meaning.

What then would be the advantage for journalists in adopting section 10 in Australia? There would seem to be some advantage in that its protection would extend beyond interlocutory and pre-trial applications. On the other hand, given the wide interpretation adopted by the British courts to the phrase 'interests of justice' as well as the phrase 'prevention of crime' this legislation might not restrain requirements for disclosure during a fishing expedition before an inquisitorial body, such as the ICAC as we have in New South Wales. Further, the balancing exercise in the requirement of disclosure under the four heads of public policy provided for three additional grounds of disclosure, although those cases, which could be brought under the other heads, may well also fall under the head which is found both at common law, and in the section 'necessary in the interests of justice'.

I confess to some form of personal dilemma in this matter because, as a strong proponent of an ICAC in South Australia, I can see enormous advantage in the tracking down and eventual prosecution in corruption or organised crime situations that the requirement for information may at times be paramount, and it may be in direct conflict with the degree of confidentiality that I am promoting in this Bill. It is going to be a fine line where two desirable goals will be from time to time in conflict. That does not give me any excuse for not addressing both of them.

So, the question is: would the adoption of section 10 in the UK Act be a satisfactory solution for Australia? While Lord Scarman had stated in 1981 that the legislation would 'ameliorate the law relating to contempt so that the public right to be informed is not impeded or obstructed', Lord Hailsham disagreed, and said:

> What are the interests of justice? I suggest they are as long as the judge's foot. What does my noble friend (Lord Morris) think he is achieving by this, except a mishmash of muddled thinking? Clearly the interests of justice will demand in a defamation case that the source of information should be disclosed. The journalist might be protected in a defamation case if malice is in issue. The interests of justice may well demand disclosures in a copyright case when a publisher is asked: Who gave you this manuscript? It may be demanded in a trade secrets case. What is thought is being achieved by this curious amendment?

I can but agree. If that is the form that is promoted by others who are looking for shield laws, I think it would backfire on us. If the section were adopted in this country, it is doubtful it would have resulted in any different decisions to those that occurred in the recent cases concerning disclosure that I cited when opening my second reading explanation. Where disclosure has been required it has been found to be necessary in the interests of justice. It is precisely that test which is the difficulty.

While accepting that national security and the prevention of disorder and crime are compelling public interests, Yvonne Cripps proposed an amendment of the section to delete the words 'interests of justice'. In so far as such interests do not coincide with interests in national security and the prevention of disorder and crime, they are, she says, too vague to be permitted to abrogate a specific statutory immunity from attempts to discover sources. Relying on the criticism by Lord Hailsham and the fact that this phrase was not included in the original Bill, she suggests that the necessary corrective surgery to the section could be accomplished by this simple amendment of removing the words 'interests of justice'.

If, however, there was a strong view that the reference to 'interests of justice' should be retained to incorporate the existing balancing exercise, the effect of the adoption of the English legislation in Australia would seem to be: first, there would be a desirable clarification of the possibly different considerations relevant to the ordering of disclosure in pre-trial applications and in interlocutory prosecutions in defamation; second, the balancing exercise would be extended to all stages of litigation; third, the balancing exercise could be weighted more in favour of disclosure by the addition of other tests not available at common law, that is, those relating to national security interests and the prevention of crime and disorder; fourth, the extraordinary powers of inquisitorial bodies such as ICAC or other bodies vested with inquisitorial power (royal commissions, obviously) and of Parliament would be subject to little, if any, change. The introduction of section 10 in Australia would not have improved the result for the journalist in any of the recent cases where he or she has been found guilty of contempt.

So, it is quite clear that I have no enthusiasm for any move to amend my Bill or to introduce legislation which embraces the English legislation, in particular section 10. Another proposal that has been put forward is the New Zealand shield law, the Evidence Amendment Act (No. 2) 1980, which provides:

> Discretion of court to excuse witness from giving any particular evidence:
>
> (1) In any proceedings before any court, the court may, in its discretion, excuse any witness (including a party) from answering any question or producing any document that he would otherwise be compellable to answer or produce, on the ground that to supply the information or produce the document would be a breach by the witness of a confidence that, having regard to the special relationship existing between him and the person from whom he obtained the information or document and to the matters specified in subsection (2) of this section—

which I am about to read—

> the witness should not be compelled to breach.

Sounds great! So far so good. It continues:

> (2) In deciding any application for the exercise of its discretion under subsection (1), the court shall consider whether or not the public interest in having the evidence disclosed to court

is outweighed, in the particular case, by the public interests in the preservation of confidences between persons and the relative positions of the confidant and the witness and the encouragement of free communication between such persons, having regard to the following matters:

(a) the likely significance of the evidence to the resolution of the issues to be decided in the proceedings;
(b) the nature of the confidence and of the special relationship between the confidant and the witness;
(c) the likely effect of the disclosure on the confidant or any other person.

The New Zealand legislation has three more clauses, as follows:

(3) An application to the court for the exercise of its discretion under subsection (1) of this section may be made by any party to the proceeding, or by the witness concerned, at any time before the commencement of the hearing of the proceeding or at the hearing.
(4) Nothing in subsection (1) of this section shall derogate from any other privilege or from any discretion vested in the court by any other provision of this Act or of any other enactment or rule of law.
(5) In this section, 'court' includes:
(a) any tribunal or authority constituted by or under any Act and having the power to compel the attendance of witnesses; and
(b) any other person acting judicially.

The New Zealand legislation covers not only journalists but all confidences. It prescribes a balancing exercise. In this, the court is directed to consider whether the public interest in disclosure is outweighed by the public interest in the preservation of the confidence. In other words, it still remains in the hands of the court to be the sole arbiter as to whether the journalist should be forced to disclose his or her sources—and this is the issue I am concerned about.

The first public interest is not defined. Moreover, subsection 31(4) of that Act provides that the balancing exercise shall not derogate, *inter alia*, from any other rule of law. While the newspaper rule is described as a rule of practice and not a rule of law, the policy considerations on which it is based would seem identical to those which have guided the courts in Australia in the exercise of the discretion in applications of pre-trial disclosure. The provision has been considered by the New Zealand courts but not in relation to, nor of relevance to, the protection of journalists' confidential sources. It would seem likely, however, that any application of the balancing exercise would differ little from that in the UK.

So, I am not particularly excited by what is currently in place in New Zealand, and the argument I am putting is that it offers very little real protection to a journalist in guaranteeing confidentiality to his or her source. It is considered that, whenever a plaintiff were left without an effective remedy, disclosure would seem to be required. 'Interests of justice' is, as Lord Hailsham suggests, a term capable of so many interpretations as to leave the law uncertain. This, and the likelihood that it would in no way restrain the broad powers of inquisitorial bodies, it is submitted, would be the disadvantage in any adoption of the New Zealand provision.

The Australian Press Council did inform me of measures that it would support, and I think it is important that this Parliament is aware of those. The Australian Press Council has proposed to Governments on a number of occasions the introduction of a preferably uniform shield law as well as one relating to searches and seizures. This material has been sent to me from the Press Council. It has proposed that a confidential communication between a journalist and a source, in principle, be subject to limited protection unless:

(a) it is waived by the source,
(b) it is made to facilitate the perpetration of a crime (that is not one relating to official secrets legislation),
(c) the journalist has reasonable cause to believe the source of information clearly misguided him or her for reasons of economic, political or personal gain, or
(d) naming the source is absolutely necessary to establish the innocence of a person charged with a crime.

If honourable members had picked them up, these points actually are justifications for a journalist to reveal his or her source voluntarily. They are not the justification for a court to insist that a journalist reveal the source of his or her information. That, to me, is not in question. I have no problem with supporting these arguments put up by the Press Council for a journalist to be released from any moral commitment he or she may feel in breaching that confidence on a voluntary basis.

The council, I am advised, has argued that much of the American experience at the US Federal level could be beneficially incorporated into the legislation. The Press Council proposes an adaptation of the American test generally applied (absent more protective state legislation), requiring the applicant who wishes to insist that a journalist reveal the source of information to:

1. Show that there is probable cause to believe that the journalist has information that is clearly relevant to a specific violation of the criminal law, not being a violation arising under 'official secrecy' legislation.

2. Demonstrate that the information sought cannot be obtained by alternative means less destructive of freedom of speech and of the press.

3. Demonstrate a compelling and overriding interest in the information.

This incorporates two principal variations on the United States test. Civil actions and violations of the law in relation to official secrecy legislation have been removed from the first branch of the test for the following reasons. The council advises me that there are distinct differences between the US Constitutional protection and therefore it leads us in Australia to have different needs for protective legislation than the US. The absence of draconian official secrecy legislation in the US and also the presence of a constitutional guarantee protecting free speech and the press demonstrates that a robust society can exist without the need for criminal sanctions on the unauthorised flow of information which is being seen as information owned by the public to which they are entitled.

The Press Council has argued that, given the width of legislation about official secrets, the first exception would be meaningless in many cases unless such technical violation were excluded. The reason for excluding civil actions is that in the US where disclosure has been available in civil actions, these have mainly been libel actions against the press where the generous public figure defence is balanced by the requirement of disclosure, contrary to Australia where we do not have the public figure defence and where the media are able to be much more boisterous in approaching so-called public figures and still be free from the risk of defamation actions.

In Australia, actions for defamation and injurious falsehood have not been modified by a public figure defence, which ensures that any debate of matters of public interest are constitutionally protected. The counterweight for this defence in the US is a concession in favour of disclosure which is seen as necessary to prevent public figure plaintiffs to make their case. In the absence of a ruling by the High Court that

actions by public figures in defamation must be similarly modified by the implied freedom of political communication, there seems no corresponding need for disclosure of journalists' confidential sources in civil actions in Australia.

As a result of incidents which occurred in Australia in 1992 and 1993 involving raids of media offices and other premises to search for and seize documents, the Press Council has told me that they made a submission to the authorities on the confidentiality of journalists' sources in relation to such searches and seizures. Certainly I am sympathetic to that aspect. Whether it would be covered by my Bill, I am yet to satisfactorily determine. I rather doubt it.

The council argued that the purpose of the power to search for and seize materials which law enforcement agencies and statutory corporations may have is ancillary to the investigation and solving of serious crime or corruption. On the basis of this proposition, it then submitted that there was need to draw a demarcation between the power to require the production of documents and the right of the public to be informed. The council argued that the power to search media premises, and to seize documents, should be limited by legislation. I do not intend to move into that area. I only read this into my second reading contribution so there is a wider understanding of the background.

The council perceived a tendency in any organisation to seek to control the outflow of information from and about it in a favourable light, and Governments of the day are no exception to that. Thus information, it argues, is sometimes released selectively. Selective releases, for example, can be off the record. Releases can include the leaking of information to selected sources for differing reasons, including the testing of public opinion.

The council argues that the keeping of confidential sources, whether official or not—and I underline official, because I do not believe that debate in this State to date has looked at the wide range of circumstances where confidential sources do occur, and the council has identified in this the so-called official confidential sources—is an essential aspect of reporting the news. Such sources may include whistleblowers, citizens of conscience whose exposure can have adverse consequences to the individual, as well as systemic consequences.

The exposure of one individual source in the council's view may have a chilling effect on the free flow of information much of which the public is morally entitled to know. I personally very emphatically endorse that last observation. I think that is where the real value of my Bill stands. It is not a question of individuals being embarrassed or pressured. It is a question of allowing the flow of information to the best advantage of the public of South Australia.

In the United States, as with Australian journalists, American journalists generally seek to protect their sources as a matter of conscience. However, some newspapers in recent years have tightened their practice in relation to reliance on confidential sources. A major reason for change was as a result of what is known as the Janet Cooke affair, when the *Washington Post* returned its 1982 Pulitzer Prize because of the fabrication of a story about Jimmy, an eight-year-old heroin addict, by the journalist (Janet Cooke) working for the *Washington Post*. That paper now requires that at least one editor should know the identity of any source relied upon in an article.

Some newspapers require a discussion between the journalist and the editor before any commitment to a source is entered into, and in some instances an absolute guarantee of confidentiality may not be given. This could be seen as editorial prudence. The paper of course does not have to publish if it has any misgivings about the credentials of a confidential source; but it is interesting to compare this with the situation which we have been viewing in South Australia and comments which I have had from other people who have been concerned about this, that the responsible principled media are as concerned about a journalist abusing the confidentiality as is this Parliament and the public and others who are concerned.

The people who have approached me with the most energetic opposition to my move have been those who have been frightened that the media itself will abuse this confidentiality and there will be pressures for irresponsible, inaccurate and at times blatantly wrong information being sheeted home to confidential sources. It is interesting to see that the Americans view this from a different perspective. Until recently, American courts interpreted the common law as according no special protection for journalists' confidential sources. After the gaoling of a journalist who refused to divulge a source to a grand jury investigation of allegations of corruption, Maryland, a State in the US, introduced in 1986 the first US shield law protecting sources. To quote from that Maryland Act in 1990 contained in *The Mass Media and the Law*:

> No person engaged in, connected with, or employed on a newspaper shall be compelled to disclose in any legal proceeding or trial or before any committee of the Legislature or elsewhere, the source of any news or information procured or obtained by him for and published in the newspaper on and in which he is engaged, connected with or employed.

There are now, I understand, 26 American States which have their own specific shield laws. One which I have found most specific and appealing has been that of Alabama which I will quote in a little while. The first amendment privilege in the US, of course, must be taken into consideration when we look at comparisons between the Australian scene and the American scene.

The privilege as applied by the courts extends to freelance journalists, including writers and photographers. It does not extend to private persons who gather information but who later decide to use it for publication. The test appears to provide greater protection in civil cases where the journalist or the media is not a defendant.

In a case *Baker v FI Investment*, 1973, the US Court of Appeals for the Second Circuit refused to order a journalist to disclose the name of a source who had described how he had scared whites living near black neighbourhoods to sell their homes to him at low prices. Blacks subsequently sued the real estate agents, claiming excessive prices had been paid. The court noted that, at least in civil cases, the public interest in protecting confidential sources will outweigh the interest in disclosing them. Moreover, the plaintiffs had not demonstrated that they had investigated alternative sources in an attempt to obtain the required information.

However, where the journalist or press itself is being sued for libel, different considerations apply. This flows from the public figure defence, a constitutionally based defence having its origins in the celebrated decision in the *New York Times v Sullivan*, 1964, case. Under this decision, to succeed in libel, public officials (later extended to public figures) must prove actual malice, notwithstanding that the plaintiff can demonstrate the defamatory material is untrue. 'Malice' means either that the defendant knew the material was untrue, or published it with reckless disregard for the truth. This

heavy burden of proof is justified in the light of the First Amendment considerations, essentially that robust debate on public issues is constitutionally protected and obviously, in my opinion, desirable.

The consequences of this defence can be a close examination during the proceedings of the process of news gathering and publication. This extends to journalists at times being required to testify as to thought processes, editorial conversations and also in relation to confidential sources, where this may be the only way the plaintiff may be able to establish the newspaper knew the story was false or that it was reckless to rely on the source. At the same time the plaintiff would first have to establish the essence of a successful suit—publication, falsity (the onus being on the plaintiff) and then that what was referred to in America as the *Branzburg* test was satisfied, and that the evidence could not be obtained by alternative means less destructive of First Amendment values.

As a result of these decisions, some courts have faced the reality that gaoling a journalist does not help a libel plaintiff, at least in disclosing a source. The vindictive plaintiff, may, of course, obtain satisfaction from the finding of contempt and the punishment of a journalist, but this should not be the purpose. I certainly feel that we are at risk in this country, with the current law, of having what could be described as vindictive punishment or pressure in pushing for punishment of a journalist who does not disclose his source of information, which has proved to be embarrassing or awkward to powerful individuals or governments.

As I said earlier, Mr President, the Alabama State legislation has aspects which I do find worthy of support and, to a degree, supportive of my Bill. In that particular Act in 1986—I cannot give the title of the Act; I do not seem to have it here—it states:

> No person engaged in, connected with or employed on any newspaper, radio broadcasting or television station—

and members will note that this is much wider than the earlier State legislation which just dealt with the media press—

> while engaged in a news gathering capacity, shall be compelled to disclose in any legal proceeding on trial, before any court or before a grand jury of any court, or before the presiding officers of any tribunal or his agent or agents, or before any committee of that legislature or elsewhere the sources of any information procured or obtained by law and published in the newspaper, broadcast by any broadcasting station, or televised by any television station on which he is engaged, connected or employed.

So it is clear that there is a substantial body of international thought and legislation confronting this very vexed question as to whether journalists should be liable for contempt of court for refusing to disclose their source. I believe that there are other issues, which I would like to spell out a little more clearly in a brief succeeding contribution to my second reading explanation, and for that reason I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ROAD TRAFFIC (BREATH ANALYSIS) AMENDMENT BILL

The Hon. Anne Levy, for the **Hon. BARBARA WIESE (Minister of Transport Development)**, obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The purpose of this Bill is to remove the requirement that the police facilitate the taking of a sample of a driver's blood at a hospital or surgery when so requested to do so by the driver following a positive breath analysis. Section 47f of the Road Traffic Act currently enables a person who has been subjected to a breath analysis by a member of the police force to request a blood sample to be taken by a medical practitioner for analysis. About one in four drivers requests a blood test following a reading on a breath analysing instrument that exceeds the prescribed limit. Based on past figures, it is estimated that approximately 2 000 drivers would request a blood test annually. When a request is made for the blood sample at a random breath testing (RBT) station, the RBT site will usually be forced to close down as it will lack the personnel to be maintained. Two police officers are required to escort the driver to a hospital or surgery where the blood sample can be taken. The police must do all things reasonably necessary to facilitate the taking of the sample. The sample must be taken within one hour of the request being made and at a place not more than 10 km distant. This procedure wastes police resources, is costly to the police (approximately $130 000 per annum) and to the driver who must pay for the sample to be taken and for his or her portion of blood to be analysed. In the past hospitals have not always been reimbursed by the driver. If a hospital is not in the vicinity, it is sometimes difficult to find a doctor who is willing to take a sample of blood.

In April 1987, the Police Department began gradually to introduce the infrared-based Dräger Alcotest Model 7110 instrument. As a check on the performance of the infrared instruments, all blood tests which had been taken within 60 minutes of positive breath analyses at metropolitan area breath test stations from July 1990 to May 1992 were compared with the breath analyses by statistical analysis. None of the 1 409 breath analysis results was shown to be incorrect by the subsequent blood test. There is now among the scientific community a growing acceptance of breath analysis as a highly accurate measure of the actual pulmonary arterial blood alcohol concentration at the time of the test.

Under the proposed system, a driver at an RBT site will be requested to submit to a breath analysis in the same way as before. That is, a screening device (alcotest) will first be used and any driver who does not register the prescribed concentration of alcohol will be allowed to drive away. Where the screening device indicates the driver has the prescribed concentration of alcohol in his or her blood, he or she will be requested to submit to the breath analysis on the Dräger instrument. The driver will be given two successive tests a short time apart with the lower reading (if any) being used for evidentiary purposes. Duplicate testing, which has already been carried out on a trial basis, provides a double check against false high readings due to mouth alcohol or regurgitation. Where a driver refuses or fails to submit to an alcotest or breath analysis, he or she will, as in the past, be charged with the offence of refusing or failing to comply. However, if a person can show good cause for not submitting to an alcotest or breath analysis by reason of some physical or medical condition but appears to have consumed alcohol, he or she will, under the proposed new arrangements, only be able to avoid prosecution for refusal or failure to comply by requesting a blood test.

The defence of good cause is dealt with under section 47e(4). The requirement for a blood test in the circumstances of good cause to refuse an alcotest or breath analysis due to some physical or medical condition is dealt with under the new subsection (5a) of section 47e. An example would be where a person has had a tracheotomy and is physically

unable to supply a sample of breath. Where a driver has good cause for such a reason and submits to a blood test, the cost of the test will be met by the Crown. However, any driver who registers the prescribed alcohol concentration from a breath analysis will still be able to contest the accuracy of the breath analysis by analysis of a blood sample, but in future will have to make his or her own arrangements to attend at a hospital or surgery for the taking of the blood sample. The police will no longer be obliged to attend with the driver. These drivers will be handed a card with precise instructions on what procedures must be followed, together with a sealed blood test kit. Regulations will be drawn up setting out the procedures for drivers requesting a subsequent blood analysis.

These new procedures will improve the efficiency of the police force in dealing with drivers with the prescribed alcohol concentration, reduce police costs and allow for more efficient operational times in detecting drink drivers. It is anticipated that the number of drivers requesting a blood analysis (good cause excepted) will fall significantly with a consequent reduction in disruption due to the demand for this service at hospitals and doctors' surgeries. Drivers will, however, continue to have the right to use the results of a blood test to challenge the accuracy of a breath analysis. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the measure to be brought into operation by proclamation.

Clause 3: Amendment of s. 47e—Police may require alcotest or breath analysis

Under section 47e(3) of the Road Traffic Act it is an offence if a person required to submit to an alcotest or a breath analysis refuses or fails to comply with the requirement or reasonable directions given by a member of the police force for that purpose. Subsection (4) of that section provides a defence of good cause for any such refusal or failure. The clause adds a new subsection (5a) that must be read in conjunction with the amendment to section 47f proposed by clause 4. Under the new provision, a person may not raise the defence of good cause based on some physical or medical condition unless—

- a sample of the person's blood was taken in accordance with section 47f;

or

- the person requested that a blood sample be taken, but—
- a member of the police force failed to facilitate the taking of a sample of the person's blood as required by that section;

or

- a medical practitioner was not reasonably available for the purpose;
- the taking of a sample of the person's blood in accordance with section 47f was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.

Clause 4: Amendment of s. 47f—Police to facilitate blood test at request of incapacitated person, etc.

Section 47f currently provides that the police must, on the request of a person who has been required to submit to a breath analysis, facilitate the taking of a sample of the person's blood. The results of analysis of the blood sample may then be used in proceedings for an offence against section 47b as evidence under section 47g(1a) to show that the breath analysis reading was inaccurate. The clause amends section 47f to remove the right to request a police-facilitated blood test in every case. Instead, under the amendments, a police-facilitated blood test need only be provided at the request of a person who has refused or failed with good cause to comply with the requirement or directions for the alcotest or breath analysis by reason of some physical or medical condition of the person. Under the amendments, any such blood test will be at the expense of the Crown.

Clause 5: Amendment of s. 47g—Evidence, etc.

Under section 47g, in its current form, it will be presumed, in the absence of proof to the contrary based on the results of a blood test under section 47f or 47i, that the concentration of alcohol indicated as being present in a person's blood by the results of a breath analysis was present in the person's blood at the time of the analysis and throughout the preceding 2 hours. As mentioned above, the police-facilitated blood test under section 47f will, as a result of the proposed amendments, be provided only for persons who refuse or fail with good cause to comply with a requirement or directions for an alcotest or breath analysis by reason of some physical or medical condition of the person. Instead, it is proposed that a person who has submitted to a breath analysis may arrange his or her own blood test in accordance with procedures prescribed by regulation. As a result, section 47g(1a) is to be amended by the clause so that the results of such a blood test (rather than a test under section 47f) may be used to rebut the presumption of accuracy of the breath analysis. As a further consequence of these changes, it is proposed—

- that the current advice and warning under section 47g(2a) will be replaced by a written notice as to the effect of the evidentiary provisions of section 47g(1) and (1a) and as to the prescribed procedures for such a blood test;

and

- that a blood test kit of a kind approved by the Minister will be provided by the police to facilitate such a blood test if the person so requests.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

MURRAY-DARLING BASIN BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 62.)

The Hon. PETER DUNN: The Opposition supports this Bill. In fact, I believe an all-Party agreement has been reached on this rather important measure. It is a large Bill, replacing the old River Murray Waters Agreement, which has been hammered out since the early 1980s. The Bill deals with an agreement between South Australia, Victoria, New South Wales and now Queensland. It is an important move because all of those areas have some water draining into the Murray-Darling Basin.

The purpose of the Bill is to approve and provide for carrying out an agreement entered into between the Commonwealth, New South Wales, Victoria and South Australia with regard to water, land and other environmental resources of the Murray-Darling Basin. Part of its role, of course, is to look after the natural resources in that area. It also deals with control of the environment and other issues.

The basin itself drains about one-sixth of Australia. I understand that it is roughly the same size as the drainage area of the Amazon River, which drains thousands of times more water than the Murray Basin on the basis that it simply has a great deal more mountainous area in which to precipitate rain and snow, which ultimately melts into the river system. Furthermore, this system is much farther away from the equator and therefore does not attract so much humidity and moisture. The Murray River itself drains about 2 500 kilometres of stream length and that is a considerable river by world standards.

In addition, that area produces 25 per cent of Australia's rural output. I suspect that a great percentage of that is because of the irrigation resources associated with the river. In fact, between $10 billion and $15 billion a year is generated and that certainly must be taken into account when the management of this system is considered.

Why the agreement? I guess that question should have been asked 100 years ago, because we have indeed cleared much of the vegetation from the area, we have set up rather large irrigation systems and we have used much of the water. In fact, I think we are using about 70 per cent of the volume of water that once flowed down the river. Before the river was locked most of the water ran out to sea. However, today, because we have locked the river and made it navigable, it is easier to deal with and gives constant water for irrigation purposes.

Since irrigation facilities have been installed we have managed to raise the water table in many areas surrounding the river. Because the basin itself was probably under the sea a few thousand years ago there is a huge deposit of salt all around the area or in the area. As a result of raising that water table the salt is now coming to the surface.

For some time now South Australia has been the sewer for the River Murray, particularly from the northern parts of Victoria and southern New South Wales. Because the total flow is small it does not dilute much of the salt, so it finishes up in South Australia and has dramatically affected some irrigation projects in this area. That is probably not as important as the fact that today the River Murray supplies so much of South Australia's potable water. It supplies areas as far north as Woomera, as far west as Whyalla and most points in between with some exceptions. It certainly does not supply the South-East with much water because that area has a big underground aquifer of its own, but it certainly provides a huge amount of Adelaide's water, and it depends on the seasons as to whether it supplies a lot or a little.

When the SDP for the Adelaide Hills came before the Environment, Resources and Development Committee the suggestion was made that perhaps we ought to take all our water from the River Murray and pump it into our reservoirs when it has the least amount of salt in it and use one or two of the reservoirs as catchments for the effluent water, whether that be drainage water or water from sewage or septic systems. In the future, if the city of Adelaide grows much larger, I do not think we will be able to harvest sufficient water in the Adelaide Hills to supply our population. It is obvious that we cannot do so now, but since the pumping of water from Mannum was introduced Adelaide has been well supplied with water and we have had fewer water restrictions than any of the capital cities over the past 20 years.

As I mentioned, South Australia has become a bit of an effluent disposal area. I have visited Albury almost every year to talk to the Murray-Darling Basin Commission and to look at some of the projects in that area, such as the paper making project, and also at the effluent disposal from that area. The commission is adamant that it ought to go back into the river. A couple of years ago it thought that it was too expensive to set up wood lots, but in the past year it seems to have changed its mind and it now believes that it can pump the effluent away from the river, and rightly so.

The paper manufacturer at Albury also wanted to put its effluent back into the river. There is an easy solution to that. If that manufacturer wants to put its effluent into the river it can do so upstream from where it takes the water out of the river. I think that would cure the problem fairly rapidly. However, I do not think that South Australia needs to be a sewer or that anyone needs to dispose of water into that river. There is a feeling amongst people in the Eastern States that they can do that. I spoke to some Victorians who thought that there would be a period of a month or six weeks in every year when the river would not be used in South Australia during which time they could unleash some of the salt from the salt pans in which they have been collecting water and which are very high in saline so that those slugs of salt could drain out to sea. I pointed out to them—and I think they were aware of this—that we take water 365 days a year for cities such as Whyalla and the Mid North cities of Port Pirie and Port Augusta and much of the Yorke Peninsula, and that to do that would be a disaster.

The other problem is the effect of putting slugs of salt and nutrients into the water. Nutrients have come about fundamentally from irrigation. I am a farmer, and I understand that irrigation is an important part of the system. One must have water in this very dry continent, but the effect of draining some of those nutrients back into the river causes things such as blue-green algae and other problems that arise in the management of the river. I refer particularly to the algae that manifests itself in our lakes and in the lower part of the river. It also affects fishing and boating. I do not know whether that will ever be controlled properly, but we are certainly seeing controls on fishing and more controls on boating.

When the Bill was debated in the other House it was asked whether the river would become and remain navigable, and the definition of 'reservoir' was referred to. Minister Klunder answered those questions. I wonder whether there has been an update, because in his response, when asked about the different understanding by other States of the word 'reservoir', he replied:

> As I indicated under the draft guidelines being prepared and reviewed we will attempt to remove the word 'reservoir' altogether because there is no intention to stop the normal use of the Murray as it presently is.

Has the word 'reservoir' been removed? Perhaps the Minister or his advisers can tell me.

The Hon. Mr Wotton stated that the Local Government Association felt that the words 'responsible to a contracting Government' were not technically correct in relation to local government and that they should be deleted. The Minister responded by saying:

> This point has been discussed, but I am opposed to making any change because any change in this document would need to be considered by other Parliaments.

I wonder whether the Minister has put that point of view to the other Parliaments to take into account the wishes of local government.

The Bill is quite lengthy. It contains much detail, but it is not the role of this Council to go into that. Rather, our role is to make sure that the Bill goes through without any discrepancies. It appears that the Bill passed through the Lower House without many queries. Quite a bit has been said about it, but most of it is just local knowledge about the River Murray and its effect in South Australia and on the whole of Australia. That certainly is an important factor.

The old adage that maybe we should dig another drain parallel with the river and bring fresh water down and let the river become a salt drain does not have much credence any longer. I can recall that suggestion being made when I was a boy, and that is not long ago. However, if we manage the whole of the basin correctly—and that is what this Bill attempts to do—it can be of use to many generations in the future, but it will need to be updated constantly. This Bill updates what the reports by the Murray-Darling Basin Commission constantly talk about. Its role is to keep an eye on things. I agree that this needs to be kept up to date on a regular basis. The commission has done a good job in conducting an education program that has made people aware

of the importance of this system. Not only that but also it has made good recommendations, it has put money into research and it has carried out a number of other positive things.

The Opposition agrees that this Bill needs to be passed so that it can come into effect as soon as possible.

Bill read a second time.

In Committee.

Clauses 1 to 16 passed.

Clause 17—'Acquisition of Land.'

The Hon. PETER DUNN: I understand that there is confusion about the definition of 'reservoir' in relation to boating or being navigable. The Minister in the other House indicated he would contact the three other States to ascertain whether there was an agreed definition of that word. Has that been done?

The Hon. ANNE LEVY: As I understand, the word 'reservoir' does not occur in the Bill at all: it is used in our boating guidelines. However, as I understand it boating guidelines are a matter for each State separately. They do not form part of the agreement, but our Minister has agreed that the word 'reservoir' will be removed from our boating guidelines, although that has not been done yet. The word 'reservoir' will be removed from the boating guidelines, and will be replaced with other definitions in which there is no possibility of ambiguity.

Clause passed.

Clauses 18 to 32 passed.

Schedule.

The Hon. PETER DUNN: The members of local government say that they are not happy with the term 'responsible to a contracting Government'. I think I can understand the reason for that. Has the Minister spoken to local government and solved that problem, because I understand that local government still has a problem with that term 'contracting Government': in other words, somebody who might interfere with the flow of the river? They have indicated that they would like a change. The Minister has indicated in his response that he does not want to send the Bill back. What explanation has the Minister given to local government, and has he allayed their fears?

The Hon. ANNE LEVY: I understand that a kite was flown by local government with the suggestion that it would be one of the contracting governments to this agreement: that the Government's concern would be the Federal Government, the Victorian, New South Wales, Queensland and South Australian Governments, and either the Australian Local Government Association or the Local Government Association in each State or individual local governments.

There has not been involvement of local government in the agreement and, if it were made clear that very large contributions of money would be expected from all the contracting Governments—and South Australia's contribution is $11 million—local governments would rapidly lose interest in being parties if they were expected to come up with that sort of money.

It is hard to see how local government could be a contracting party to the agreement, seeing that a local government association, either at national or at State level is not a Government: it is merely an association of Government. If one looked at individual councils, one could see that some in each State would be involved in the Murray-Darling Basin while there would be others that would certainly not be involved in the Murray-Darling Basin, given the geography of the four States concerned.

Furthermore, it would mean virtually going back to square one to get individual local governments included in the agreement. How the agreement would be placed if some of the relevant local governments agreed to pay the large sums of money involved and others did not agree to be a party to or to pay the sums of money involved could be pretty messy. It would certainly require a fairly large amount of lengthy consultation before it could be achieved. In summary, it is probably not a practical proposition at the moment.

Schedule passed.

Title passed.

Bill read a third time and passed.

LOCAL GOVERNMENT (VOTING AT MEETINGS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 62.)

The Hon. J.C. IRWIN: I support the Bill before us and recognise that it was introduced in about April this year. It found its way to the Council but was not proceeded with prior to the winter recess. I am quite happy to say that that was not the fault of the Government. I was having some consultation with a number of people who had expressed the desire to have another look at it and, although it is a only a very small measure, we know it has been a contentious matter for a number of years. So, I thank the Government for the time that it has taken to complete that consultation, and the Liberal Party is happy to go on with the second reading and the passage of this legislation today.

As I said, the matter of what is a majority at a council meeting has been a contentious issue for some time, and it involves the interpretation of section 63 of the Local Government Act when the council concerned has a mayor. It provides:

> Subject to this Act, the question arising for decision at a meeting of a council will be decided by a majority of the votes of the members present at the meeting.

As the mayor presently has only a casting and not a deliberative vote, it is unclear whether the mayor should be included as one of the members present to determine what numbers are required for a majority of votes. In the Crown Solicitor's opinion, the mayor must be included when determining the number of members present, even though he or she has only a casting vote. Therefore, a majority of members present does not mean a majority of those present and that they are entitled to a deliberative vote.

Norman Waterhouse is the firm of solicitors advising local government and in particular the Local Government Association. Previously, one of the senior partners of Norman Waterhouse, when it was called Norman Waterhouse and Mutton, was Mr Brian Hayes, who is now a QC. It was his opinion of some time ago that conflicted with Crown Law advice, and that opinion was:

> 'members present' means a majority of members present and entitled to a deliberative vote.

So those words in dispute were not actually in section 63 of the Local Government Act, but they gave rise then to the contentious issue of the opinion from Crown Law on the one hand and a leading QC's advice on the other. An article in the *Advertiser* of 11 August 1990, which was exactly three years ago, brought to a head the latest controversy over this matter. It states:

A conflict over what determines a majority in a council vote has so angered a residents group its members are prepared to take the matter to the Supreme Court. On 5 June, after weeks of negotiating, the Burnside Council and the Waterfall Gully Residents Association struck a compromise on the issue of a rubbish dump at Waterfall Gully. The association says that the tip adjacent to Cleland Conservation Park should be part of the park. By a majority of 7:4, the council voted to close the dump in five years. The decision would have ended five years of conflict over the matter. However, at the next council meeting the decision was rescinded on a vote of 6:5. As a result, two opposing legal opinions have been produced interpreting the Local Government Act 1934 as to what constitutes a majority in a council vote. Crown Law opinion says that a 6:5 vote is not enough to pass a motion because there are 12 members, including the mayor, and seven is a majority of 12, not six. In the other opinion of Mr Brian Hayes, QC for the council, he says that 6:5 is sufficient.

So, although that goes over the ground that I have already spoken about and is well known, it just crystallises one of the problems which is being faced and which will go on being faced by a council when it is making motions and passing resolutions, all of which one could say would be contentious. Certainly, with a conservation side to this and with a council on the other side of the argument and the rescinding of a motion, we can imagine that this would be a fairly hot issue, and it has been. I recall reading that article when those two opinions were given and I appreciate the confusion that it must have caused.

I cannot recall the exact dates, but it was about that time that local government legislation was before the Chamber, and the Liberal Party determined to try to insert the Brian Hayes QC opinion as an amendment to section 63. It was not accepted by the Parliament, so we have gone on now for a couple of years in a sense in no person's land. It is only the courts that can really sort out this matter. I think about 99 per cent of South Australian councils have been using this simple majority issue, which is the Brian Hayes advice, and one council in particular, St Peters, is the only one up until a year ago that had been meticulous about using the Crown Law advice. I will not go into the reason why that council was using Crown Law advice. It probably had some inside information.

The Hon. Anne Levy: They have a lawyer as mayor.

The Hon. J.C. IRWIN: Indeed, and I think he was also part of the Crown Law advice.

The Hon. Anne Levy: No.

The Hon. J.C. IRWIN: No, well I did not want to reflect at all or even bring it in. But they stuck very rigidly and were well known for that. I have correspondence from that mayor which is very interesting in the philosophy and reasons for the council's sticking to the Crown Law interpretation of section 63. I will certainly not go into it at all, but in shorthand it really finishes up like the Senate, where if there is an equality of votes, a motion is lost, and the argument is that if it is not a clear majority it ought to go back through the mill, anyway, and come back through and have the right argument and the right reasons for being passed.

Something in that article raised my concern about an absolute majority. The example was given of a council of 12, and everyone was there, therefore the majority of 12 is seven and not six. I accept that, but it is not clear whether that advice and the Crown Law advice was saying there must be an absolute majority of the council numbers. In other words, if there were 12 councillors and only 11 there, you still needed seven to have that matter passed. I think that is taken care of, and my worry is diminished, by the words, 'by the members present at the meeting'.

The Hon. Anne Levy: You have 12 councillors and one of them is the mayor, then the majority of 11 is six, but a majority of 12 is seven.

The Hon. J.C. IRWIN: Yes. We can put up different numbers, I suppose, and I am not trying to make anything of it other than have it dispelled once and for all that for an ordinary motion of council, which is not one specifically needing an absolute majority, as long as a quorum is present, it is just a simple majority of the quorum and not of the whole number of the people who make up the council.

The Hon. Anne Levy: It is only ever those present; it is a question of whether the mayor should be counted in. If only eight people are present, including the mayor, are you counting a majority of eight or of seven?

The Hon. J.C. IRWIN: Yes, I know. However, the way that the article that I have read out is written, obviously based on having seen the Crown Law advice, which I have not seen, they used the majority of seven when all 12 councillors were present.

The Hon. Anne Levy interjecting:

The Hon. J.C. IRWIN: Yes, that is right. It just struck me that they might be using an example that you need an absolute majority of that number, whatever the number is.

The Hon. Anne Levy interjecting:

The Hon. J.C. IRWIN: But it is not; so I have covered that. Even though there are some sections of the Local Government Act which do require an absolute majority of the whole council, this is what I am calling an everyday procedure for the resolution of most council motions will only require that simple majority of a vote where the councillor attendance is above that quorum. Certainly the vast majority of councils in South Australia wanted this matter sorted out once and for all, given that the court is the final arbiter in any of these matters. Even if we pass this today, it does not say the court will not be tested. I tend to think it will not be, but it may be. It seems that the public are reluctant to take matters to court, and that is understandable from the cost factor as much as anything else on this type of voting issue, but I have no doubt that as councils make more and more decisions which are contentious, and if they are given more responsibility, and have more responsibility, it is more likely that they will be tested in court on any part of their decision making process which may include the voting.

I am pleased to say, and it is obvious—and the Minister has said it—that the Local Government Association has spent a lengthy time asking its members what they want. They support the Bill. I am pleased in particular that the City of Burnside, which was part of the early discussions and part of the matter three years ago that I read out from the *Advertiser*, wants to get on with it and have this very important matter addressed and finalised. Norman Waterhouse has indicated to me in a short letter that they support the Bill before us. With those words, I indicate the Liberal Party's support.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank the honourable member for his contribution. This matter has been debated in this Chamber before, as he indicated, including soon after the controversy arose with Burnside Council. At the time it was felt desirable to determine the views of the LGA on the matter and in consequence the matter was not passed at that time. Since then, the LGA has considered the matter very thoroughly, with the taking of polls of all its members.

I might say that the matter only concerns councils which have mayors, so it is not 96 per cent of councils that do one

thing or another, because a majority of councils in this State are district councils, and have chairs, not mayors, and the question does not arise where they have a chair. However, the view of the LGA and of the majority of its members was that the matter should be tidied up by indicating that a motion would be passed by a majority of the members present who were able to vote.

So, in the case where there is a mayor, and the mayor is not able to vote except in the case of a tied vote, but for determining whether a motion had passed or not, it would be a majority of those present and able to vote. In other words, the mayor would not be included in the number of whom there had to be a majority.

It has been pointed out that this can lead to anomalous situations with different results being obtained in committee from council. In committee, the chair has a deliberative but not a casting vote. When the matter then moves into council, with exactly the same people present but a mayor instead of a chair, a different result could occur from exactly the same people voting in exactly the same way, because the rules are different. However, that is the way that the LGA and councils of this State wish it to be. In consequence, this legislation is enacting that to emphasise yet again that this Government as much as possible wishes to make councils masters of their own destinies.

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

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 10 August. Page 89.)

The Hon. T.G. ROBERTS: I rise to support the motion for adoption of the Address in Reply to the Governor's speech at the opening of this session and I, along with other members, express my sympathies to the families of Mr Hugh Hudson and the Hon. Sir Condor Laucke. I would also like to place on record my sympathies to the family of Cathy Watkins, an ALP member who died recently.

Mr President, I rise as always to place on record my views and opinions on where Australia as a nation and South Australia as a State are heading at this time. I agree with the Hon. Mr Lucas that the forum of the Parliament as it is structured at the moment does not allow Legislative Councillors the freedoms of the Lower House to express opinions on issues that are of relevance out in the community at a particular time. We have to wait for debates on Bills to make our views heard.

The Hon. R.I. Lucas: You can always change them.

The Hon. T.G. ROBERTS: I would be prepared to sit on a committee of the Legislative Council to look at our operating procedures to see whether the Legislative Council could become more relevant to the lives of those people that we represent. If it means including a session that allows backbenchers to make contributions relevant to their constituencies then I would certainly support that.

The problem that we have in putting on record our general views and opinions on important issues is reflected in the frustration of some of the speeches we have heard thus far. Unemployment is the leading problem in many of the communities, and many members have touched on that in their speeches. Caroline Schaefer, our new member, suggested holding development programs for country people and providing support and services for country people. I have advocated that in the time that I have been in this Chamber.

It is not easy for a State such as South Australia. It is basically a city State—most of the power and wealth lies within the city—and the rest of the State tends to have to fight and struggle to maintain support and services. Most of the wealth that is created in the regional areas is filtered back through the city, and more and more of South Australia's wealth only just touches base in Adelaide and then finds its way into the Eastern States or overseas. That is not a good foundation for broad based industrial or regional development. I hope that we can develop policies that allow for a more even distribution of wealth throughout the State and our communities.

What we are finding at the moment is that all States, all nations, are in the process of restructuring. In Europe we have important nations restructuring, such as West Germany, which is in difficult circumstances, having incorporated East Germany into its fold, and what was once a power house of Europe is now struggling to hold its economic position within the European structure. The United States Congress has just moved to cut Government spending in a number of areas. So the power houses of Europe and America are now going into a situation where their economies will not carry Australia's.

The problem associated with South Australia's economy is that it is a small economy within the province of a relatively powerless nation in terms of international trading structures and we have to be cognisant of the changes at an international level and the way that international trading groups form and reform. At the moment it is the national view that as an Asian-Pacific nation—I would put it as a Pacific-Asian nation—we have to tap more closely into the Asian economy. The growth in the Asian economy has allowed for some of the trade imbalance that has persisted through the formation of a closed Europe and a more and more closed American economy to be worked out in Asia. We are now trading something like 38 to 40 per cent of our economy into Asia and it is predicted that by the year 2000 and into the year 2000 we will be trading between 60 and 80 per cent of our economy into the Asian nations.

As a basically Anglo-Saxon, multicultural, multi-European cultural society, we have a difficulty in establishing a foothold or a place of recognition in Asia, and more and more Asian nations are asking the question: where were you when we were having our difficult times? They recognise that we now want to be a part of the trading groups within the Asian nations, but it is not going to come automatically; we have to earn our stripes and recognition geographically. The economies of Indonesia and Malaysia are growing quite rapidly, and we have to take advantage of any opportunities that we can get to trade our commodities and our services into this growing region.

All that leads to Australia having to put its programs together so that it is seen as a single trading nation and not as a number of trading States moving around Asia promoting our own positions without a national identity. More and more, the States' roles need to be coordinated through a national identity that Asian nations can recognise as being distinctly Australian. That brings into play some of the questions that have been debated at a national level, such as the republican position.

A lot of people see pain with moving into a republican model, but I do not have too many problems with Australia becoming a republic, as long as we ask the question 'Why',

and the questions of 'When' and 'How' will follow after the establishment of the case for 'Why' is argued.

The Hon. K.T. Griffin: It hasn't been argued very well so far, has it?

The Hon. T.G. ROBERTS: I would have to agree with the Hon. Mr Griffin that it has not been argued very well so far. It has been argued on a very singular, narrow level, using base emotion as the key to the arguments rather than a collective view debated across the board amongst all of Australia's constituents.

That means bringing the argument down to a level that most Australians can understand. Where changes are proposed the reason for them and the benefits resulting have to be explained. That is the challenge for those advocating the change to a republic in the next few years. I expect the debate to continue and I hope that people have an open mind in debating the issue and do not fall into the trap of throwing away the opportunity for constructive debate over the next five years.

It is pretty clear that many people, particularly our newly arrived migrants who do not have an Anglo-Saxon background or an Asian culture either, do not understand why we have been so closely aligned to a less significant British influence and why we have not picked up our multicultural roots and expressed them in the form of a republic and then sold that to the Asian people. That is our new-found place, our new evolved democratic process that will lead us to the year 2000. We would get more respect by debating those issues more formally amongst our constituents at every opportunity. There is a confusion in Asia about our role and our identity. We are seeing—

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: I think they do see us as an outmoded British outpost to some extent. Many Asian people are surprised when they look at statistics in relation to our multicultural makeup. I know there is also a lack of understanding on the part of our Pacific Island neighbours that we do not pay more respect to the original owners of this land.

We need to answer those questions as a mature nation in the lead up to any debate about the republic. Any such debate has to include Australia as a single trading nation. We have to maximise our geographic importance and all of the attributes that the nation has in manufacturing, primary industries and service industries. We must be unified in the way we go about selling that. It is all linked to national development and to creating the best possible opportunities for job creation and development to bring into play as many of our citizens as possible and to give them a standard of living that is equated to our ability to produce our national cake. That must be done in a way that is traditionally different from the way in which we have proceeded for the first 200 years of our existence.

We have two arguments running side by side. One is a very conservative argument on States' rights. The fact that the mutual recognition legislation was defeated in the last sitting shows that we lack the maturity to be able to get a consensus about how to proceed even at a simple level. States need to get mutual recognition legislation in place so that there is a mature relationship between the three levels of Government: local government, State Government and Federal Government. The Federal Government needs to be able to act as a single leader in developing Australia as a nation.

It is no good having a strong Federal Government with strong views about its place in the world if we have conservative State Governments that are pulling against it and wanting to go back to the last century. I think there are enough people of goodwill at the moment to turn their mind to Australia as a single nation and a single trading nation in the Asian region. That is one of the challenges that we have to face, debate and satisfactorily resolve in the very near future. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

At 6 p.m. the Council adjourned until Thursday 12 August at 2.15 p.m.