LEGISLATIVE COUNCIL

Thursday 27 August 1998

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 11 a.m. and read prayers.

STATUTES AMENDMENT (MOTOR ACCIDENTS) BILL

The Hon. R.I. LUCAS (Treasurer): I move:

That the sitting of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

EMERGENCY SERVICES FUNDING BILL

In Committee.

(Continued from 25 August. Page 1571.)

Clause 3.

The Hon. K.T. GRIFFIN: There are a number of amendments on the Bill so I will indicate a process that might help to facilitate dealing with the Committee. There will be competing points of view—perhaps three different points of view—on some amendments. I will endeavour to put the Government's position in respect of various amendments and, where it comes to some of the difficult issues of whether the Economic and Finance Committee or an advisory committee should have responsibility for certain functions under the Act, particularly in relation to the levy and payments out of the fund, I will endeavour to indicate a view on behalf of the Government which might at least deal with the issue of principle. Then, at a later stage, if there is some finetuning to be done, it may be that at the end of the Committee consideration of the Bill I will want to report progress so that further consideration can be given to the amendments which finally are agreed by the Legislative Council.

The object is to work as quickly as possible through the amendments so that we have at least a majority view on every issue, then to look at what we have finally ended up with through the Committee process. There may be some informal, maybe formal discussions; we each reassess our respective positions; and, as I say, it may then be appropriate to recommit the Bill with a view to dealing with some finetuning, maybe some issues of significant substance. In that way, I would hope that we might ultimately avoid the necessity of going to a deadlock conference. If that ultimately is the outcome, so be it, but because, hopefully, this is the last sitting day, I would expect all members would want to ensure that as much as possible we deal with this as effectively and as quickly as possible.

I indicate that is the approach I will be taking. I will be certainly putting the Government's position down but not at great length in acrimonious debate because I do not think anything will be served by that, except perhaps to stir passions and prolong unnecessarily the consideration of the Committee.

The Hon. P. HOLLOWAY: I indicate that the Opposition has spoken to Attorney and the Hon. Ian Gilfillan and will concur with the general thrust of handling this Bill as has just been outlined by the Attorney-General. I will speak as briefly as I can to those amendments which the Opposition is moving of which there are four. We will try to deal with this matter as speedily as possible so that we can perhaps negotiate a satisfactory final outcome.

The Hon. IAN GILFILLAN: My amendment seeks to distinguish between Crown land which is being used by another body for a commercial or some form of profit activity from that which clearly is not. So that, in fairness, the levy (which is the amount of money to go towards this emergency services fund) should be drawn from the entity most appropriate to pay it. Paragraph (b)(i) seeks to identify the body that has made money from the actual use of the land and therefore most probably should be the one paying the levy.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. It seeks to alter the definition of 'owner' for the attribution of the levy in respect of Crown land, and the effect of it is to attribute a levy to Crown land where profit is gained. There are two bases for rejecting that concept. The first is that there will be significant costs to individuals as well as to the levy management body in recording the costs and benefits so as to determine whether a parcel of land is in profit or loss. The benefit from emergency services has no bearing really on the profit making relationship of a parcel of land.

One could, I suppose, think of a place such as Memorial Drive, which is not a property belonging to the Crown as I recollect. Supposing that were a facility which was worth, say, some millions of dollars but actually returned an operating loss: just because it returned an operating loss it should not be regarded therefore as the responsibility of the Crown. Trying to assess the appropriateness of a levy based upon some concept of profit or excess of income over expenditure is not an appropriate basis for making a decision about which land should be levied in the name of the Crown and which land should not. The Government has an alternative proposal in relation to that, very largely reflected in clause 6 of the schedule which we can deal with at that time. It actually deals with usage rather than with any concept of profit.

The Hon. P. HOLLOWAY: The Opposition considered that the definition of 'owner' created some problems when the Bill was originally presented. I know that the Local Government Association has had lengthy discussions with the Government over this matter. I also notice that the Government has on file an amendment to deal with some problems that may arise under that definition.

In relation to the Hon. Ian Gilfillan's amendment, I can understand what he is seeking to do and I think in principle it is probably a reasonable attempt. But like the Attorney I have some fears that setting this test that the income derived from the land has to exceed the costs incurred will be a fairly difficult one to measure in practice. I think it is the practicality of that and the anomalies and problems it might create that lead me to believe that we would be better to go with the Attorney's amendment which will address most of the problems that arise under the definition of Crown land. On that basis, the Opposition will not support the amendment.

Amendment negatived.

The Hon. K.T. GRIFFIN: I move:

Page 2—After line 27 insert paragraph as follows:

(ba) in relation to land dedicated by or under any other Act being land that has not been granted in fee simple but which is under the care, control and management of a Minister, body or other person—the Minister, body or other person;

This additional subclause amends the definition of 'owner' in the interpretation to include those responsible for Crown

lands dedicated under Acts other than the Crown Lands Act 1929. The initial Bill had included in its definition of 'owner' only those who owned, managed or controlled lands dedicated by the Crown under the Crown Lands Act. In reality, a significant number of other dedications of Crown land occur under other Acts, for example, the Local Government Act, the Marine and Harbours Act and many others. It was not intended to exclude these areas from the definition of 'owner', as the levy should be attributed to the responsible authority under whatever piece of legislation it may be dedicated.

The impact of this change will be to recognise the owner of Crown land for the purposes of the levy as a larger grouping; that is, they may have had the Crown land dedicated under any Act. If we do not make the amendment, the Crown would be responsible for such levies under the 10 per cent contribution, and the overall impact on the public would be a higher levy rate.

The Hon. P. HOLLOWAY: As I indicated earlier, we are aware that the Government has had lengthy discussions on this Bill with the Local Government Association. We have kept ourselves informed about those discussions and we are pleased to see that a satisfactory outcome was negotiated between the Government and the Local Government Association that has led to the amendments that the Government is now moving. By and large, we support those amendments, although I might indicate one minor adjustment later. In announcing my support for this paragraph, I would like to ask the Attorney a question.

If we look at the West Beach Trust, which is probably one example of where Crown land is under the control of a body, given that it is a Government body would the levy imposed on the West Beach Trust be part of the 10 per cent the Government is required to pay?

The Hon. K.T. GRIFFIN: In clause 6 of the schedule the amendment that the Government will seek to make at that stage provides, under paragraph (2)(b):

(ii) dedicated land within the meaning of the Crown Lands Act 1929 that has been granted in fee simple in trust for the purposes for which the land was dedicated;

If it is dedicated in trust it would form part of the 10 per cent, as I understand it. Without looking at the West Beach Trust Act I cannot tell the honourable member specifically in relation to that body whether that is the case. My recollection is that the West Beach Trust is not an instrumentality of the Crown. It is a curious structure where local councils have representation, and I think actually have the numbers to control it, but I cannot tell the honourable member the exact position following that question. If it becomes critical, I can have some work done.

The Hon. IAN GILFILLAN: I did not follow all of that but there was an attempt to determine whether the West Beach Trust would be regarded as the owner for the purposes of this Act. Is that what was being explored?

The Hon. P. Holloway interjecting:

The Hon. IAN GILFILLAN: I thought so. I am now in a position to support the Attorney's amendment, having lost mine. I do refer to the letter dated 24 August that the LGA wrote to the Minister for Emergency Services with the reference 'Crown taken to be owner of certain land'. I will read these three paragraphs because they are relevant to amendments anyway, albeit some may be a little way down the track. It reads:

The definition of 'coastal reserve' could be interpreted rather narrowly. Where such a reserve is separated from the sea only by a small distance, which may include, for example, a road (whether made or not), a watercourse or an area of open space or similar reserve, then it is to be taken to fit within the definition contained in the amendments.

The proposed requirement in clause 6(2)(c)(i)—

although in the draft of the Bill I cannot actually put my finger on that reference—

shall relate only to the portion of the land being used by the council for its operations, i.e., where a council operates a tourist information centre on a reserve, only that portion of the reserve being used for this operation will be captured by the amendment.

The proposed requirement in clause 6(2)(c)(ii) will only be applied where a licence exists on an ongoing basis, not a relatively short duration, i.e., council has granted a licence to a local community group to occupy the parklands for a single day to stage a fete. Similarly, as above, the clause shall relate only to the portion of the land that is subject to a lease, not the entire land.

The letter then goes on to talk about delegation as follows:

The Minister will not seek to delegate to a council any duty, power or function against the wishes of the council concerned, notwithstanding that the legal ability to do so appears to exist.

To enable me to advise the Opposition Parties that the LGA is supportive of the Bill with these amendments, I would appreciate your prompt written confirmation that the above points will be made to the Parliament and hence included in the official Parliamentary Debates.

The letter is signed by John Comrie, Executive Director, Local Government Association. I think the LGA has a rather naive faith that, if words are included in the *Hansard* record of the debate, they are sure defence in times of trouble. That is not true. One has to be more meticulous and make sure that the defence against the fear is included in the legislation. I am not convinced that what I was trying to do in my amendment is in fact covered by what the Attorney is moving. I do not claim it is not, but I certainly do not understand how it is to protect the council which is nervous that it will get lumbered with the levy by having, as Mr Comrie identified, only partial or temporary use of an area. Can the Attorney indicate to me that, through the amendment or in some other way, the proposed legislation will set the mind of council at rest?

The Hon. K.T. GRIFFIN: I read the Local Government Association's letter into *Hansard* in the second reading reply and indicated that we agreed with the propositions set out in that letter. I indicated that I was not sure whether a letter or some communication in writing had gone to the Local Government Association, as it had requested. I was subsequently informed that the Minister for Police, Correctional Services and Emergency Services had confirmed in writing to the Local Government Association that he and the Government agreed with the proposition set out in the letter.

In terms of how its concerns will be addressed, it is difficult to put that into an amendment in the way in which the honourable member identifies, but there will be some need for governmental interpretation. Whilst the honourable member suggests that it may be naive of the Local Government Association to rely on the undertaking that is now on the public record, I suggest that in something as sensitive as this any Government that ignored the commitments would be not so much taking its life in its own hands but certainly would be acting in bad faith. We have no intention of adopting that position.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 3, line 3—Leave out 'Part' and insert 'Act'.

This is a simple drafting amendment.

The Hon. P. HOLLOWAY: We support it.

The Hon. K.T. GRIFFIN: Whilst it may be simple, I will explain it. The amendment allows for the application of the contiguous land definition to be applied throughout the Bill as opposed to this Part only. It was an error of drafting, although I place no blame on anyone's shoulders for that. It is readily corrected by the amendment and the Government supports it.

Amendment carried; clause as amended passed.

New clause 3A.

The Hon. IAN GILFILLAN: I move:

Page 3, after line 11—Insert new Part as follows:

PART 1A
THE EMERGENCY SERVICES FUNDING ADVISORY COMMITTEE

The Emergency Services Funding Advisory Committee

3A. (1) The Emergency Services Funding Advisory Committee is established.

(2) The Committee consists of six members appointed by the Governor of whom—

(a) two have been nominated by the Minister; and

(b) three have been nominated by the Local Government Association of South Australia; and

(c) one has been nominated by the South Australian Farmers Federation Incorporated.

(3) The Governor will designate one of the members to preside at meetings of the Committee

(4) A member of the Committee will be appointed for a term of office, not exceeding three years, specified in the instrument of appointment and, on completion of the term of appointment, will be eligible for reappointment.

(5) The Governor may remove a member of the Committee from office for—

(a) mental or physical incapacity; or

(b) neglect of duty; or

(c) misconduct.

(6) The office of a member of the Committee becomes vacant if the member—

(a) dies; or

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

(c) resigns by written notice to the Minister; or

(d) is removed from office by the Governor under subsection (5).

(7) On the occurrence of a vacancy in the membership of the Committee a person will be appointed in accordance with this section to the vacant office but the validity of acts and proceedings of the Committee is not affected by the existence of a vacancy or vacancies in its membership.

(8) A meeting of the Committee will be chaired by the member appointed to preside, or, in the absence of that member, a member chosen by those present.

(9) A quorum of the Committee consists of four members of the Committee.

(10) A decision carried by a majority of the votes of the members present at a meeting of the Committee is a decision of the Committee.

(11) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at that meeting and, if the votes are equal, the person chairing the meeting is entitled to a second or casting vote.

(12) The functions of the Committee are—

(a) to advise the Minister on questions and arrangements relating to the transition from the previous method of funding emergency services to the funding of those services by means of levies under this Act; and

(b) to advise the Minister in relation to his or her recommendation to the Governor under section 9 as to the amount of the levy and the values of the area factors and the land use factors to be declared under that section; and

(c) to advise the Minister as to the application of the Fund; and

(d) such other functions as are determined by the Minister or are prescribed by regulation.

(13) A member of the Committee is entitled to such fees and allowances as may be determined by the Governor.

This is a major amendment to establish an Emergency Services Funding Advisory Committee. The Bill allows for the establishment of a committee to provide for a transitional period. So, it is not a dramatic departure from that aspect of the Bill, except that our amendment seeks to have an ongoing role for that committee.

I argued at some length in my second reading contribution for this method of operation to be followed. I do not intend to go through all that again, but I emphasise that the committee, as far as possible, will be drawn from groups and individuals who have knowledge and, to a certain extent, a representative aspect, so that it will be a balanced committee to give advice. I underline—although it will not be underlined in *Hansard*—the word 'advice' because this is not—

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: Perhaps I could, but I forgo that at the moment. It is not a body which is dictating to the Minister or the Government of the day: it is purely giving advice, and the trend of our amendments through the Bill is still to retain the final say in the hands of the Minister. In fact, regardless of whether the Minister follows the advice, the detail of the report, the information and the findings that this advisory committee reaches will be made available to the Parliament and to the public. I am convinced that for confidence in and acceptance of this as a hypothecated fund for a special purpose, drawn from virtually all the community (because very few will not be contributing to it in some way or another), this is a very sensible, minimalist procedure to ensure the smooth working of the scheme and to achieve the widest possible acceptance of it.

It may also be appropriate to indicate that it will be a determining vote as to whether the Committee takes on board my amendment or considers the amendment on file under the name of the Hon. Paul Holloway which seeks again to introduce an answerability factor on this whole process, but to the Economic and Finance Committee. Therefore, it is quite distinctly different in its mode of operation. In our discussions outside this place, we have felt that it would be advisable for the Committee to indicate whether it will support my amendment because, if I am unsuccessful, I indicate that the Democrats would support the Hon. Paul Holloway's amendment. There could be a determining vote on this amendment.

The Hon. P. HOLLOWAY: As the Hon. Ian Gilfillan has pointed out, I think that both the Democrats and the Opposition believed that, in relation to this new emergency services funding levy, there should be greater accountability from the Minister to the Parliament. Under this Bill the Minister sets the levy, but it is based on the area factor as well as on a land use factor. The Opposition's approach to accountability was to say, 'Look, at the end of the process, once the Minister has made these determinations it should then go to the Economic and Finance Committee of this Parliament,' which, of course, is a committee of the House of Assembly. That is the House where money decisions arise.

We thought that was the appropriate way of getting, first, scrutiny through the committee's deliberations; and, secondly, if any problems arose then any disallowance should come through that committee. That was our approach to trying to get greater accountability in relation to this Bill, and that will be introduced by way of amendment later.

On the other hand, what the Democrats have done to try to achieve accountability is look at each of these steps along the way, such as the determination of the area factor, the land use factor, and so on, and to propose that they be subject to

regulation, and therefore subject to the processes of both Houses of Parliament by various steps along the way.

It is certainly the Opposition's view that there should be some form of scrutiny and accountability of this process—certainly much greater than provided for in the original Bill. It is really a question of which method is adopted. There is no doubt that the Hon. Ian Gilfillan's approach is a coherent one. The Opposition has this alternative method which we prefer because we believe that it provides scrutiny at the end of the process. It is not quite so messy, in our view, in terms of looking at it along the way.

This amendment, which is really a test clause between these two approaches, is to establish an Emergency Services Advisory Committee. The Government, after its negotiations with the Local Government Association, proposes to establish a transitional Emergency Services Funding Advisory Committee, which would be subject to a sunset clause that would expire on 30 June 2001. The committee's purpose would be to deal with those issues in determining who was responsible for the levy in relation to land that was arguably under the control of either council or Government. A number of issues clearly need to be resolved, and we would certainly support the establishment of a transitional committee.

The Hon. Ian Gilfillan's amendment envisages a permanent role for this committee. His amendment also gives it additional functions of scrutinising and advising on the setting of land use factors, area factors, and so on. Again, this is part of the Hon. Ian Gilfillan's approach to accountability. The honourable member's processes are perfectly coherent and consistent: it is just that they are in conflict with the Opposition's proposal of using the Economic and Finance Committee as the vehicle by which scrutiny of the entire process may be undertaken. I indicate, therefore, that the Opposition will obviously oppose this amendment so that it can support its own approach at a later stage. I place on the record that, regardless of the outcome, the Opposition and the Democrats are moving in the same direction in trying to achieve greater accountability of the entire process of this scheme.

The Hon. K.T. GRIFFIN: The Government would prefer to have neither the Opposition amendment nor that of the Hon. Mr Gilfillan, remembering that in the House of Assembly the issue was recognised by the insertion of two subclauses, the first to subclause (9) and the other to clause 23. Subclause (6) of clause 9 provides that, after the first notice declaring a levy, a further levy could not be declared unless the amount of the levy is the same as or less than the amount of the levy declared by the first notice, or the notice declaring that the levy has been authorised by a resolution of the House of Assembly.

The same applies under clause 23, which is the levy in respect of vehicles and vessels. The object of that was to ensure that the Government had the flexibility to deal effectively with the first levy, which will come into operation on 1 July 1999, and thereafter no increases could be made in the rate of the levy unless approved by the House of Assembly. That, we believed, provides both accountability of the Government to the Parliament as well as flexibility for the Government in setting the first levy. If, though, we were stuck with one of the options, we have given consideration to which would be the preferred option, and the only way that we can see the matter being dealt with sensibly is to opt for some model that is based upon the Economic and Finance Committee.

We recognise that the advisory committee proposed by the Hon. Mr Gilfillan has no power of disallowance, and there is some attraction in that for any Government. The difficulty is that it is a continuing committee which must be consulted on a number of matters. For example, its functions are to advise the Minister on the recommendation in relation to a levy, to advise on questions and arrangements relating to transition from the present method to the new method of funding, to advise the Minister as to the application of the fund, and such other functions as are determined by the Minister or are prescribed by regulation. There is also a requirement in clause 27 that the Minister must not apply the fund without first requesting and considering the advice of the Emergency Services Funding Advisory Committee. That advice has to be in writing and tabled in both Houses of Parliament. Also under clause 27 there is another provision where the powers of the committee are proposed to be involved, and I will come back to that later.

The advisory committee will be an ongoing committee, not a transitional committee, as the Government has proposed in its amendments, which has a life of two years. The emphasis in the committee is on constant consultation before the Minister can do anything. As I say, there is some attraction in that because it does not have to run the gauntlet of the Economic and Finance Committee. On the other hand, I do not think that the framework in the Water Resources Act dealing with water catchment levies is a sensible structure and process and, when we reach the amendment proposed by the Opposition on the establishment of the disallowance process, I want to make a number of observations about ways in which it can be significantly improved to ensure that the whole system does not collapse in chaos by notice of disallowance having been moved but not resolved. It also raises the question about whether every year that the rate is declared, even if it is the same as the previous year, it has to go to the Economic and Finance Committee for review so every year is subject to disallowance.

If the Hon. Mr Holloway is prepared to keep an open mind on that so that we can have some productive consultation about it, the Government would be prepared to go down the track of preferring the Economic and Finance Committee model but with modifications that are likely to make it more workable from the public's perspective as well as the Government's perspective, yet still retain that measure of oversight which the Economic and Finance Committee has in any event under the Parliamentary Committees Act, although it does not have power to disallow the determination of the Minister in relation to the levy which may be set.

In summary, the indication is that the Government will not support the Hon. Mr Gilfillan's amendment. If we prefer either of the two, we prefer the Opposition's but with the proviso that we want to try to achieve some more rational and satisfactory structure involving the Economic and Finance Committee than I believe exists under the amendments that are being proposed.

The Hon. IAN GILFILLAN: I am very disappointed that the Government has decided that option. I think it will live to rue the day. The Economic and Finance Committee has proved from time to time to be a bit stroppy. Quite frequently it is a political forum and it is a retrograde step to give to it what ought to be dispassionately assessed at arm's length from Parliament as an advisory entity to the Minister, with the Minister being able to make the decision on the advice given, which is by far the simplest and less controversial way to go. I repeat that I am very disappointed that the Govern-

ment—I will not say in its wisdom—in its determination has chosen this other method.

Because we are totally convinced that there must be as much accountability for any of the decision making of the Government, we are not prepared to let the Government float through with its Bill as it was originally presented, and we will support the initiative of the Hon. Paul Holloway, but it is what I regard as a much less fruitful and a much more controversial alternative.

New clause negatived.

Clauses 4 and 5 passed.

Clause 6.

The Hon. IAN GILFILLAN: I move:

Page 6, line 4—Leave out 'proclamation' and insert 'regulation'.

This follows on the line of our accountability exercise. It amends subclause (2). Clause 6 deals with the emergency services areas. As members know, the State is divided into areas to facilitate determining the area factor of the levy, and there can be quite a significant difference in the amount of the levy that is applied to each area. Therefore, it is quite significant if there are to be changes made in or out of areas or by varying of boundaries, which is envisaged by this clause. Rather than being a proclamation, changes ought to be done by regulation, and that enables, in the first instance, the Legislative Review Committee to have scrutiny and, of course, the Parliament to have scrutiny, in which case any argument, debate or objection can be raised in a public forum.

The Hon. P. HOLLOWAY: As I outlined earlier, the Opposition's approach to accountability was that, under our scenario, we would allow the Government to devise the entire package of the funding levy and then it would go back to the Economic and Finance Committee for scrutiny. This amendment is really incompatible with the process that we will be moving later because, if there were disallowance by the House at either stage, it would be just a duplication of the consideration of this issue in the final stages by the Economic and Finance Committee. For that reason, we will not support it.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. I appreciate what the Hon. Mr Gilfillan is endeavouring to do. The difficulty is that I do not believe it is workable and I will be arguing also in relation to the setting of the levy that, as I have indicated already in relation to the Economic and Finance Committee's involvement, we have to get a better process in place than is presently in the amendments that the Opposition will move later. We have to remember, first, that the insurance industry sets its own ratings without any accountability except through consumer demand or resistance.

There may have to be modifications from time to time which are just commonsense modifications but which might be seen to be sensitive politically by some members and, if we move through the disallowance process, then it is quite possible that a levy might be, in a sense, in limbo for anything up to 12 months because you can move for disallowance but you do not have to actually have the resolution voted upon until the end of a parliamentary session.

So, one of the difficulties in dealing with regulations under this sort of scenario is that it has the capacity to affect quite dramatically the sensible operation of something as complex as the imposition of levies for the purposes of providing services to the public in relation to dealing with emergencies.

Amendment negatived.

The Hon. IAN GILFILLAN: I will not move either of the next two amendments because, as I was defeated on the previous amendment, they are unlikely to be successful.

Clause passed.

Clause 7.

The Hon. IAN GILFILLAN: I move:

Page 6, line 21—Leave out 'the council in whose area the land is situated' and insert

the Valuer-General

This is a relocation of the authority that makes the determination on land use, which is another factor in determining the levy. Currently, in the Bill clause 7(2) provides:

Land will be taken to be used for one of the purposes referred to in subsection (1) if, in the opinion of the council in whose area the land is situated, it is being predominantly used for that purpose on the relevant day.

Those purposes are listed in clause 7(1) and I will not go through them because members will be aware of them. The significant fact is that the amendment seeks to take that decision-making power from the council into the appropriate hands of the Valuer-General.

The Hon. K.T. GRIFFIN: The amendment is the same as the amendment I have on file and results from consultation with local government and, as the Hon. Mr Gilfillan has said, the amendment removes the reference to local government in the attribution of land use. Local government has argued strongly that it is not involved generally in the attribution of land use. Apparently, the estimate is that something less than 40 per cent of councils use such a system for the entire area of the council and we have concluded that the attribution role of councils, if pursued through this clause, would be patchy and better directed through a central point, and that is the Valuer-General. The evidence that we have shows our data to be adequate to the level required and we therefore deemed it better to remove the reference to the option altogether.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 6, lines 23 to 25—Leave out subclause (3).

This amendment is consequential in the light of the success of the previous one. It takes out a further clause which refers to the council having the decision-making power. As we are removing that from the clause and replacing it with the Valuer-General, this clause is no longer needed and it is therefore appropriate to remove it from the Bill.

Amendment carried; clause as amended passed.

Clause 8.

The Hon. IAN GILFILLAN: I move:

Page 7, lines 10 and 11—Leave out 'a council or'.

This amendment follows in the same vein as the previous two amendments because the council will no longer have particular power to determine the use of the land for the purposes of this Bill.

Amendment carried; clause as amended passed.

Clause 9.

The Hon. IAN GILFILLAN: I move:

Page 8, line 11—leave out subclause (5) and insert:

(5a) Before making a determination under subsection (4) the Minister must consult—

(a) the Country Fire Service; and

(b) the South Australian Metropolitan Fire Service; and

(c) the State Emergency Service South Australia; and

(d) the Surf Life Saving Association of South Australia Incorporated; and

(e) the Volunteer Marine Rescue SA Incorporated.

(5b) A notice published under subsection (1) must—

(a) include a statement of the amount determined by the Minister under subsection (4); and

(b) include a description of the method used in determining the amount.

(5c) The Minister must, as soon as practicable after the publication of a notice under subsection (1), cause a copy of the notice to be laid before both Houses of Parliament.

The first part of my original amendment read as follows:

(5) Before making a recommendation to the Governor under subsection (1) as to the amount of the levy and the values of the area factors and the land use factors to be included in the notice published under that subsection and before making a determination under subsection (4) the Minister must consult and consider the advice of the Emergency Services Funding Advisory Committee.

This will no longer be valid because the establishment of an Emergency Services Funding Advisory Committee was defeated in one of my earlier amendments. However, proposed subclauses (5a) and (5b) which deal with the levy have not been affected. In relation to my original amendment, subclause (5b)(c) read as follows:

where the Minister did not follow the advice of the Emergency Services Funding Advisory Committee in making the determination or in his or her recommendation to the Governor as to the amount of the levy or the values of the area factors or the land use factors—include his or her reasons for not following the advice.

As members can see that final paragraph is no longer applicable for the same reason; that is, there is no Emergency Services Funding Advisory Committee. However, I put it to the Committee that the balance of that amendment stands on its own and I urge the Committee to look favourably at the balance of the amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. With respect to the Hon. Mr Gilfillan, we say that this is overkill and that in any event the issue of methodology in calculating the levy will be a matter for scrutiny by the Economic and Finance Committee under the model which will probably be accepted by a majority of the Council.

In respect of consultation, perhaps the honourable member does not understand the processes of budgeting within Government at the present time. The Country Fire Service, the South Australian Metropolitan Fire Service and the State Emergency Service of South Australia are all instrumentalities of the Crown. In fact, the State Emergency Service is an administrative unit of the Government under the Public Sector Management Act; the Country Fire Service is a body corporate under its own Act and the Government appoints members to its board; and for the Metropolitan Fire Service the Minister is the body corporate and it is a corporation sole.

It seems a bit over the top to have the Minister consulting with himself, although in different legal capacities, in relation to the Metropolitan Fire Service; and in relation to the State Emergency Service to consult with an administrative unit which is under his responsibility, because in fact that consultation occurs as part of the budgeting processes already. Budgeting processes generally start in about October/November/December of one year with a view to the budget ultimately being presented in about May or early June of the following year. Each of the agencies of Government need to make their propositions to Treasury through the portfolio, the budgets are vetted for need, expenditure and savings (if necessary), and a variety of other issues are taken into consideration.

In respect of the non-government bodies, there will obviously be consultation. How can one make a determination about the contribution that will be made from the fund to these organisations without consultation?

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The honourable member might have a couple of examples where it has not been done, but considering that this is a new structure and a new scheme in which these bodies will be appropriately funded under the emergency services umbrella it seems to me to be an extreme position for someone to suggest that they would not be consulted. So on both these issues—consultation and the public description of the methodology—on the first, that consultation will occur automatically, I think it is overkill to include a provision for consultation in the Bill and, secondly, in relation to the latter, that is the description of the method used in determining the amount, that will be a matter that is likely to be the subject of public scrutiny under later amendments.

The Hon. P. HOLLOWAY: Concerning the three remaining parts of the Hon. Ian Gilfillan's amendment, in relation to consultation I think it would be the case that the Minister responsible would have to consult with these bodies. I think we can safely assume that that will happen, anyway. In relation to the second part of the amendment, that is proposed subclause (5b), as the Attorney has said that concerns matters that would go to the Economic and Finance Committee and then that committee would report to the Parliament anyway, so eventually the Parliament would be made aware of that information. Therefore, in that sense, subclause (5b), if it is not incompatible with the approach we are adopting, is certainly an unnecessary duplication.

In relation to subclause (5c), which concerns publication of a notice and it being laid before both Houses of Parliament, I suppose that that does at least inform this House of Parliament about the issue, and I guess that that may not occur under the Economic and Finance Committee model. If perhaps in later discussions we wish to do something like that I am sure that could be accommodated at that point. At this stage I indicate that the Opposition will not support the amendment.

The Hon. K.T. GRIFFIN: I did omit to address some comment on subclause (5c). When water rates are now levied there is notice in the *Gazette*, so it is not as though there will not be any public notification of the levy: there is required to be gazettal because once it is proclaimed it automatically goes through the Governor in Council and on the day it goes through the Governor in Council it is a proclamation of which notice is given in the *Government Gazette*. I think that again it is a bit of overkill to suggest that Parliament should actually have a copy of the notice tabled when in fact it is already in the public arena through the means of notification in the *Gazette*.

Amendment negatived.

The Hon. IAN GILFILLAN: I move:

Page 8, lines 19 to 22—Leave out subclause (7).

My amendment applies to subclause (7), which provides:

No proceedings for judicial review or for a declaration, injunction, writ, order or other remedy may be brought before a court, tribunal or other person or body to challenge or question the amount of the levy or the value of the area factor or the land use factor declared in a notice under subsection (1).

We believe that that is a draconian removal of justice, a fair go for people in this system, and cannot accept that it should be part of this legislation. Therefore, I am moving to delete the provision.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. There is always a dilemma about these sorts of issues as to the extent to which they should be reviewable by

the court. I think in many instances no-one can dispute that some decisions of Government ought to be reviewable by the courts. But if one looks at what this seeks to do it is the amount of the levy or the value of the area factor or the land use factor declared in a notice under subsection (1).

We see in subsection (1) that the Governor may by notice in the *Gazette* on the recommendation of the Minister declare the levy, and where the levy or a component of the levy is an amount payable in respect of each dollar of the value of land the area factor for each of the emergency services areas—and area factor is the factor for each of the emergency services areas declared by notice—and the land use factor for each of the land uses referred to in section 7(1) are relevant in determining the levy which will be imposed on particular properties.

I think it would be quite untenable to have, for example, the amount of the levy subject to any form of judicial review. If one looks at other levies that are imposed, for example, the water catchment levy, although I have questioned the viability of the process under that legislation, nevertheless it is not, as I recollect it, subject to judicial review. That is the amount that is fixed and it is subject to review by the Economic and Finance Committee.

There are many other levies—the water rating levy, the sewerage rating levy. They are not subject to judicial review. They are fixed. People have to pay them, and the only issue which is subject to review is the capital value upon which the levy or rate is assessed. I think the potential for undermining the integrity of the whole scheme is significant if we do not specifically provide for judicial review to be excluded.

The Hon. P. HOLLOWAY: During my second reading speech I referred to the determining factors for the Emergency Services Levy, such as the area factor or the land use factor. The land use factor is the responsibility of the Valuer-General. I am not sure whether that is subject to appeal under the Valuation of Land Act. Certainly, the Valuer-General's valuations are; but the land use factor may not be. The Valuer-General uses general valuation principles, and they are fairly well defined.

I guess the area factor and its determination will, essentially, be an arbitrary exercise. It will, to some extent, be political. I think that is inevitable. That is why the Opposition's preferred scrutiny method is to have it through the Economic and Finance Committee of Parliament, which will ultimately look at the total outcome of the levy setting process and which will then deal with it accordingly at that stage. I think we will have a problem that, if we do keep scrutinising these factor determinations along the way, we might be in a situation where we do not see the wood for the trees.

I can best sum up the Opposition's approach to review by the Economic and Finance Committee by saying that we should look at the overall result and at the balance of the whole scheme so that we can see the wood for the trees and not get too bogged down in the fine detail. For that reason, this again comes back to our approach that the level of scrutiny is best done at the Economic and Finance Committee level where those sorts of issues can be addressed. I think in relation to the area factor these are fairly general factors. It is not as though someone is going down each street and making a determination on such a small level. We are talking here initially about greater Adelaide. I suppose one could argue about the boundaries of greater Adelaide but, nevertheless, at the end of the day some arbitrary decision will have to be made, anyway, by somebody and we think it is best to look at the end result and judge the whole scheme at that stage. So for that reason we will oppose the amendment.

The Hon. IAN GILFILLAN: It is unfortunate, I think, that we are actually seeing a collaboration of the old boys' and old girls' club—both the Opposition dreams and the Government in reality—applying the softest option for themselves in Government. The fact that what I would consider as a basic right could prove troublesome is no justification for removing it. The Hon. Paul Holloway identified one of the matters which I emphasised in my second reading speech: the determination of area factors and land use factors can be quite discriminatory and could be abused for a Party political purpose in a run up to an election. It is quite clear that no-one wants to forecast or to contemplate that happening, because it is unsavoury, but the fact is that it can.

This clause actually has enough temerity to cut out a person questioning the amount. There is to be no scrutiny, no rethink, no avenue for a group of people who feel that they have been unfairly treated, and that there may be error or imbalance in this, to take this matter to be looked at before not only a court, tribunal or other persons or body. So there will be, if this clause stays in, virtually a total veto on any member of the public who feels that they have a grievance going to anybody, and even questioning it. In my view, it is a monstrous clause to leave in any legislation, and I would plead with the Committee to remove this clause.

If the Committee, as the Attorney has indicated, is going to be flexible to revisit certain clauses to have a look again at other matters, and this is the cooperative role that we have set in place, to chop this out *in toto* in my view is unnecessary and unethical on the part of groups of people who want to have a comfortable time in government, settling down to determine the amount of the levy, the amount that each group in the community will pay for each of the particular aspects of land use, or area factors, and that is to be take it or leave it.

No forum at all is to be allowed for any revisiting, except maybe in the Economic and Finance Committee and, as I said before, I believe that in many cases, unfortunately, that can be directed and controlled particularly with the fever of election or point scoring. It is not the most reliable and necessarily independent entity to look at these matters. So, I would ask the Committee to rethink this and to remove this clause, as my amendment moves. If need be, if there is some particular wording which would avoid the extreme concern that might be justifiable, and I would be prepared to talk that through, we could look at some alternative wording. But as it is now it is virtually a veto on anyone questioning any aspect of it.

The Hon. K.T. GRIFFIN: There have been some fairly colourful descriptions given by the honourable member. I do not share those views. As the Hon. Paul Holloway said, when you get down to land use factors and area factors one is talking in the broad sweep of things in trying to describe the uses of property and the rating levels which will apply to them, depending upon land use—commercial, industrial, residential, and rural, for example. The other point I make, and I repeat, is that you just cannot have the levy being subject to challenge in the courts. You do not do it with other levies. The levies are to be paid. There is still the opportunity for the valuation to be challenged, and that valuation necessarily takes into consideration what is the land use—residential, commercial, rural, whatever. So the basic valuation is still able to be challenged.

The Hon. P. HOLLOWAY: I think there would be grave difficulties if you had some of these general factors subject to review. It could, of course, completely upset the entire process, if someone were to successfully challenge the value of the factor in one area, unless of course they were right at the margin and it was a boundary issue. I can see this creating all sorts of problems for the entire scheme. Nevertheless, I have to say that I do concede the Hon. Ian Gilfillan's point to the extent that it would be nice if we could find some way of dealing with errors or perhaps a gross anomaly that has occurred for an individual. Whether that can be done is something that I have not really thought through. Whether it is possible at a later stage to see whether there may be areas where it is possible to allow for the correction of anomalies, and so on, perhaps could be open to some suggestions. Just to knock out this clause could lead to a complete gumming up of the whole process which would make it unworkable. If we can perhaps consider if there are any alternatives at a later stage, let us do so. Certainly at this stage I indicate that we will oppose the deletion of the clause.

The Hon. IAN GILFILLAN: Could I ask the Attorney (and if he cannot answer it himself, he could refer to his advisers) whether this would cover the Economic and Finance Committee as being a body which could not consider any of the matters embraced by this clause?

The Hon. K.T. GRIFFIN: No, I do not think this restricts what the Economic and Finance Committee can do. Judicial review is review by the courts. It is not review by Parliament or any of its committees.

The Hon. Ian Gilfillan: It is not only for judicial review but also for a declaration, injunction, writ, order or other remedy.

The Hon. K.T. GRIFFIN: That is judicial. Judicial review relates to all those sorts of issues. No remedies are granted by the Parliament or by a committee of the Parliament. Under the proposal, a committee of the Parliament either disallows, approves or objects. There are certain processes, but judicial review is review by the courts. Those sorts of remedies are remedies which may be granted by courts. This does not in any way limit what the Economic and Finance Committee can do, what the House can do or what the honourable member can do in raising questions. It does not have any application to that at all.

The Hon. P. HOLLOWAY: In the point that I raised earlier—but perhaps the Attorney was distracted at the time—I indicated that deletion of this clause could cause all sorts of problems to the operation of this scheme by gumming it up totally. Nevertheless, if there was a clear anomaly or a clear error made in processing in relation to the calculation or some factor (I do not have a case in mind), while rejecting the clause at this stage, perhaps we could give some thought as to whether it is possible that there might be some sort of limited scope for appeal when dealing with any obvious error that was made.

The Hon. K.T. GRIFFIN: I will take that on notice. There are some other areas where we will be looking at it.

Amendment negatived; clause passed.

Clause 10.

The Hon. IAN GILFILLAN: I move:

Page 8, line 26—Leave out '10 per cent' and insert:
20 per cent.

This amendment seeks to increase the contribution by the Government to the fund. Clause 10(1) provides:

The Crown is exempt from paying the levy for a financial year in respect of the land referred to in subsection (2) if it has paid into the Community Emergency Services Fund in respect of that year an amount that is equivalent to 10 per cent of the amount determined by the Minister under section 9(4) for that year.

My amendment seeks to lift that percentage from 10 per cent to 20 per cent, working on the basis that Governments seek to minimise their own contribution wherever possible. I have a dubious view that the figure of 10 per cent accurately reflects what is a fair contribution for the Government, and therefore move that the amount be replaced by 20 per cent as the Government's proper contribution to the Community Emergency Services Fund.

The Hon. P. HOLLOWAY: I move:

Clause 10—Leave out this clause and insert:
Liability of the Crown
10. (1) The Crown and its agencies and instrumentalities are not liable to pay a levy declared under this Division.
(2) However, the Crown must pay into the Community Emergency Services Fund in respect of each year in relation to which a levy is declared under section 9 an amount that is equivalent to 20 per cent of the amount determined by the Minister and published in the notice declaring the levy under section 9(5).
(3) Subsection (2) does not apply in relation to a notice disallowed under Division 3.

This amendment is fairly similar to that of the Hon. Mr Gilfillan in that it seeks the same objective, namely, that the Government should contribute at least 20 per cent of the amount raised under the new emergency services levy. It just does it in a different way. As provided in the Bill, the Government is exempt from paying the levy if it contributes an amount that is equal to 10 per cent of the total levy raised.

Of course, an alternative to that is that when the land owned by the Government is ultimately valued, and under the new formulas that will be set out for the raising of this particular levy, if it transpires that the Government is due for a different amount on the basis of the capital value of the land that it is deemed to own, the Government could pay that alternative amount. Either way, it would satisfy its obligations of paying the levy.

Under the ALP amendment, we take a slightly different approach and just fix the levy at 20 per cent. I should indicate why we are saying that the Government should make a greater contribution. I gave these figures in the second reading debate but I will go through them again. In 1996-97, the State Government contributed about $14.3 million, I think, to the CFS, MFS and SES. Under this new regime, if it was 10 per cent as proposed by the Government, 10 per cent of the total budget that the Government spent on these services in the current year would mean that its contribution was about $8 million. So, clearly the Government would contribute significantly less than it does at present to the maintenance of these services.

Really, the logic behind the Opposition's amendment is simply to ensure that the Government continues to pay its fair share and not just use this as a means of shifting the cost over to property owners. I guess one can argue as to what would be an appropriate percentage. The Government's figure of 10 per cent was fairly arbitrary, and so, too, is the 20 per cent that we are proposing.

If it transpires that the Economic and Finance Committee has the duty to scrutinise this scheme, I am sure that at that stage it will look carefully as to what is a reasonable contribution from Government. We believe that, under the current proposal, the Government would be getting out of it cheaply and in fact using this scheme as a means of cost shifting to

the public the contributions that it currently makes to our emergency services. I believe that it is very difficult to determine exactly what the Government contribution is. I did raise during the second reading debate the case of the Government's provision of firefighting services through Government agencies such as the National Parks and Wildlife Services and Forests SA.

There are a number of ways in which the Government contributes to emergency services that are not directly through the budget of the major agencies dealing with fire fighting, namely, the CFS, SES and MFS. There are the indirect contributions to which I have just referred, so it is not an easy task. The important thing is that whatever amendment is carried, whether it be mine or the Hon. Ian Gilfillan's, the Government should contribute its fair share to this levy and should not use the introduction of this new levy as a means of shifting its contribution over to the public; otherwise, the levy can be considered to be nothing more than a new taxation measure. I ask the committee to support my amendment, although it is not all that different from the one moved by the Hon. Ian Gilfillan.

The Hon. K.T. GRIFFIN: This is a fundamental question. The Bill is part of a package of budget Bills, and for that reason the Legislative Council has to be most cautious in making a decision that is directly an attack on the budget component of this Bill. With other budget Bills, maybe taxation measures, it would be most uncommon—in fact, it does not happen—for the Legislative Council to seek to either reject or amend, certainly in relation to the core issue of quantum, the tax that might be raised.

The Government's argument is that it is inappropriate for the Legislative Council to seek to amend the 10 per cent contribution that the Government will make to the dedicated emergency services fund. It is important for members to understand how the Government reached the conclusion that 10 per cent was an appropriate amount to be contributed by the Government (ultimately the taxpayers across the State) to emergency services. The funding review recommended the 10 per cent figure because it believed that on it is calculations it was an appropriate level. The report at paragraph 9.3.8, which is now in the public arena and relating to the contribution of the State Government, states:

> The State Government currently contributes a proportion of general revenue to emergency service agencies. In addition, a percentage of departmental premium to the State's self-insurance body, SACORP, is designated as equating to existing insurance levies and directed to risk management activities internal to the Government exposure. It is expected that State Government instrumentalities, including trading enterprises, shall contribute equitably to the Community Emergency Service Fund. This contribution should be made on the basis of benefit accruing to property held by those agencies best indicated as for private property by the capital value of that property.
>
> Existing limitations in the valuation data for State property add difficulty to this equation. However, on the basis of current estimates approximately 10 per cent of the State's value base is held by State agencies on behalf of the Crown, excluding business trading enterprises. Ongoing review and validation of the State asset register is aimed at improving the quality of the valuation of property held by the State. As this data is improved, the contribution by the State should be reviewed. Agencies that occupy privately rented premises will contribute to the Community Emergency Service Fund through charges accruing to individual properties. It is yet to be determined whether State property be levied individually by agency, department or globally.

The basis upon which the calculation of 10 per cent was made is as follows. According to our calculations, the total capital value of property in the State is $89 billion. Rating data was used from the Grants Commission, and approximately $80 billion was non-exempt or rateable property; $9 billion approximately was exempt from rating, and of that $2 billion was local government; $5 billion was State Government; and, $2 billion was property of churches, charitable organisations, schools and so on.

If we work out, on the basis of a common levy rate across the State and all properties, the Government contribution for its exempt property, based on a total recovery of $80 million, it would be $5.5 million. In addition, the 10 per cent contribution covers Housing Trust properties for which, on the basis I have indicated, would be $2.5 million, for a total take of $80 million across the State. That gives a total of $8 million which, if you compare it with a 10 per cent contribution out of $80 million, is equal to $8 million. I suggest that that is over generous in that all Government property has been taken to be in greater Adelaide, which is area 1. That is not the case. A significant amount of State property is out in the country where a lower rating would be applied.

To suggest that there ought to be an additional contribution does not in the Government's view stand up to close scrutiny. It must be remembered also that any additional amount over 10 per cent for every 1 per cent is about $1 million extra on the budget, and that will effectively mean that in the Community Emergency Services Fund others will pay less and the taxpayers across the State will effectively be paying more through the Government contribution. I vigorously resist the amendments from both the Opposition and the Hon. Mr Gilfillan and indicate that this will be one of those clauses on which I will seek to divide.

The Hon. P. HOLLOWAY: I am not really convinced by the Attorney's arguments in relation to the 10 per cent, although, as I did concede earlier, one can argue how this contribution might be determined. It is a little rubbery, but this is a question on which we will have to agree to disagree at this stage, and perhaps we will have discussion on it later. Will the Attorney indicate which of the two amendments—either my amendment or the Hon. Mr Gilfillan's—he finds least detestable, and we can then use one of them as a test clause, as we will clearly be discussing this again later?

The Hon. K.T. GRIFFIN: I am informed that the lesser of the two evils is the Hon. Mr Gilfillan's amendment and so, for the time being, we will support that.

The Hon. P. HOLLOWAY: In that case, I accept the inevitable and will use Mr Gilfillan's amendment as the test clause.

The Hon. Ian Gilfillan's amendment carried.

The Committee divided on the clause as amended:

AYES (9)

Cameron, T. G.	Elliott, M. J.
Gilfillan, I. (teller)	Holloway, P.
Kanck, S. M.	Pickles, C. A.
Roberts, T. G.	Weatherill, G.
Zollo, C.	

NOES (8)

Dawkins, J. S. L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Roberts, R. R.	Davis, L. H.
Crothers, T.	Schaefer, C. V.

Majority of 1 for the Ayes.

Clause as amended thus passed.

Clauses 11 to 13 passed.

Clause 14.

The Hon. CARMEL ZOLLO: I note that the Minister's second reading explanation indicates that 31 per cent of households and 20 per cent of small businesses do not insure and that another 29 per cent of households and 24 per cent of small businesses are underinsured. I presume that people simply cannot afford to pay for insurance. Can the Attorney say whether any arrangements for concessions will be made available in addition to many other rates that constituents face, such as water, sewerage, electricity and council rates? I am concerned also about low income families that need to have two motor vehicles because of where they live. Could the Attorney also comment on the fact that land owners already pay a land tax for properties other than their principal place of residence, and that it is, in fact, double dipping on the part of Government?

The Hon. K.T. GRIFFIN: I suggest that the issue of land tax is an irrelevancy. Land tax on other than the principal place of residence is what it says: it is a tax and bears no relationship to services that may be provided; it is distinguishable from, say, water rates, which are now moving much more towards user-pays, but there is a capital base within the calculation of the rates. There really is no similarity other than the fact that land tax is levied on the value.

The emergency services levy is designed to address the provision of specific services because the amount raised will go into the Community Emergency Services Fund for a particular purpose. Land tax goes into the Consolidated Account. The Government is not proposing any concessions and that issue will be debated in an amendment which comes up later for consideration. The Government believes that it would be inappropriate to build in concessions. Those who insure at the moment are not the beneficiaries of any concessions. They insure for the value and they get what they insure for, that is, coverage of risk, whether it is fire or other risk.

As I said at the second reading stage, why should someone who has a high income and owns a property be treated any differently from a person who has a low income and owns a property? The property values may well be the same and the risk is still the same, and seeking a level of protection against that risk might also be similar. The granting of concessions for something which is a service designed to protect against emergencies should not be distinguishable on the basis of a person's income or other means.

Clause passed.

Clauses 15 and 16 passed.

Clause 17.

The Hon. CARMEL ZOLLO: Under this clause, which relates to the Community Titles Act 1996, the charge is on community lots and not on common property. Is that the same for other Government levies or charges?

The Hon. K.T. GRIFFIN: I am not able to confirm that and I would have to do some work or get some research undertaken. The principle is this: if one lot holder does not pay his or her levy, why should the other lot holders carry the burden of that by virtue of its being on the common property? The common property is shared by all of those who have community titles with rights over the common property. It would be fundamentally unjust to provide for any unpaid levy over a community lot to become the burden of all the other community title holders within that development. That is what would happen if the levy were imposed on the community property.

The Hon. P. HOLLOWAY: In the case of a lessee or licensee of land in situations that clause 18 covers, who is ultimately liable for the levy, an owner or a tenant?

The Hon. K.T. GRIFFIN: There are two issues. The first, which the Hon. Carmel Zollo raised, is whether the provision in relation to community titles is the same as in other rating legislation, and I am told that it is. It is a consistent approach. The levy is on the owner, but there is an opportunity for owners through leasing arrangements to recover that as an outgoing which the landlord may seek to recover from the lessee. The primary obligation is upon the landlord.

The Hon. CARMEL ZOLLO: My question was the same as the Hon. Paul Holloway's, but I interpreted the provision in clause 18—'payable by lessee or licensee'—differently. Does subclause (5) of clause 18 enable an exemption if the terms of the lease say so?

The Hon. K.T. GRIFFIN: This operates in the following way: if there is a lease over land and the levy payable by the owner is outstanding, this provides that the Minister can give a notice to the lessee saying, 'Instead of paying your next lot of rent to your landlord, because the landlord has not paid X amount of dollars in levy, you pay us that part of your rent sufficient to meet that liability. You will then not be in default under your lease for non-payment of rent.' It is another means of the Crown ensuring that the levy is paid. That is not uncommon with mortgages, for example, because the mortgagee is frequently able to recover unpaid principal and interest by accessing the rent of a property which might be subject to a tenancy.

The Hon. P. HOLLOWAY: If a lessee was forced to pay, how is a guarantee given that the owner of the land will not try to recover it in some other way? What protection would a person who is a lessee have in those situations to ensure that the owner does not try to retrieve that amount?

The Hon. K.T. GRIFFIN: Subclause (5) makes that clear. It states:

> Payment by a lessee or licensee of rent or other consideration to the Minister under this section is, to the extent of the payment, in satisfaction of the lessee's or licensee's obligation under the lease or licence.

The lessor can only take action under the lease if there is default. If the lessee does not pay the rent, that is default. There is a process by which the lessor—the landlord—can take action to terminate the lease or whatever else is provided under the lease. That default does not occur by operation of this, which will be the law, and that is, if a lessee pays to the Minister that part of the rent which is required to meet the outstanding liability for the levy, that is deemed to be payment to the landlord and therefore there is no default.

Clause passed.

Progress reported; Committee to sit again.

[Sitting suspended from 1.2 to 2.15 p.m.]

STATUTES AMENDMENT (MOTOR ACCIDENTS) BILL

The following recommendations of the conference were reported to the Council:

As to Amendments Nos 1 to 4:

That the Legislative Council no longer insists on its disagreement.

As to Amendment No. 5:

That the House of Assembly amends its amendment by leaving out all the words after 'Leave out section 124AC'

and the Legislative Council agrees thereto.

As to Amendment No. 6:

That the House of Assembly amends its amendment by inserting after subclause (3):

(4) The insurer must, after acquiring the vehicle, allow inspection and, if necessary, testing, of the vehicle, on reasonable terms and conditions, by—

(a) any person who is or may become a party to proceedings in respect of death or bodily injury caused by or arising out of the use of the vehicle; or

(b) any person who otherwise has a proper interest in inspecting the vehicle; or

(c) any agent of a person referred to in paragraph (a) or (b).

and the Legislative Council agrees thereto.

As to Amendments Nos 7 to 10:

That the Legislative Council no longer insists on its disagreement.

As to Amendment No. 11:

That the House of Assembly amends its amendment by inserting after 'paragraph (a)' the words 'and substitute:

(a) require that, for the purposes of this section, the regulations made for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986* be read subject to modifications specified in the notice;'

and the Legislative Council agrees thereto.

As to Amendment No. 12:

That the Legislative Council no longer insists on its disagreement and the House of Assembly makes the following additional amendment:

Clause 9, page 4, lines 2 to 12—Leave out subsection (3) and insert:

(3) The Minister must, before issuing a notice under subsection (2)(a) or a notice varying or revoking such a notice, consult with professional associations representing the providers of services to which the notice relates.

and the Legislative Council agrees thereto.

As to Amendment No. 13:

That the Legislative Council no longer insists on its disagreement and the House of Assembly makes the following additional amendment:

Clause 9, page 4—After new subsection (4b) insert:

(4c) Proceedings may not be commenced under subsection (4b)(a) in relation to a charge for a prescribed service for which there is not a prescribed limit and to which a prescribed scale does not apply if, prior to the injured person being charged for the service, the insurer agreed to the amount of the charge.

(4d) Proceedings may not be commenced under subsection (4b) unless the insurer has—

(a) first given the service provider notice that the insurer claims the charge to be excessive or the services to be inappropriate or unnecessary, as the case may be, and of the reasons for the claim; and

(b) allowed at least 30 days from the giving of the notice for the service provider and any professional association or other person acting on behalf of the service provider to respond to the claim and consult with the insurer: and

(c) given due consideration to any response to the claim and proposals for settlement of the matter made by or on behalf of the service provider; and

(d) given the service provider notice of the result of the insurer's consideration of the matter and allowed a further period of 30 days to elapse from the giving of that notice for any further consultations if requested by the service provider.

and the Legislative Council agrees thereto.

As to Amendment No. 14:

That the House of Assembly amends its amendment by inserting after 'subsections (6), (7) and (8)' the words 'and substitute:

(6) Proceedings may not be commenced under subsection (4b) or for an offence against subsection (5) in respect of prescribed services provided in relation to bodily injury caused by or arising out of the use of a motor vehicle unless liability to damages (whether being the whole or part only of the amount claimed) in respect of that injury has been accepted by or established against an insured person or the insurer.

(7) Proceedings for an offence against subsection (5) may be commenced at any time within 12 months after—

(a) liability to damages (whether being the whole or part only of the amount claimed) has been accepted or established as referred to in subsection (6); or

(b) receipt by the insurer of an account for payment of the charge to which the proceedings relate,

whichever is the later.

(8) In proceedings for an offence against subsection (5) it is a defence if the defendant proves that, at the time the defendant charged for the services, the defendant, having made reasonable inquiries, had reason to believe that neither an insured person nor the insurer has or might have any liability to damages in respect of the injury.'

and the Legislative Council agrees thereto.

As to Amendment No. 15:

That the Legislative Council no longer insists on its disagreement.

As to Amendments Nos 16 and 17:

That the House of Assembly no longer insists on its amendments.

As to Amendment No. 18:

That the Legislative Council no longer insists on its disagreement.

As to Amendments Nos 19 to 21:

That the House of Assembly no longer insists on its amendments.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Government Boards and Committees Information—Boards and Committees (by Portfolio) as at 30 June 1998

By the Minister for Transport and Urban Planning (Hon. Diana Laidlaw)—

Development Act 1993—Report on the Interim Operation of the Barossa Council—Mount Pleasant District Council Development Plan—Taunton Area Plan Amendment Report

Development Act 1993—Report on the Interim Operation of the City of Charles Sturt—Hindmarsh and Woodville (City) Development Plan Coastal Areas Plan Amendment.

ROAD SAFETY

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial statement on new road safety management arrangements.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier today the joint select committee of this Parliament appointed to address transport safety issues met for the first time. Our first area of investigation will be driver training and testing—a contentious issue in terms of persistent claims that South Australian drivers are the worst in the world—and highly relevant due to escalating premiums for compulsory third party bodily accident claims.

With the establishment of this committee the South Australian Parliament is following the example of the New South Wales, Victorian and Queensland Parliaments. Over this decade, all these Parliaments, and now the South Australian Parliament, have come to appreciate that transport safety issues are complex involving respect for human life, trade-offs in terms of civil liberties and change in community culture.

In this environment, the best way to advance road safety reform is to seek consensus at least amongst members of Parliament—and the committee system is the best way we know to realise such a positive outcome.

To complement the establishment of the parliamentary committee, I am pleased to announce today new arrangements for the management of road safety in South Australia and the provision of advice on road safety to the South Australian Government. These measures acknowledge the National Road Safety Strategy and Action Plan which emphasises the importance of implementing structures and processes that maximise the effectiveness of the road safety activities pursued by a wide range of Government and private organisations, as well as the community in general. The new arrangements retain the positive features of previous arrangements.

Road Safety Executive Group

In relation to the Road Safety Executive Group, the Chief Executives Group was established in December 1994. It is considered critical that such a group be retained to demonstrate commitment at the highest level of Government agencies to the strategic directions of the Government's road safety program.

The reformatted group will comprise the Chief Executives or Executive Directors of Transport, Police, Education and Children's Services, Human Services, Justice and the Motor Accident Commission. An executive of the Justice Agency has been added to the group due to the key role this agency has in developing and implementing legislation affecting road user behaviour and road safety. This group, to be chaired by the Executive Director of Transport SA, will be more effective in future in relation to development, funding and monitoring of programs, by increasing from two to six the number of meetings held annually. It is my intention to meet the Executive Group on a regular basis to ensure maximum liaison with the work of the Parliamentary Transport Safety Committee.

Road Safety Consultative Group

It is proposed that this new group, reporting to the Executive Group, will have a membership of around 20 in order to provide a forum with a wide range of Government agencies, local government, and other organisations to contribute to the identification, investigation and solution of road safety issues. Formation of the group provides a tangible demonstration of this Government's enthusiasm to involve the relatively large number of organisations representing a broad cross-section of the community interested and involved in road safety related issues.

The terms of reference for the Consultative Group provides for working groups to be formed by the Executive Group on a needs basis. This approach is considered to be desirable when a range of expertise and experience is required. Possible issues for such groups may be seat belt usage, pedestrian safety, fatigue, speed, media and road safety in Aboriginal lands.

Prior to 1995, working groups addressing drink driving and speed reported to the Office of Road Safety. These groups ceased to operate when the Road Safety Consultative Council was established. I should add that this consultative council no longer operates.

Community Road Safety

In order to maximise the impact of road safety plans, policies and practices, the Government recognises that more work must be undertaken to develop a culture of concern about road safety in our community. Rather than pursue a top down approach, we must develop a sense of ownership of this issue in our community—and a general understanding of why road safety measures are being advanced. The use of speed cameras for road safety purposes is one such issue. Too often today too many people simply regard road safety measures as an imposition on their lives, which they resent and resist.

As in Western Australia, and more recently in Victoria, community road safety will now become a major focus and force in South Australia to maximise community goodwill and the effective implementation of road safety policy and practice. There are already a number of local area community road safety groups operating in South Australia—and I highlight the Millicent community.

It is the Government's wish to expand the number of these groups initially in the Adelaide Hills and southern metropolitan area, and to provide each group with a more tangible level of support. For this purpose, Transport SA has allocated $100 000 of new funds to this program this year—and has recently advertised the position of a community road safety officer.

While the primary role of the community road safety groups is to address local issues within the scope and resources of the groups, other local authorities and organisations, it is proposed that from time to time local communities will identify issues that require broader consideration at Government agency level.

Meanwhile, it is proposed that the Executive Group will implement a communication process with all formally constituted road safety groups. This arrangement will have the benefit of enabling community groups to refer road safety issues, which they are unable to address locally, to the Executive Group for consideration and appropriate action.

The Parliamentary Committee on Road Safety, the Executive Group, the Consultative Group and any future working groups will be provided with executive, administrative and technical support by the Safety Strategy Unit of Transport SA, which is a recent amalgamation of the former Office of Road Safety and other safety units within Transport SA.

Overall, the changes in management arrangements and the provision of advice which I have outlined today for road safety in South Australia will provide a smarter, sharper and more comprehensive approach to advancing road safety issues in South Australia in future.

OFFICE OF IMMIGRATION

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of the ministerial statement made by the Premier today on the subject of the Office of Multicultural and International Affairs.

Leave granted.

QUESTION TIME

YOUTH ARTS BOARD

The Hon. CAROLYN PICKLES: My questions to the Minister for the Arts are:

1. How does the Minister justify reviewing the grants function of the South Australian Youth Arts Board when in fact Mr Meldrum in his Report on the Review of Legal and Administrative Arrangements in the Publicly Subsidised Arts Sector in South Australia himself acknowledges:

> . . . because the youth arts programs are efficiently managed by the South Australian Youth Arts Board at present, the new arrangements (referring to his plan to create an additional central office grants committee) is unlikely to produce savings.

2. Given that the Minister agrees with Mr Meldrum's recommendation, can she explain the following statement:

> . . . while the grants administration appears to be very efficient, capacity to influence the youth arts is major.

Is not that what the South Australian Youth Arts Board is supposed to do?

3. Does the Minister acknowledge that removing the South Australian Youth Arts Board grants function and centralising it in Arts SA removes the independence and integrity of youth arts funding?

4. Did Mr Meldrum consult with the South Australian Youth Arts Board and other organisations?

The Hon. DIANA LAIDLAW: I have explained earlier that Mr Meldrum spoke with a number of individuals, not all in every arts organisation. I am aware that he did speak with the Chair of the South Australian Youth Arts Board. There is no intention to remove the grants function from the South Australian Youth Arts Board. Perhaps for the benefit of the honourable member and the Parliament I could read a letter that I wrote on 12 August to Ms Mary Mitchell, Chair of the South Australian Youth Arts Board. It states:

> I confirm that the 'review' is intended to be a collaborative exercise between Arts SA and Carclew focusing solely on administrative processes. You may be aware that Mr Tim O'Loughlin has already discussed this issue with Judy Potter—

she is the Executive Officer of the South Australian Youth Arts Board—

> and this exercise is a continuation of that process. The particular concern is that there may be some duplication between Arts SA and SAYAB administration of its grants processes as a result of the introduction by Arts SA of the Emerging Artists project grant category and the assignment to Arts SA of responsibility for administering Living Health arts funding. There is also some potential to use this review as a means of streamlining both Arts SA and SAYAB processes with the aim of making these processes more 'user friendly' for artists and arts organisations.
>
> I believe that SAYAB recognises the need to address this changing environment also and understand that this was part of the reason for SAYAB's decision to establish a working party to re-examine the way the board manages and implements the grants functions.

I highlight that SAYAB, even while the Meldrum committee was addressing various issues, had established its own working party to look at its grants function. The letter continues:

> I appreciate your invitation to make a nomination [to this working party], and I am pleased to nominate Mr Lester MacKenzie, the Director of Administration and Finance of the History Trust of South Australia.
>
> I reiterate that there is no review beyond this examination of administrative processes and I am sure you will accept that, with that clarification, the specific questions relating to the broader, more formal review that you have asked are not relevant for this these purposes.

I should add that I have since received a reply from Ms Mary Mitchell, Chair of the South Australian Youth Arts Board, and she has indicated that her earlier questions were no longer relevant in the light of this reply. I believe that the reply will also satisfy the honourable member's questions.

MOTOROLA

The Hon. P. HOLLOWAY: My question is to the Attorney-General. Further to my question yesterday when I sought information from the Attorney-General in relation to the Motorola contract, can he confirm reports in this morning's *Australian* newspaper that the then Premier, Mr Brown, signed a contract with Motorola in November 1996 which designated Motorola as the equipment supplier for the whole of Government radio network? Secondly, does the Attorney agree that it is unusual for the Government to let any substantial contract, such as the $60 million Motorola contract, without going to tender? If so, did he seek explanations for this at the time? Finally, was Crown Law advice sought prior to the signing of the November 1996 contract with Motorola, and what was that advice?

The Hon. K.T. GRIFFIN: I will take those questions on notice and bring back a reply.

MOUNT SCHANK ABATTOIR

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Treasurer, representing Minister for Industry, Trade and Tourism, a question about the Mount Schank meat dispute.

Leave granted.

The Hon. T.G. ROBERTS: I have asked a few questions in relation to the Mount Schank meat dispute and have referred to the similarities to the docks dispute that occurred earlier this year. It also has similarities to a coal dispute that is being played out in Queensland at the moment by a United States owned coal company. Although it is a minor dispute in most people's eyes in the metropolitan area and perhaps in the Government, to those people who rely on part-time, casual and seasonal employment in regional areas it is a very important issue.

In the *Australian* of 27 July 1998 an article by Christopher Niesche headed 'Order a win for sacked miners' states:

> A US-owned coalmine was 'either naive or too clever by half' when it sacked its miners and later tried to hire a replacement workforce, the Australian Industrial Relations Commission found yesterday. Commissioner Errol Hodder ordered yesterday that if it reopened, the idle Gordonstone coalmine in central Queensland should recruit from the pool of 312 workers it sacked last October.
>
> Mine manager Gary Wright said Gordonstone, majority owned by US multinational Arco, was seeking an urgent appeal before the Full Bench of the commission. But there was some doubt whether the miners would get their jobs back, with the company refusing to comment on whether it would reopen the mine.

This is one of the tactics that was used in the Corrigan dock dispute and it is also one of the tactics used by the owners of the Mount Schank meatworks. The message has to be given to employers in those organisations which set up bogus companies and make it very difficult for unions and their representatives to follow the money and ownership trail that these practices will be outlawed in this State. Will the Minister state clearly to all bogus or rogue employers stupid enough to try these disruptive, morally corrupt methods of

employment and industrial relations in this State that their methods and investment are not welcome here?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Minister and bring back a reply.

NATIONAL WINE INDUSTRY CENTRE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Treasurer, representing the Premier, a question about the National Wine Centre.

Leave granted.

The Hon. J.S.L. DAWKINS: I have noted in the 25 August edition of the *Murray Pioneer*—which is listed as the State's No. 1 country newspaper—a frontpage story about the National Wine Centre which is to be developed in Adelaide and which has potential benefits for Riverland wineries. I was interested in these comments as well as the editorial in the same issue because there have been questions asked in the past about the siting of the centre in Adelaide rather than in a wine growing region of this State. There has also been some speculation about the manner in which the various wine regions will be promoted through the centre. Can the Premier indicate how the various wine regions and their individual wineries, both large and small, will be given the opportunity to participate in promotions and activities at the National Wine Centre when it opens in the year 2000?

The Hon. R.I. LUCAS: I thought the honourable member believed that a certain country newspaper just north of Adelaide was the premier country newspaper in South Australia! I will certainly refer the honourable member's question to the Premier and bring back a reply. I note in the supporting documentation from the *Murray Pioneer* that the honourable member has kindly provided to me information that the National Wine Centre will showcase the products of each wine region in Australia and that each month one of the regions will take pride of place at the centre with display areas and tasting sessions by the designated region of the month.

As I understand it from information provided by the honourable member and information that Anne Ruston has previously provided, there is a very clear intention that the National Wine Centre will be there to ensure that all our important wine producing regions in South Australia and nationally will have an opportunity prominently to display their wares. I will happily refer the honourable member's important question to the Premier and bring back a reply.

DISTINGUISHED VISITORS

The PRESIDENT: I would like to take this opportunity to recognise two members of the Playford Trust board in the gallery, the former Chairman of the trust, the Hon. Don Laidlaw, and Mr Howard Michell.

EMPLOYEE OMBUDSMAN

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Hon. Angus Redford, as Chair of the Legislative Review Committee, a question about the Employee Ombudsman's Office.

Leave granted.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I even warned him, albeit briefly. Under section 61 of the Employee Ombudsman's Office legislation, the Employee Ombudsman may consult with the Legislative Review Committee of the Parliament on questions affecting the administration of his office. It is on that basis that I am asking questions of the Hon. Angus Redford about the office of the Employee Ombudsman, because he is not answerable to any Minister.

My office has received information that in the 1997-98 financial year the Office of the Employee Ombudsman in South Australia handled 3 265 inquiries. There is evidence of an increasing demand for the services of this office, following figures from 1995-96, which saw 2 164 inquiries dealt with, and 1996-97, when the number of inquiries rose to 3 156.

The Employee Ombudsman's most recent annual report (of 1996-97) shows the important oversight the office has on industrial matters in South Australia. The report says that the role of the office in the enterprise bargaining process is changing, with the office's additional participation in areas such as advising, informing and assisting parties to develop their own agreement. The Employee Ombudsman's role in grievances is also increasing. The report states at page 7:

> Particularly disappointing is that fact that the number of complaints from State Government employees has continued to increase despite attention paid to these sorts of problems in last year's report.

The report says that, while steps were taken by the Employee Ombudsman's Office to deal with this problem with Government departments, very little appears to have been done so far to give these issues the attention they deserve. The Ombudsman said that poor morale arising out of such practices could do much to cancel any benefits to be obtained through enterprise bargaining. My questions to the Hon. Angus Redford are:

1. Have there been any discussions between the Legislative Review Committee and the Employee Ombudsman in relation to both the level of resources and concerns that have been raised in previous reports?

2. If there have been discussions, what has come of them?

3. If there have not been discussions so far, is the honourable member, as Chair of that committee, in a position to indicate whether or not he would be prepared to follow up on those matters?

The Hon. A.J. REDFORD: First, the committee has not had any contact with the Employee Ombudsman since I became Chair in October last year, and my predecessor the Hon. Robert Lawson has just advised me that he did not have any contact with the Employee Ombudsman during his term of office, which commenced prior to the establishment of the office of Employee Ombudsman. Therefore, there has been no discussion about the matters raised by the honourable member. However, I am prepared to ensure that the matter is raised at our next meeting. For the benefit of the honourable member, we are scheduled to meet next Wednesday and will raise it on that occasion.

NGAPARTJI MULTIMEDIA CENTRE

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Government Enterprises, a question about the 'Hello' free e-mail service run by Ngapartji.

Leave granted.

The Hon. CARMEL ZOLLO: Ngapartji Multimedia Centre provides a World Wide Web based Internet e-mail facility as a free service to South Australian residents, and I

understand that this will now be extended to all Australians. Ngapartji is a consortium involving the State Government, South Australian universities and private industries, as well as aid by way of Commonwealth grants.

A constituent has recently contacted me complaining of a major fault with the new e-mail system. When the constituent had logged on to his e-mail account, his personal e-mail account was filled with over 10 messages. After opening some of the messages deposited in his account, he discovered that the messages were meant not for him but for other users of the 'Hello' system. Somehow, their personal correspondence had been delivered to his in-box. Correspondence originally destined for other users was randomly received by my constituent's account, quite contrary to his wishes or those of the senders or intended recipients.

Interestingly, this included a message sent via the Australian Commonwealth parliamentary system by a staff member of a South Australian Federal Liberal member, who sent vulgar jokes on Bill Clinton to a list of a dozen Liberal staffers and members of the Public Service. I assume that they were all friends of his. This may easily have been more sensitive information and reminds us of the current vulnerability of the Internet and the need to implement legislative measures to protect the privacy and security of individuals—even of Liberal Party members.

This breakdown in the 'Hello' e-mail system constitutes a vast breach of the privacy of these individuals. For example, the names and employers of the Liberal staffer's network of contacts was revealed. In another account a constituent received pornographic and profane material, unmentionable in this Chamber. The constituent attempted to have this issue dealt with by contacting the Ngapartji help desk. He was informed that that matter would be corrected and that it was caused by an expansion and upgrade of the system. This was two weeks ago. Despite his contacting Ngapartji several times since his initial complaint, the matter has yet to be rectified. I understand that this is only one example amongst hundreds of users of the system. My questions to the Minister are:

1. As the South Australian Government is a key stakeholder in Ngapartji and quick to claim credit for its successes, will the Minister inform this Chamber what has caused the failure of the 'Hello' system?

2. How many South Australians has it affected?

3. What is being done to rectify the problem in order to ensure that the matter is resolved and that the South Australian users of the system have their privacy protected?

The Hon. K.T. GRIFFIN: I will refer the questions to the Minister in another place and bring back a reply.

LEGISLATIVE COUNCIL, ROLE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Treasurer, as Leader of the Government in the Council, a question about the role of the Legislative Council.

Leave granted.

The Hon. L.H. DAVIS: Members would well know that Labor Party policy is to abolish the Legislative Council. Therefore, I was interested to note in the August edition of the *Adelaide Review* an article by Don Dunstan addressing this matter. He recalled his early days in the Parliament and his reflection on the Council when he said:

> From my earliest days in Parliament I urged that it was a useless impediment on the will of the people. I remember remarking in the House that the Legislative Council was at that time mostly a repository for superannuated dodos whose chiefest activity was to sit there, on the few occasions they were called together, listening to their arteries harden.

However, he prefaced that remark by saying that he had hoped the Legislative Council would not let the Parliament get away with certain things relating to competition policy. He developed the argument by saying:

> I believe that we have devised the best system for the Lower House because it retains individual electorates which can be served by the single members who can then clearly be called to account for their stewardship by their electors. At this time the Statewide PR system for the Upper House does ensure that those minorities can be heard and a balance given.

Apparently Mr Dunstan has the support of the Hon. Terry Roberts from the soft Left, which would suggest that the Hon. Mr Roberts is running counter to Party policy, so he should watch out. There are precedents in this place for that. The Hon. Don Dunstan concluded by saying:

> I am having second thoughts.

The irresistible conclusion is that the Hon. Don Dunstan, who is a father figure for the Labor Party in South Australia, is publicly expressing doubts about what is Party policy. I wonder whether the Leader has any additional information on this important matter, and would this suggest that Mr Dunstan is in danger of being expelled from the Labor Party?

The PRESIDENT: Order! Before I call on the Treasurer, the Hon. Mr Davis knows better than most that he cannot just ask any Minister simply to comment. He must ask a direct question. Would the honourable member rephrase his question please?

The Hon. L.H. DAVIS: Is the Leader aware of this article by Mr Dunstan? Would I be right in assuming that, if Mr Dunstan does hold those views, he could well be in danger of being expelled from the Labor Party?

The Hon. R.I. LUCAS: That was a very well-phrased question. I must admit that I did read that edition of the *Adelaide Review* at the time and I was shocked. I read it and had to go back to the by-line again and think, 'Was this really Don Dunstan talking to us—the same Don Dunstan who railed against the Legislative Council for his decade in the 1970s before he retired hurt?'

Members interjecting:

The Hon. R.I. LUCAS: Well, the changes had been made—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The changes had actually been made in the mid 1970s, in the middle of the Dunstan decade. The changes were not made in the 1980s, the Hon. Mr Holloway. Those who are long in the tooth, such as the Hon. Mr Roberts and myself, who have been around this Chamber for a long time, know that the changes were made in 1975. Prior to 1975, if you were not over the age of 30, you were not entitled to be a member of the Legislative Council. A whole range of changes were made during that early part of the 1970s.

I was shocked, when I read that article from Don Dunstan, to see such a significant change in policy direction and political outlook about this esteemed Chamber, which I know that you, Mr President and I hold very dear in terms of its importance to our democratic institutions here in South Australia. The Liberal Party is a very strong supporter of the bicameral system, Mr President, as you would well know, and long may that continue. I think the Hon. Mr Davis raises—

Members interjecting:

The PRESIDENT: Order! The honourable Treasurer.

The Hon. R.I. LUCAS: In response to the Hon. Mr Holloway, you do not have to betray any confidence. I think they put their views on the front page of the *Advertiser*.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: That may well be true. They may well have forgotten what they said on the front page of the *Advertiser* last year or, to put the kindest construction on it, they may well have changed their view, too, in the space of 12 months. Don Dunstan has changed his view from 20 years ago, and it may well be that those aforementioned members may well have changed their view in the past 12 months.

It is an interesting second question from the Hon. Mr Davis, that is, how Don Dunstan or anyone could publicly speak against the Labor Party policy and escape the sort of fearsome retribution that is being meted out by the Hon. Mr Cameron's colleagues upon him for the position that he has adopted in relation to another issue which has been put down by Mike Rann and his current colleagues in the Labor Party. Here we have Don Dunstan, in this article and, I understand, in a number of other speeches, publicly opposing Labor Party policy and platform—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Cameron is prepared to support that particular policy. Of course, it is not his policy any more. He is now free to roam across the policy horizons, as he will, to decide which ones he does or does not believe to be correct.

The Hon. L.H. Davis: And to act in the best interests of South Australia!

The Hon. R.I. LUCAS: And to act in the best interests of South Australia, as my colleague the Hon. Mr Davis says. That freedom to roam across the policy horizons is not with Mr Dunstan or any other member of the Labor Party, because they have pledged to support their platform and their policy statement. So, we await with interest—

The Hon. T.G. Cameron: Is Peter Lewis still a member of the Liberal Party?

The Hon. R.I. LUCAS: Yes—a simple answer to a simple question. We await with interest whether, as I heard him described by the Hon. Mr Cameron, the envoy of the socialist left, Mr Ian Hunter, and Paddy Conlon will seek to take action against Mr Dunstan under—

The Hon. L.H. Davis: A show trial for Don!

The Hon. R.I. LUCAS: A show trial for Don, under the provisions of the Labor Party rules, as I understand it, where anyone can take action against a colleague for disloyalty. As the Hon. Mr Cameron has very aptly described Mr Conlon and Mr Hunter—

Members interjecting:

The Hon. R.I. LUCAS: Public disloyalty, the Hon. Mr Cameron says, and he would know the rules better than anyone in this Chamber.

The Hon. T.G. Cameron: I wrote half of them!

The Hon. R.I. LUCAS: He wrote half of them. Public disloyalty by Don Dunstan in relation to this important policy. If I might conclude in terms of public disloyalty, I must say that it would be very interesting to ask Mike Rann what his response was when, in the Caucus, one member suggested they ought to follow the Party policy and introduce legislation to abolish the Legislative Council. What was Mike Rann's response in his own Caucus to a suggestion that Party policy ought to be followed? All members in this Chamber from the Labor Party Caucus know what Mike Rann's response was to that. There is a deathless hush.

What was Mike Rann's response when a member of his own Caucus said, 'Do you want me to move a motion in the Parliament to support the Party's policy to abolish the Legislative Council?'? Mike Rann said 'No.' I will be very interested to hear Mike Rann's response, when questioned by the media about his response about whether he is prepared to support their own Labor Party policy in relation to the Legislative Council.

WORKERS COMPENSATION

The Hon. R.R. ROBERTS: Getting back to the business of the House, I ask the Attorney-General, representing the Minister for Government Enterprises:

1. Is he aware that proceedings before the workers compensation review panel have recently been aborted as a consequence of a review officer not being reappointed?

2. Is the Minister aware that some review officer appointments ended on 30 June 1998 and others are to end on 31 August 1998?

3. Has the Minister taken any steps to reappoint review officers to ensure that all proceedings are completed?

4. Has the Minister conducted a review on or before 30 June this year to review the remuneration of review officers and, if so, what was the outcome of that review?

5. Has the Minister notified any review officer of his intention not to reemploy the review officer in accordance with clause 11 of their appointment statement?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague in another place and bring back a reply.

NEW ROCK GENERATION PROJECT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Education, Children's Services and Training, a question about the new rock generation project.

Leave granted.

The Hon. A.J. REDFORD: First, I declare an interest in that I sit in a voluntary capacity on the board of Ausmusic South Australia with a number of other dedicated and enthusiastic board members who also serve in a voluntary capacity. Yesterday I was approached by Ms Emily Heysen, the General Manager of Ausmusic SA, concerning the new rock generation program. The new rock generation program was initiated by Ausmusic in 1992 and involves a contemporary popular music program for secondary schools. It is a program delivered to schools by tutors and contemporary music artists and offers workshops and lessons for the purpose of enhancing and supporting existing school programs.

Since its introduction the program has been delivered weekly in eight key schools, with one-off workshops in other schools. Initially ensemble workshops in performance are identified as the main area of assistance required by schools, although over the past three years the program has been expanded to include music business, production and other music industry subjects. As well as the workshops and lessons, the new rock generation has been active in the establishment of career pathways for students wishing to enter the music industry through coordinated training courses and resources. Through this coordinated approach to contemporary music education, the new rock generation now

provides opportunities not only at secondary school level but with TAFE and other community training providers through the establishment of curriculum links, music industry training attachments, music business traineeships, work placements and performance opportunities. This has all been provided at a cost to the Education Department of some $45 000 per annum.

My personal experience would indicate that it has been very successful, having attended the last three multi arts showcases, the last one being at the Adelaide Festival Centre in early June this year. Next year's showcase has been set for March and I hope that the shadow Minister for Arts, like her predecessor the Hon. Anne Levy, can attend. The aims of the program are to foster the creation of opportunities for South Australians and it provides a link between the industry and contemporary music education providers and develops and implements training courses.

We have been very lucky in this State in that our former Minister for Education, the Hon. Rob Lucas, was a great supporter of this program and the Minister for the Arts—

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: It is a good opinion. The Minister for the Arts has been proclaimed nationwide as being the most progressive Minister in the delivery of contemporary music. You have a couple of old lefty mates in Melbourne who will fly over at the drop of a hat for any request of the Hon. Di Laidlaw in terms of the arts program and contemporary music here in South Australia. It has been acclaimed nationwide and we are the preeminent State, without any shadow of a doubt, in the area of contemporary music. In terms of budget cuts, some concern has been expressed to me that this excellent program may be affected. In light of that, my question to the Minister is:

1. Can we have an assurance that these excellent programs will continue?

2. Will the Minister outline some of the benefits of the NRG program to the music industry and to our young people?

The PRESIDENT: I call on the blushing Minister for Transport.

The Hon. DIANA LAIDLAW: I do not know that I blushed, although my father did earlier when you acknowledged him in the gallery. It almost went to my head, and if I had a big ego I would be in trouble after what the honourable member said. We do continue to get extraordinary letters and compliments printed over the Internet and in correspondence. They flowed thick and fast after the last Music Business Adelaide event and I compliment Warwick Cheatle and his committee. It was great to see the Hon. Angus Redford there participating yet again to advance the interests of contemporary music in this State.

I advise that in terms of the new rock generation program there is certainly no basis for any claim that the contemporary music projects within the Education Department, including this one, are about to be cut. These programs are considered as a priority by the department and indeed Ausmusic recently requested additional funds and that proposal is currently being assessed by the department.

Following the Government's new budgetary position the Department of Education and Children's Services has requested that all areas of responsibility within the department submit reports, which should then provide an evaluation of each unit's program. Assessment will then be made of each and every program to determine where some restraint measures might eventually be made. I am aware, having spoken to the Minister's office (and this is the advice from the Minister for Education himself), that there may have been some misinterpretation by some relevant staff, that the provision of these reports that he and the CEO have sought mean they will lose funding as a consequence of submitting that report. That is just not so.

I am pleased to have the opportunity today to put that matter on record because the Hon. Malcolm Buckby, like the former Minister for Education and Children's Services (Hon. Rob Lucas), has been fantastic in supporting these programs. I remember making a personal request of the Hon. Rob Lucas on one occasion for Ausmusic. I have to understand that as Treasurer he is not always as nice as he used to be when education Minister, because when I made a request on behalf of the contemporary music industry and Ausmusic he was particularly helpful as education Minister and regularly came forward with money. I wish the same approach prevailed in his new role, but I would expect the same approach of the Hon. Malcolm Buckby.

I anticipate that I will have a very welcome responsibility in the next few days to be able to make a major announcement in terms of Federal funds for the contemporary music industry in this State. I will be making that statement with the Hon. Richard Alston, the Federal Minister for the Arts. The funds have been cleared, tied off and agreed to and it will be tremendous news for South Australian arts, particularly our young people and the contemporary music industry, and will augment so many initiatives undertaken by the industry at large, by arts and education in the contemporary music sector.

ADTEC98

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Treasurer, representing the Premier as Minister for Industry, Trade and Tourism, a question about the Australian Defence Technology Expo and Convention.

Leave granted.

The Hon. SANDRA KANCK: I have been advised via e-mail from the 'Stop ADTEC Campaign' that Adelaide will be hosting the Australian Defence Technology Expo and Convention, known as ADTEC98, in November. The aim of the expo is to promote the sale of military products to, primarily, the South-East Asian and Middle Eastern markets. The end of the Cold War has reduced the demand for arms and has resulted in a downturn in the armaments industry. The Australian Government's response has been to market more aggressively to two regions where spending has not been significantly reduced, namely, South-East Asia and the Middle East. The material provided to me by the Stop ADTEC Campaign quotes the Minister for Defence, Bronwyn Bishop, as saying:

> The defence industry will receive unprecedented Government support in its export drive. It can also count on my personal commitment. I will help in any way I can with letters of support, telephone calls, visits or whatever is required.

The e-mail letters also state that the Defence Minister has led a number of military trade delegations, including to the Middle East and Indonesia. Is the Premier aware of the military expo known as ADTEC98, and does he personally endorse Adelaide as the site for the promotion of sales of arms in our region?

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

GENETIC MANIPULATION

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to directing some questions to the Treasurer, representing the Minister for Human Services, about genetic engineering.

The PRESIDENT: I do not like the look of that sheaf of papers in the honourable member's hands.

Leave granted.

The Hon. T. CROTHERS: Like the speaker, half of them are blank.

The Hon. L.H. Davis: What do you know about genetic engineering?

The Hon. T. CROTHERS: Well, I know enough to avoid the honourable member at all costs. On 23 July I directed a question related to genetics to the Minister. Today I wish to pursue the same subject matter and, to that end, I shall formulate some questions based on the viewpoints of the Gene Ethics Network and the South Australian Genetic Food Information Network, particularly that viewpoint encapsulated by Mr Arnold Ward who is a member of the body to which I have just referred. My officers have been in touch with Mr Ward's home and, in his papers, he asserts the following:

> That there are inherent dangers in transferring genes across the species barrier because they can land anywhere on the receiving DNA strand—it is an imprecise technique.
>
> The process can lead to health problems, such as the so-called crippled virus bacteria vectors and antibiotic resistant markers which can recombine in a host via the action of other organisms to produce new viruses and pathogens.
>
> [On 27 May this year] in Washington an unprecedented coalition of scientists, religious leaders, health professionals, consumers and chefs filed suit against the U.S. Food and Drug Administration to obtain mandatory safety testing and labelling of all genetically engineered foods.

A meeting of the Codex Alimentarius in Ottowa in May of this year saw no decision taken on food labelling. As Mr Ward points out, at that meeting the United States, Canada, Brazil and Australia opted for no labelling whilst the United Kingdom, the European Union, India, Norway, Switzerland, Austria and Poland want mandatory labelling. Mr Ward, in his excellent information paper, lists several known problems with genetically engineered products and, for the purpose of the *Hansard* record, it is worth listing them: first, soy bean with a brazil nut gene inserted but not marketed or labelled showed that test subjects with allergies to nuts suffered an allergic reaction; secondly, celery with an insecticide gene (Psoralin) caused skin irritation on all who handled it; and, thirdly, 60 000 bags of canola crop designed to be used in sowing the 1997 Canadian crop had to be destroyed as they were spliced with the wrong gene.

I further note that this year Australia exported 120 000 tonnes of canola seed into Europe because Europe's former Canadian canola seed sources contained a mixture of genetically engineered and non-genetically engineered seeds. Talking of which, I further note that Monsanto, which thus far has spent $US3 billion on research on genetic engineering, has now perfected crops, the seeds of which will not reproduce, which means that, each year, the farmer user will have to pay for any of Monsanto's genetically engineered product over and over again.

I understand that recently a meeting of State, Federal and New Zealand Health Ministers has taken place and that high on the agenda was the question whether or not to label foods containing genetically manipulated organisms. History now records that they refused to do that. In the light of the foregoing, therefore, I direct the following questions to the Minister:

1. Has any decision been recently taken as to labelling genetic manipulated foods and, if not, why not?

2. What is the State Minister's view on the subject of labelling genetically engineered food and crop products?

3. Does the Minister agree that Australia's and South Australia's success in exporting food stuffs and farm products generally comes in part from the fact that Australia and the States of this Commonwealth are seen by the importers of our product to have a clean, green image?

4. Does the Minister agree that it would take only one genetically engineered disaster, such as happened with the Canadian canola seed, for our food exports to suffer disastrous consequences?

5. Does the Minister agree with me that there needs to be more informed public debate on the whole of the subject matter than is and has been the case up till now and, if he does, will he use his best endeavours to encourage public debate and, if not, why not?

The Hon. R.I. LUCAS: I will need to take advice on those questions, which will not surprise the honourable member. I will gladly consult my learned colleagues and their learned advisers on the important questions that the honourable member has put to the Government. Obviously, we will need to correspond with the honourable member during the upcoming break.

SCHOOL FEES

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about education regulations.

Leave granted.

The Hon. R.R. ROBERTS: Last night in this Council, after what was a fairly acrimonious debate at times, the Council's view was to disallow the regulations in respect of the Education Act which would have allowed the setting and compulsory collection of fees. My questions to the Treasurer are:

1. Did Executive Council meet this morning?

2. Did it discuss the disallowance?

3. Has it reinstated the regulations and, if not, will he give the Council a guarantee that the Executive Council will not abuse the wish of this Council and reintroduce those regulations during the parliamentary break?

The Hon. R.I. LUCAS: I was just taking some advice from the Hon. Mr Crothers as to how to answer this question. It is such a difficult question; I needed to consult my learned adviser, the Hon. Mr Crothers.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: I do not and neither does any member of the Executive Council—

The Hon. K.T. Griffin: We have an oath of secrecy.

The Hon. R.I. LUCAS: As the Attorney-General indicates, we have an oath of secrecy about which the Hon. Mr Roberts is obviously not aware. We do not publicly discuss what was discussed in Executive Council meetings, and I have no intention of breaching my oath of secrecy at the invitation of the Hon. Mr Roberts or anyone else. In the fullness of time I am sure that the Minister for Education will indicate the Government's response to the act of education irresponsibility that was inflicted upon Government schools in South Australia by people of the ilk of the Hon. Mr Roberts, the Hon. Mr Elliott and the Hon. Ms Pickles last

evening. That will be the responsibility for the appropriate Minister, and I have no intention of breaching my oath of secrecy for the honourable member or, indeed, anyone else.

GAMING MACHINES

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Leader of the Government in the Council, representing the Premier, a question in relation to poker machines.

Leave granted.

The Hon. NICK XENOPHON: The *Advertiser* of 27 November 1997 in an article headed 'Pokies ban too costly, says Olsen' referred to a Government warning that phasing out poker machines over a five year period from hotels would cost South Australia more than $1 billion in compensation. It quoted the Premier as saying that if machines were phased out 'the compensation bill to all those who invested lawfully would be horrendous.' I further refer to the Social Development Committee's recommendation, released yesterday, that poker machine numbers ought to be gradually reduced to 10 000. My questions to the Premier are follows:

1. Did the Premier receive any advice, including legal advice, regarding the question of compensation prior to making his statement referred to?

2. If so—

(a) from whom did he receive such advice?

(b) what was the substance of that advice?

(c) what was the legal basis of that advice?

(d) will he table that advice?

(e) if 'No' to (d), why not?

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: Some members have the gift of the gab: the Hon. Angus Redford has the gift of the gaffe. My questions continue:

3. If the Premier did not receive any advice prior to making the statement, what was the basis of his making the statement referred to?

4. Has the Premier received any advice, including legal advice, on the issue of compensation subsequent to making the statement referred to and, if so—

(a) from whom did he receive such advice?

(b) what was the substance of that advice?

(c) what was the legal basis of that advice?

(d) will he table that advice?

(e) if 'No' to (d), why not?

The Hon. R.I. LUCAS: I take it from what the honourable member has just said that he did not provide the legal advice to the Premier. I will happily refer the honourable member's 14 questions, or however many there were, to the Premier and—

The Hon. A.J. Redford: A request for particulars, we call it in the law.

The Hon. R.I. LUCAS: A request for particulars. We will need to correspond with the honourable member during the upcoming break.

POPULATION GROWTH

The Hon. G. WEATHERILL: I seek leave to make a brief explanation prior to asking the Treasurer, representing the Premier, a question on the State's population.

Leave granted.

The Hon. G. WEATHERILL: Numerous views exist on what is the ideal population of Australia, now and over the next 30 years, based on the environment, food production, economic and quality of life considerations, and many more. A recent episode of the ABC's *Lateline* program showed an expert identifying a population of 40 million as being all that Australia can feed through domestic production. Brisbane, Sydney, Melbourne and their surrounds were expected under this projection to effectively triple their population to around the 9 million mark each. My questions to the Premier are:

1. Does the Government have a population policy and, if so, what is it?

2. What level of population does the Government forecast for South Australia in 10, 20 or 30 years time in accordance with its policy?

3. Irrespective of what Federal Government policies might be over time, what level of population does the Government view as ideal for South Australia or in the State's best overall interest in 10, 20 or 30 years time and why?

The Hon. R.I. LUCAS: I thank the honourable member for his question. The Government has just responded in some detail to one member of the Legislative Council on the issue of population and I will need to dust off that response. I am happy to provide—

The Hon. R.R. Roberts: Make sure it is the same.

The Hon. R.I. LUCAS: They will be. I am happy to provide that response to the honourable member. That will in some part respond to the honourable member's question. My colleague the Hon. Mr Stefani was quick enough to remind me that the report that has just been placed on members' desks—Report of the Review of the Office of Multicultural and International Affairs—incorrectly dated April 1997 (I suspect that should be April 1998) sets out a range of initiatives in relation to immigration promotion. I will not go through all those initiatives, but I refer the honourable member to page 7 of the report under the heading 'Immigration Promotion', page 6 under 'Immigration-related Activities' and page 8 under 'Settlement Support Services', which set out a range of initiatives from the Government in the area of immigration.

The Hon. Sandra Kanck: It says populate and perish.

The Hon. R.I. LUCAS: This does?

The Hon. Sandra Kanck: Basically, yes.

The Hon. R.I. LUCAS: I know that the Hon. Sandra Kanck, together with the Democrats, has a different view in relation to this issue of population and, of course, she is entitled to that view. Her colleague the Hon. Mr Elliott has spoken on a number of occasions on the issue of population and growth in the South Australian economy. That is a debate for another day. I am happy to refer the honourable member's questions to the Premier and, for those questions that are not answered by the reply that I have referred to, I will undertake to have a reply sent to him during the coming break.

SMOKE ALARMS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning a question about smoke alarms.

Leave granted.

The Hon. SANDRA KANCK: At the launch of Hearing Awareness Week on Monday, a hearing impaired person raised with me the issue of smoke alarms. In their rush to come up with an election policy on housing, the Government

declared that the installation of smoke alarms in all houses would become compulsory, but it appears that the Government's announcement was not well thought out as it did not take into account the issue of hearing impairment.

Loss of high frequency hearing is usually the first step in hearing loss, and smoke alarms are pitched at a high frequency, so these people are already at a disadvantage. When a hearing impaired person goes to bed that disadvantage is increased as any hearing aids that are normally in use are most likely put aside on the bedside table. It is a costly exercise for someone to install a smoke alarm in their home when it will serve no purpose. It was suggested to me by this person that the activation of a flashing light would be a more effective method. My questions are:

1. Has the Government investigated alternative ways of alerting hearing impaired people to the danger of fire in their home and what is the cost differential between the standard smoke alarm and the one that would be more likely to alert a hearing impaired person?

2. Given that many hearing impaired people live in Housing Trust accommodation, what steps is the Housing Trust taking to ensure that such people have an appropriate smoke alarm system in place?

3. Will the Government consider giving an exemption to hearing impaired people from the requirement to install smoke alarms or subsidise the extra cost for a suitable alarm?

The Hon. R.D. LAWSON: I thank the honourable member for her question regarding smoke alarms, in particular—

The Hon. Diana Laidlaw interjecting:

The Hon. R.D. LAWSON: No, and indeed the Minister for Planning has already published very useful information on the Planning Act requirements for the provision of smoke alarms in new and existing dwellings. An examination being undertaken by the Disability Services Office is addressing the issues to which the honourable member has referred in her question. With regard to the provision of smoke alarms for the hearing impaired in the Housing Trust sector, I am aware that an examination is also being conducted elsewhere in the Department of Human Services on that issue. I do not have the precise status of those inquiries at the moment, but I will undertake to make inquiries and bring back a complete reply.

Also I am reminded by my colleague the Minister for Transport that the honourable member's suggestion that the Government's policy at the time of the last election to introduce smoke alarms was not an ill-considered and hasty policy, but was a well considered, thought out and very positive and popular policy. It was the first occasion on which any Government of this State had ever addressed this important issue.

EMERGENCY SERVICES FUNDING BILL

In Committee (resumed on motion).

(Continued from page 1640).

Clause 18 passed.

Clause 19.

The Hon. IAN GILFILLAN: I move:

Page 12, line 24—Leave out 'one year' and insert 'two years'.

Clause 19(1) empowers the Minister to sell land and it currently provides:

> Where a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for one year or more, the Minister may sell the land.

My amendment seeks to replace the one year minimum with two years. It appears to us that it is rather abrupt to empower the Minister to sell just on the basis that the levy (or the interest on a levy) has not been paid for a 12 month period and I put it to the Committee that it would be a more reasonable time period to make it two years.

The Hon. P. HOLLOWAY: I indicate that the comments of the Hon. Ian Gilfillan are eminently reasonable and that two years is an appropriate time to deal with these matters. We therefore support the amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment.

Amendment carried; clause as amended passed.

Clauses 20 to 22 passed.

Clause 23.

The Hon. CARMEL ZOLLO: In relation to declaring the amount of levy, when a car is written off by an owner for whatever reason, a part thereof of the registration charge is refunded to the owner. Will the same apply to a refund of this levy?

The Hon. K.T. GRIFFIN: There is no intention to make any part of this refundable in those circumstances. I suppose, if one looks at it objectively, if it has been in an accident, it may well have had the benefit of emergency services, whether they be Country Fire Service, Metropolitan Fire Service, police, or whatever, so the—

The Hon. Carmel Zollo: It may not.

The Hon. K.T. GRIFFIN: It may not, but, if it was written off, you would expect them to have had the need to call upon some of the emergency services, even if it is police at the scene of the accident, police to take an accident report. My view is that the small amount of the levy would have been far outweighed by those rescue and other services most likely to have been made available.

The Hon. IAN GILFILLAN: Does that mean that some of the fund will go to police?

The Hon. K.T. GRIFFIN: If one looks at the definition of 'emergency service', it is clear. Clause 3(1) provides:

> 'emergency service' means—

and then paragraph (b)—

> a service provided by the South Australian Police Department—
> (i) of a kind referred to in paragraph (a); or
> (ii) to assist a body or organisation referred to in paragraph (a) in providing such a service.

Clause passed.

Clause 24.

The Hon. CARMEL ZOLLO: Will the Attorney-General indicate what class of motor vehicles are exempt and perhaps give an example or two?

The Hon. K.T. GRIFFIN: My understanding is that this originated in the House of Assembly and was supported by the Opposition. That is my understanding: I have not checked the *Hansard* to give an unqualified indication that that was the position. My understanding is that it came about to a large extent as a result of representations by rural members of Parliament in respect of special purpose vehicles such as tractors, harvesters, combines and whatever else might be the subject of registration now under the Motor Vehicles Registration Act, remembering that there is a three year

registration, or shorter period if required, for all farm vehicles that go onto the road. Tractors, for example, are registered, and I think the maximum period of registration allowed is three years. So, some exemption might be given for some of that sort of equipment from this levy.

Clause passed.

Clauses 25 and 26 passed.

New clause 26A.

The Hon. P. HOLLOWAY: I move:

Page 16, after line 29—Insert new division as follows:

Division 3—Disallowance Of Levy By Parliament

Submission of notice to Economic and Finance Committee

26A.(1) Within seven days after publication of a notice declaring a levy under Division 1 or 2, the Minister must submit a copy of the notice to the Economic and Finance Committee of Parliament.

(2) The Economic and Finance Committee must, after receipt of the copy of a notice under subsection (1)—

(a) resolve that it does not object to the notice; or

(b) resolve to suggest amendments to the notice; or

(c) resolve to object to the notice.

(3) If, at the expiration of 21 days from the day on which it received a copy of a notice under subsection (1), the Economic and Finance Committee has not made a resolution under subsection (2), it will be conclusively presumed that the Committee does not object to the notice and does not propose to suggest any amendment to it.

(4) If an amendment is suggested under subsection (2)(b)—

(a) the Minister may make a recommendation to the Governor that a new notice including the suggested amendment be published in the *Gazette* (a new notice published pursuant to such a recommendation supersedes the previous notice); or

(b) the Minister may report back to the Committee that he or she is not willing to make the recommendation referred to in paragraph (a) (in which case the Committee may resolve that it does not object to the notice as originally published, or that it does object to the notice).

(5) If the Economic and Finance Committee resolves to object to the notice, a copy of the notice must be laid before the House of Assembly.

(6) If the House of Assembly passes a resolution disallowing the notice, the notice will cease to have effect and will be taken never to have had effect.

(7) A resolution is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within 6 sitting days (which need not fall within the same session of Parliament) after the day on which the copy of the notice was laid before the House.

(8) Where a resolution is passed under subsection (6), notice of the resolution must forthwith be published in the *Gazette*.

(9) Any amount paid as a levy pursuant to a notice that is subsequently disallowed must be refunded by the Minister.

This is the principal accountability clause that the Opposition is moving. There are a series of provisions under new section 26A which would refer the levy to the Economic and Finance Committee for its deliberation within seven days of a notice being declared by the Minister. In other words, when the Minister sets the rate, having determined the area and land use factors, he or she must then forward a copy to the Economic and Finance Committee. The Economic and Finance Committee then considers the proposal of the Government to set this new emergency services levy and has 21 days in which to do so. Having been a member of the Economic and Finance Committee—I guess I am the only person in this place who has been—

The Hon. K.T. Griffin: You saw the light of day.

The Hon. P. HOLLOWAY: Yes—I know that it is a committee that can be very effective in considering issues. I recall from my time on the committee that in 1993 it brought to light some information regarding the State Bank and other Government salaries, as well as consultancies which those agencies fought tooth and nail to prevent coming to light. As a result of all that information being put on the public record, it was of great assistance. It is a tragedy that it was not done years earlier, but that is another story.

I think the committee has the capacity and the resources, unlike some of our other committees, to properly consider these matters. As I said earlier, this is our preferred approach to providing accountability in relation to the new emergency services levy. We think the whole package should be looked at when it is finalised. The committee, which can look at the overall effect of it, has the power to bring forward public servants, to order documents and obtain all the information it needs to consider any aspect of the matter and, indeed, to pass judgment on the levy that the Minister might strike.

There is also a capacity within the series of amendments for the House of Assembly to disallow the notice. It would, of course, be the practice of the Economic and Finance Committee that it report to the House of Assembly on its consideration of these matters. The Opposition believes that it is the appropriate committee to perform this task, given that it is a levy that we are talking about (it is a tax raising power), especially given the traditional role of the House of Assembly as the originator of money Bills. We have discussed this issue at some length on other clauses. I will not take up any more time of the Committee other than to ask it to support this new clause.

The Hon. K.T. GRIFFIN: We had a discussion about the principle of this earlier when I indicated that the Government would prefer to have neither the Opposition's nor the Hon. Mr Gilfillan's amendment, believing that the matters that we have set forth in the Bill are more than adequate. However, I indicated that this model in broad principle was preferable to that of the Hon. Mr Gilfillan, even though this had the potential to create a great deal of difficulty because of the additional power of recommending disallowance.

I will ask the Hon. Mr Holloway in a moment to give an indication whether, if this were to pass, he would be prepared to remove the amendment which the House of Assembly made: that after the first notice declaring a levy a further levy cannot be declared unless it is of the same amount as the previous levy or the notice declaring the levy has been authorised by resolution of the House of Assembly. I do not think you can have both. I think that clauses 9(6) and 23(8) will have to come out, and we will need to keep that in mind as we deal with this.

The difficulty that the Government has with this proposition is that, first, it applies to each levy every year. The proposition that I would like members to consider is this: if the levy rate declared in the next year after the first year is no different, that will not be the subject of disallowance. However, if there is a subsequent year in which the levy is increased, then the disallowance would apply to the difference between the levy in the preceding year and the levy in the year under consideration. So, in the first year the levy would be subject to review, and if it passed everybody's approval then that stood. If the next year it was increased by 1 per cent then that would be the subject of a potential disallowance so that we do not have the situation every year where potentially the levy can be disallowed. If we have to go through that process every year, I suggest that it will be unduly burdensome and bureaucratic and create such uncertainty in the whole scheme of things that it may well become unworkable.

The next point is the question as to when the levy comes into operation. According to the amendment, I presume that the levy remains valid until disallowed, but I think that needs to be made clear. If the levy is disallowed, even though

payments may have been made under it, the notice that fixes the levy—or, under my proposal, that part of the levy which exceeds the previous year's levy—will be taken never to have had effect. That is unusual, because all regulations are valid and any action taken under regulations that are valid remains valid, even if subsequently the regulation is disallowed.

The proposition that I think we need to consider in relation to this is that the levy is valid when it is declared; that it remains valid until disallowed; that any payments that have been made up to the point of disallowance are not refundable; and that any made after the date of disallowance are refundable. That then puts it more into the framework of the disallowance processes applying to regulations. Another issue is in subclause (7), which provides:

> A resolution [for disallowance] is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within six sitting days (which need not fall within the same session of Parliament). . .

It is the Government's very strong view that, if we are to proceed with something like this, a fairly strict time frame has to be put in place within which disallowance may occur. If one thinks about it, one realises that at the end of a financial year, when the notice of the fixing of the levy has been given, Parliament may be sitting. It is budget time, but it may sit for only two or three days, and then we might get up for two or three months. We are then in a position where the end of the session might not come until the end of September, and you have a period of perhaps four months when the disallowance motion might still be current.

However, suppose that the notice of the levy was given earlier in the financial year: suppose that, anticipating that it would need to go through the review process, the notice was given in, say, February, and within six sitting days there was notice given of a motion to disallow. If the end of the session does not come until the end of September or even October, which is a flexible time frame, it may be eight or nine months before it can be disallowed. In the meantime, the notices for payment have all gone out, payments have been made and then suddenly in September or October the notices are disallowed. That then means that no more will be collected, but for those who have not paid perhaps a new notice will need to be given, and then we start the process all over again.

It seems to me that, if one looks at this sensibly, we have to put in place a very strict time frame within which disallowance may occur. If we do not, it will be chaotic, and there is potential for the frustration of the intention of the Parliament that a levy should be a levy in place and collected, but it has been frustrated by disallowance motions and, ultimately, those motions passing. I think a number of changes need to be made before this becomes a workable proposition if one looks at it from the worst possible scenario. When you are passing legislation, everything is fine while all goes according to plan, but you need to look at the worst case scenario because that is when the problems occur.

I would like the Hon. Mr Holloway to address some of those issues, if not now then certainly later, because I think that, whilst I have accepted the principle of this on behalf of the Government, there is still a lot of work to be done to make it a workable proposition.

The Hon. P. HOLLOWAY: I think I understand most of the points the Attorney is making in relation to this, and I do not have any fundamental disagreement with many of them. We need to sit down and go through this clause and see whether it can be tightened. I take the Attorney's point that, if you were just to disallow increments in the levy rather than the whole levy each time, that might be administratively much more convenient, without necessarily giving away the principle involved. All I can say is that, from the Opposition's point of view, we are prepared to look at these things and come up with a workable option.

As long as we keep the essential principle that the scheme be reviewed by the Economic and Finance Committee in a proper way, I do not see why we cannot negotiate on the particular arrangements. If we come up with something better as a result of that, then let us do it. I think it would be best if we were to discuss this at a later stage outside this Parliament and see what we come up with. All I can indicate is that we will be reasonable in trying to get a workable scheme.

The Hon. IAN GILFILLAN: I indicate the Democrats' general support for this amendment on the ground that earlier in the Committee discussion I indicated that we believed that one or other of the two procedures was more desirable than none, in relation to encouraging some accountability and some review of the process of determining the levy and the other factors involved.

The Attorney raised a problem with the timing of the levy notice and the consequential 'unworkability' of some of the clauses in this amendment. I do not see any reason why the process of determining the levy should not be given adequate lead time so that any of the frustrations, reviews and rethinking that might occur from the process could be well and truly out of the way before the levy is collected from the people who will be paying it. I do not find that overly daunting, although it may mean that it does need to be amended. We agree with the intention informally to look constructively at ways in which the process can be made workable.

The only other comment I make is to repeat the argument that the Democrats believe that, although this is better than nothing, it still is in our view grossly inadequate as far as providing valuable, constructive, independent advice and scrutiny on the process of determining and distributing the burden of the levy. Although we are supporting it, we do so regretfully and would much rather have supported the idea of the independent advisory committee. I do not believe that we are likely to get a change of heart to the extent that it would be amended in the foreseeable future, but I hope that, by fine-tuning, this particular amendment will be acceptable to the Government and at least do some good.

The Hon. K.T. GRIFFIN: I understand the point that the Hon. Mr Gilfillan is making, but the difficulty I saw with his proposal, as I think I have already indicated, is that everything that is done under his model is required to be the subject of consultation with the committee. For example, the Minister may not apply the fund without first requesting and considering advice of the Emergency Services Funding Advisory Committee in relation to the proposed application of the fund.

It seemed to me that that means before any payment can be made out there has to be this consultation with the committee. It is not just a matter of rolling up to a meeting, providing all the background information, all the justifications for it, arguing about it, talking about it, and then giving advice to the Minister.

If there is a simpler model which the honourable member is considering proposing, I am happy to give further consideration to that, and that would certainly solve the problems I have raised in relation to the potential for disallowance and so on. I am prepared to give some further consideration to that as well, but I gained the impression that it was not possible to get to the point of a simpler process both in

relation to fixing the levy and the way in which the funding was applied.

I come back to the other point in relation to the amendment which is before us, to which the honourable member referred. He said he was not convinced about the timing issues. He will know as well as any of us, and even from this Notice Paper, that resolutions for disallowance can be on the Notice Paper until the end of the session. Although notice of the disallowance has to be given within six sitting days, it says nothing about when it should be moved. It does not have to be moved and passed or dealt with within a short period of time. It can stay on the Notice Paper, holding everything up, like a sword over everybody's head, for months.

Even if a Government, with all the goodwill in the world, provided information to the Economic and Finance Committee, and the decisions were taken very quickly (as they must be) within 21 days of the notice, the fact is that when a notice of disallowance is given, that may well stay on the Notice Paper, like a sword over everybody's head, for anything up to six months. I do not think that is good government. It is not in the interests of the proper administration of the scheme, and it is creating unnecessary uncertainty and bureaucracy, when we should be able to get on to enable people to be protected from emergencies.

The other point that has to be made is that all this money goes into a fund which is to be used for emergency services. What happens if the fund is not collecting money? Do we not then fund the MFS, the CFS or the SES? There are some very important and fundamental questions involved, and we do need to address those before we finalise the consideration of this Bill.

New clause 26A inserted.

The Hon. IAN GILFILLAN: I move:

Page 17, lines 17 and 18—Leave out subparagraph (vi).

This amendment actually applies to the clause dealing with those entities which can benefit from the Community Emergency Services Fund. My amendment sought to put a fence around that so that they could be expanded only by amendment to legislation. It includes in this Bill the CFS, MFS, SES, Surf Lifesaving Association of South Australia Incorporated, and a body or organisation that is a member of Volunteer Marine Rescue S.A. Incorporated. The provision I wish to have deleted is:

any other person or organisation (whether an agency or instrumentality of the Crown or not).

I am not easy about such an open-ended provision sitting in this Bill. As I said before, we were not reluctant to let the Minister have considerable power in the administration of this Act, but to leave that virtually totally open-ended appears to us to be unacceptable.

The Hon. K.T. GRIFFIN: The amendment is opposed. It just puts an unnecessarily tight straitjacket around the application of these funds. For example, what about the Coast Guard? If the Minister wants to make some contribution to the Coast Guard because it provides rescue services—

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: We can, but we have not made a decision to do it. The moment you put it in, it becomes almost an invitation to apply for funds. It is limited to the provision of emergency services. Emergency services are defined in the definition clause to include the South Australian Police with its cliff rescue and other services. That is not in here either, but it may be that it is appropriate to fund it.

The Hon. CARMEL ZOLLO: I refer to clause 27(4)(a)(vi). The Attorney has touched on what I was going to ask. In the Minister's second reading speech in another place he mentioned the South Australian Police. Will the Attorney confirm whether he is requiring organisers of festivities or concerts to be paying into a levy such as this, should they require police services?

The Hon. K.T. GRIFFIN: That is not relevant to this because this is about a levy for emergency services on fixed and movable property.

The Hon. P. HOLLOWAY: The big omission in these groups of agencies that can receive payment is the South Australian Police. There may be a wish to pay the police under this heading. Perhaps the Attorney could answer that first and we will go from there.

The Hon. K.T. GRIFFIN: There is an intention to make some contribution to SA Police and there is no hiding from that because the definition of 'emergency service' refers to it. The difficulty is that we are still seeking to define what might be the cost of that. It certainly will not be the cost of running the police because that would be quite improper and would not fall within the definition of 'emergency services' anyway. However, we have search and rescue, cliff rescues, waterborne rescues and a whole range of rescue services that are clearly and identifiably emergency services. If the Hon. Mr Gilfillan's amendment was carried we would have to rethink the framing of subclause (4)(a). It may be that paragraph (b) might cover that.

There may also be some issues arising with, for example, volunteer marine rescue. If it went out of action, membership ceased and someone else came in, obviously we would have to come back to Parliament if subparagraph (vi) is not in there, but it seemed when preparing this that there needed to be flexibility to cover a whole range of exigencies that no-one can foretell when setting up a new scheme such as this.

The Hon. P. HOLLOWAY: Having heard the Attorney's arguments, the Opposition will not support the deletion of this subparagraph. It is common practice in most legislation when money is being paid out that provision is made for contingencies. When you try to specify those agencies that will obviously get payment you have to allow for contingencies. I would feel much happier in relation to keeping this provision if there was some greater level of accountability of the fund. That is a matter I intended to raise later under clause 29. How much public disclosure will there be of the accounts of this fund so the Parliament and the public can know exactly what is being made? Providing there is a reasonable level of disclosure I have no problem with enabling the Government to spend the money as it sees fit, provided always that it is accountable at the end of the day to the public for so doing.

The Hon. K.T. GRIFFIN: There is a requirement under the Public Finance and Audit Act for the accounts to be audited.

The Hon. P. Holloway: By the Auditor-General?

The Hon. K.T. GRIFFIN: Yes, by the Auditor-General. It is not mentioned here because it is covered by the Public Finance and Audit Act. It is a fund under the control of the Government, so it has to be audited, the accounts have to be kept in accrual accounting form and are subject to scrutiny by the Economic and Finance Committee. The accounts of each of the agencies—the Country Fire Service, the Metropolitan Fire Service and State Emergency Service—certainly have to be exposed for scrutiny and each have to provide annual reports. In addition, I would expect that in providing

information about the levy some fairly detailed submissions would have to be made about what the money will be spent on, making a comparison with the previous year's budget or previous years' budgets and for that reason I would have thought that there was adequate public scrutiny and accountability in respect of the fund.

The Hon. IAN GILFILLAN: I find it difficult to accept that the attitude of the Opposition to my amendment and its further extension is other than in anticipation of being in Government. Not only is the clause I seek to delete open ended, but also paragraph (b) enables the fund, at the Minister's discretion, to be used as follows:

> (b) for any purpose for or relating to the prevention of circumstances in which emergency services are likely to be required;
>
> (c) without limiting paragraph (b), for any purpose of or relating to education as to, or research into—
>
> (i) the prevention of circumstances in which emergency services are likely to be required; or
>
> (ii) the strategies and procedures for dealing with emergencies when they arise and for dealing with the harmful effects of emergencies; or
>
> (iii) the factors that give rise to emergencies;

It is quite easy to see that there could be an allocation to the Education Department and to tertiary education institutions under the aegis of this clause. That would be using hypothecated funds for emergency services, for which people are being specifically levied, to take the place of areas of expenditure that should and normally would be from general revenue. That reinforces the concern I have that, as currently drafted, it is so open ended that it is virtually a comfortable cheque book for a Minister who wants to use it that way, particularly without the scrutinising and advising committee which, had my amendment been successful, would have been the public's watchdog.

As the public's watchdog it would have prevented these abuses from being perpetrated, at least not without their being clear public revelation of them and for the opportunity for the Parliament and the public to react. I am sorry if the Opposition is determined to persist with this because it will mean that I lose my amendment. However, I feel that it is important that I express by bitter disappointment that the Opposition does not appear to be treating this legislation as an Opposition: it appears to be treating it like a Government in waiting.

The Hon. P. HOLLOWAY: I would feel more concerned about it if it were not for the bottom paragraph which states, 'for the provision of emergency services'. Under this fund the Minister can pay moneys to any person or organisation, but it must be for the provision of emergency services. I would have thought that the Minister could probably do that now with or without a fund. If a Minister, the Cabinet or whatever level of Government decides that it wants to support a particular body to provide emergency services then, I guess, they can do so now. I do not know that it necessarily needs this particular clause.

One aspect of hypothecated funds, of course, is that, down the years, Governments of all persuasions have tended to dedicate funds for a particular purpose but use them for cost shifting. That was the very criticism I made of this whole levy right from the start. To be fair, I think that it has happened with hospital funds, highways funds, and other sorts of funds that were set up for particular purposes.

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: Yes, they have all been used by Governments to either displace revenue or to justify introducing a new levy. Whether or not we delete this particular clause will not stop any Government from making payment for the provision of emergency services if that Government is really determined to do so.

Amendment negatived.

The Hon. IAN GILFILLAN: I am not proceeding with my further amendment to clause 27 (page 17, after line 29) as it is no longer relevant in light of the results of my earlier amendments.

Clause passed.

New clause 27A.

The Hon. P. HOLLOWAY: I move:

> Page 17, after line 29—Insert new clause as follows:
>
> Certain expenditure to be authorised by regulation
>
> 27A.(1) The Minister must not apply an amount of five million dollars or more from the fund as, or for, a single item of capital expenditure unless he or she is authorised to do so by regulation.
>
> (2) A regulation under subsection (1) can only authorise items of expenditure that are specifically identified by the regulation.
>
> (3) A regulation under subsection (1) cannot come into operation while it is possible for the regulation to be disallowed by either House of Parliament under section 10 of the Subordinate Legislation Act 1978.

This is the other part of the accountability package, if I can call it that. Under this new clause any expenditure of greater than $5 million from the fund for a single item of capital expenditure would have to be done by regulation and therefore would be subject to disallowance in either House of Parliament. Really, its purpose is quite clear: where very large items are involved there should be some Parliamentary scrutiny of that particular process.

The Hon. K.T. GRIFFIN: This is a rather bizarre proposition, I might suggest. The expenditure, if it is a public work, will be subject to scrutiny by the Public Works Standing Committee for anything over $4 million. I do not know what capital expenditure means in the context of this provision but, whatever it means, I do not see what it achieves. It may be that the regulation will be subject to disallowance and, if it is, you cannot spend the money. But presumably any capital expenditure will be identified in the budgets which are presented for the purpose of determining the levy.

I would have presumed that that information will be ascertainable one way or the other. If a levy is to be fixed or an increase in the levy, information will have to be provided to the Economic and Finance Committee, at least; or the Economic and Finance Committee of its own motion can ask questions about it. The Auditor-General will also have the opportunity to make comment, adverse or otherwise, on any large expenditure. It must be remembered that any expenditure from the fund of a capital and income nature will have to be justified by business plans and be prepared to deliver service and to meet the needs of the community. The fund will be subject to internal audit at the portfolio level and also, of course, subject, in an overriding way, to the Public Finance and Audit Act.

There is, I think, an unreasonable degree of suspicion about the way in which the funds will be spent. I would hope that commonsense will prevail and that we will not clutter this up with unnecessary bureaucracy which does not really add to the protections or to the accountability to which I have already referred.

The Hon. IAN GILFILLAN: I had indicated in private conversation that I was not attracted to this amendment had we got the advisory committee in place, because I felt that there was enough disclosure and the opportunities would be there for the cries of protest or the analysis for what may be

perceived as abuse, if that took place. I think that the Attorney is living in an amiable world of cooperation, which tends to apply in this Chamber most of the time; but politicians in other circumstances do not always have such open, honest and trustworthy motives. I therefore indicate our support for the Opposition's amendment, because we are grasping at straws as much as possible to ensure that there will be checks and balances, accountability and disclosure in the administration of this fund.

The reasons are on record as to why we have taken this track, but I reinforce the fact that we are supporting this amendment because we do not believe other structures are in place to safeguard the expenditure in the account.

New clause inserted.

Clauses 28 to 30 passed.

Clause 31.

The Hon. K.T. GRIFFIN: I move:

Page 19, line 27—Leave out 'section 220' and insert 'section 109X'.

The amendments to the Corporations Law came into operation on 1 July 1998. They include a change to the position and consequently the number of the provision dealing with service of documents on a company. The new provision in the Corporations Law dealing with this subject is section 109X.

The Hon. P. HOLLOWAY: We support the amendment.

Amendment carried; clause as amended passed.

New clause 31A.

The Hon. IAN GILFILLAN: I move:

Page 19, after line 27—Insert new clause as follows:

Remission of levies by regulation

31A. (1) The Governor may, on the recommendation of the Minister, make regulations for the remission of one or both of the levies imposed under this Act for the benefit of—

(a) persons who are entitled to pensions, benefits, allowances or other payments under the Social Security Act 1991 of the Commonwealth;

(b) charitable organisations;

(c) persons who are suffering financial hardship.

(2) The Minister must in each year, before making a recommendation to the Governor as to the levies to be declared under this Act, consider whether he or she should make a recommendation to the Governor under subsection (1) as to the making or varying of regulations under this section.

This is to allow discretion for the relief of people who may find it particularly difficult to pay. It is a social conscience area and, as it is at the discretion of the Minister, I do not believe that it will impose particular problems for the administration of this fund.

The Hon. P. HOLLOWAY: As I understand this new clause, Parliament cannot really force the Minister to provide for concessions to people who are in receipt of pensions or other social security benefits. However, what we can do and what this new clause seeks to do is ensure that the Minister must in each year before determining this levy and making recommendations under the Act consider whether he or she should make a recommendation in relation to providing concessions to pensioners. With this provision, every year the Minister must at least consider this issue. That is probably about as far as we can go because it is generally accepted that matters such as concessions should be dealt with by way of regulation and this is about as far as the Opposition or other Parties can go in trying to get the Government to pay attention to this issue. We support the new clause.

The Hon. K.T. GRIFFIN: The new clause is opposed. It is recognised that it merely requires the Minister to give consideration to the issue. We say that it is unnecessary. The present Government has no intention of granting concessions but maybe a future Government will offer it in the heat of an election campaign and seek to—

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: No. As I have already indicated, no concessions are currently paid to pensioners or low income persons for insurance purposes. Reductions will accrue to those who are adequately insured. The system is based on equity whereby everybody contributes a fair amount based on the value of property and a fair amount per vehicle type. Providing partial remissions would remove some of the fairness in the system and bias the contribution from some sectors of the community because, quite obviously, if we grant remissions it means that others have to pay for it. It will become disproportionate.

Ninety per cent of Housing Trust residents are welfare recipients and they are already subject to a capped rental agreement that may limit or compound the impact of a rebate. Where pensioners are in rental property, they may be unable to benefit from any levy remission, as much will relate to the property and not to their occupancy. A considerable administrative cost is associated with the application of concessions, especially when one comes to consider what is financial hardship, a concession for which is not given in any other rating area as far as I am aware.

Any charitable organisation will gain through insurance premium reductions. Additional remission is not recommended to me and I certainly do not support it. The definition of benefits under the amendment is extremely broad and may possibly encompass a larger group of persons than otherwise intended. As the pensioner proportion of the community is increasing, the impact on the levy might be to force increases in levy amounts on others that otherwise would not have occurred, so the stability of the levy might be compromised and a significant amount of inequity might be brought to bear as a result of others having to pay for the concessions, remembering that this comes out of one big pool to which the Government will contribute a particular percentage and to which others in the private sector will contribute the balance.

New clause inserted.

Clause 32 passed.

Schedule 1 passed.

Schedule 2.

The Hon. K.T. GRIFFIN: I move:

Page 21, after line 2—Insert heading as follows:

Amendment of other Acts

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

After line 22—Insert heading as follows:

Transitional Provisions

Amendment carried.

New clause 5.

The Hon. K.T. GRIFFIN: I suggest that we might deal with my new clause 5, which is to establish the Emergency Services Funding Transitional Advisory Committee, and then we deal with the next amendment where I have a new clause 6. The Hon. Mr Gilfillan has a new clause 5, which we could renumber '6', and then we are talking about the same things. I therefore move:

Page 21, after line 37—insert new clause as follows:

The Emergency Services Funding Transitional Advisory Committee

5. (1) The Emergency Services Funding Transitional Advisory Committee is established.

(2) The Committee consists of six members appointed by the Minister of whom three have been nominated by the Local Government Association of South Australia.

(3) The Minister will designate one of the members to preside at meetings of the committee.

(4) The term of office of members of the committee is until the dissolution of the committee (see subclause (15)).

(5) The Minister—

(a) may remove a member of the committee who was not appointed on the nomination of the Local Government Association of South Australia on any ground that the Minister considers sufficient;

(b) must remove a member of the committee appointed on the nomination of the Local Government Association of South Australia if requested to do so by the association.

(6) The Local Government Association of South Australia may request the Minister to remove a member of the committee appointed on its nomination on any ground that the association considers sufficient.

(7) The office of a member of the committee becomes vacant if the member—

(a) dies; or

(b) resigns by written notice to the Minister; or

(c) is removed from office by the Minister under subclause (5).

(8) On the occurrence of a vacancy in the membership of the committee, a person will be appointed in accordance with this clause to the vacant office, but the validity of acts and proceedings of the committee is not affected by the existence of a vacancy or vacancies in its membership.

(9) A meeting of the committee will be chaired by the member appointed to preside, or, in the absence of that member, a member chosen by those present.

(10) A quorum of the committee consists of four members of the committee.

(11) A decision carried by a majority of the votes of the members present at a meeting of the committee is a decision of the committee.

(12) Each member present at a meeting of the committee is entitled to one vote on any matter arising for decision at that meeting and, if the votes are equal, the person chairing the meeting is entitled to a second or casting vote.

(13) The functions of the committee are—

(a) to advise the Minister, at his or her request, on questions and arrangements relating to the transition from the previous method of funding emergency services to the funding of those services by means of levies under this Act; and

(b) such other functions as are determined by the Minister or are prescribed by regulation.

(14) A member of the committee is entitled to such fees and allowances as may be determined by the Governor.

(15) The committee is dissolved at the expiration of 30 June 2001.

This clause establishes a transitional advisory committee to advise the Minister on issues relating to the transition from the previous methods of funding of emergency services to that of levies under the Bill. The clause establishes representation, function, terms, quorums, decisions and voting rights of the committee appointed by the Minister for a period of transition up to 30 June 2001, and covers two full cycles of the levy. The membership is balanced between the Local Government Association and the Government—three from each group. Functions are at the direction of the Minister and are intended to be focused on those issues arising from transitions that impact on councils, such as the mechanisms for collection, marketing and matters associated with a large asset base (fire appliances, and so on) held by councils for CFS, SES and other service providers.

The committee acts on functions which may be nominated to it by the Minister. The committee is not intended to be involved in the determination of service strategies for emergency service agencies nor the disbursement of funds. That clearly is the role of the Minister under the general protocols which apply to the public sector. I should say that this has been agreed with local government.

The Hon. P. HOLLOWAY: The Opposition supports the Emergency Services Funding Transitional Advisory Committee. As I understand it, this was part of the agreement between the Local Government Association and the Government to deal with a number of the issues that will arise concerning who is the owner of property and other important matters. There will be questions relating to the collection of the levy and a number of other matters. We believe that a committee involving representatives from the Government and the Local Government Association as the appropriate way to do it and we will support this part of the amendment.

New clause inserted.

New clause 6.

The Hon. K.T. GRIFFIN: I move:

After new clause 5—Insert:

Crown to be taken to be owner of certain land

6. (1) The following provisions apply in relation to land referred to in subclause (2) during the period from the commencement of this Act up to and including 30 June 2001:

(a) the Crown will be taken to be the owner of the land for the purposes of this Act; and

(b) section 10(1) relates to the land as though it were referred to in subsection (2) of that section.

(2) Subclause (1) applies to land if—

(a) the land is under the care, control and management of a council; and

(b) the land is—

(i) dedicated land within the meaning of the Crown Lands Act 1929 that has not been granted in fee simple; or

(ii) dedicated land within the meaning of the Crown Lands Act 1929 that has been granted in fee simple in trust for the purposes for which the land was dedicated; or

(iii) land comprising—

· park lands; or

· a cemetery; or

· a coastal reserve; or

· a road reserve

After new clause 6(2)(b)(iii) there is a difference between what the Hon. Mr Gilfillan and I propose. The Hon. Mr Gilfillan wants to qualify new clause 6(2)(c)(i) by using the words 'predominantly used by the council'; and I think there is also a difference in subparagraph (ii) of paragraph (c) in relation to leases.

The whole clause provides for the Crown to be the owner of certain land for the purposes of the levy. The clause identifies the particular land and sets a period for which this transitional ownership applies. That transitional ownership is up until 30 June 2001. The particular land must be under the care, management and control of a council. It cannot be granted in fee simple unless it is Crown land in trust and must be either dedicated Crown land or comprise a park, cemetery, coastal reserve or road reserve. The land cannot be used by a council for its operations or leased or otherwise dealt with for more than a nominal fee.

The amendment has been moved in recognition of the fact that many reserves are under the care, control and management of councils and that those reserves are poorly valued and defined or they may be maintained for the enjoyment of the public. While councils may be responsible for the levy on those lands the definition within clause 2 of the Bill proper is such as to place all reserves other than Crown land dedications under the Crown.

The amendment allows two years in which to clarify the issue of reserves, potentially tying in to changes to land

definition under the Local Government Act review in so far as it relates to community land. Although not complete with respect to all reserves, the split is considered by local government and the Government to be adequate for this interim period.

The Hon. Mr Gilfillan's amendment dealing with operational land is opposed on the basis of the administrative burden of determining, for a very small return to councils, what may or may not be predominantly used by councils. Both the councils and the fund manager would need to make an assessment of those matters, and that introduces perhaps a more subjective test. The fund will act with goodwill and there will be a reasonable benefits test for the two year period. There are significant returns from property to councils that should not be ignored.

The Hon. Mr Gilfillan's new clause 5(2)(c)(ii) relating to leases or licences that extend for more than six months of the year is opposed again because it requires significant additional administrative work, and imposes that on councils as well as the fund when there will be very little benefit. It is a short-term problem where, frankly, the amendments are just not worth the hassle.

The Hon. IAN GILFILLAN: I am sorry that my amendments have been short changed to that extent but, Mr Chairman, as you can probably predict, I will not suddenly wilt and withdraw them in the face of those comments. They are indicative amendments to give protections to councils and do not involve a whole lot of meticulous accounting and legalistic argument. It is reasonable that the wording of the Bill provides that a council need not feel the risk of being caught by perhaps using one corner of a larger reserve for one of its activities, perhaps the storage of road material or for another activity, which in relative terms may be minuscule in relation to the area about which we are talking. So, the word 'predominantly' is a reasonable indication and a safeguard, and I urge the Committee to support my amendment.

Subparagraph (ii) would protect a council from even having to consider being caught by this provision if, for example, it had charged not a nominal but a reasonable rent or fee for an activity by a scout troop or the YMCA for a few days or a couple of weeks in a year. Again, I believe that both these new clauses add that bit more security and certainty to the way in which it will be interpreted and do absolutely no harm and, indeed, are at no risk of increasing the bureaucracy involved in the transitional period.

New clause inserted.

The Hon. K.T. GRIFFIN: I move:

After new clause 6(2)(b)(iii)—Insert:

(c) the land—
  (i) is not used by the council for its operations; or
  (ii) is not subject to a lease or licence granted by the council to another person for a rent or fee (except a nominal rent or fee).

(3) In this clause—

'coastal reserve' means land reserved or set apart for any purpose being land that has as one or more of its boundaries the boundary between the land and the sea;

'park lands' means—
  (a) public parks and park lands including the park lands in the area of the Corporation of the City of Adelaide; and
  (b) all other land declared or set apart as a park or reserve for the use and enjoyment of the public.

The Hon. IAN GILFILLAN: My amendment contains different wording to that of the Attorney's regarding the definition of 'coastal reserve'. I refer the Attorney to clause 3(2) of the Bill which we have just amended. It provides:

For the purposes of this Act, pieces of land will be taken to be contiguous if they abut one another at any point or if they are separated only by—
  (a) a street, road, lane, footway, court, railway, thoroughfare or travelling stock route; or
  (b) a reserve or other similar open space dedicated for public purposes.

I use that as an analogy for the amendment that I am seeking to move. There could be a narrow barrier between the area that could quite properly be declared a coastal reserve and the actual coast. It could be a river or road, and I do not want the area designated as coastal reserve to lose that category just because of what I regard as virtually furniture and not in any way denigrating the area as being a bona fide coastal reserve.

The Hon. P. HOLLOWAY: The Opposition will support the Hon. Mr Gilfillan's position in relation to his definition of land and coastal reserve. It is our belief that his definitions are closer to the understanding that was reached between the Government and the LGA. Although there is not a great deal of difference between them, we believe that they give local government some greater security in relation to those matters, and on those grounds we support them.

The CHAIRMAN: The test is the Attorney-General's amendment which is new clause 6(2)(c) and (3). The question is that new clause 6(2)(c) and (3) of the schedule as proposed to be inserted by the Attorney-General's amendment be so inserted.

Amendment negatived.

The Hon. IAN GILFILLAN: I move:

After new clause 6(2)(b)(iii)—Insert:

(c) the land—
  (i) is not used predominantly by the council for its operations; or
  (ii) is not subject to one or more leases or licences granted by the council to another person for a rent or fee (except a nominal rent or fee) the term (or the aggregate of the terms) of which exceeds six months in any period of 12 months.

(3) In this clause—

'coastal reserve' means land reserved or set apart for any purpose if any part of the land is within 50 metres of the sea at high water.

'park lands' means—
  (a) public parks and park lands including the park lands in the area of the Corporation of the City of Adelaide; and
  (b) all other land declared or set apart as a park or reserve for the use and enjoyment of the public.

Amendment carried; schedule as amended passed.

Title passed.

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS)(MISCELLANEOUS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's message.

The Hon. K.T. GRIFFIN: I move:

That the Council do not insist on its amendment No. 1 but agree to the alternative amendment.

That alternative amendment has been circulated. It essentially adopts the amendment moved by the Hon. Mr Gilfillan in respect of the burden of proof in disciplinary matters and with the reduction of that burden of proof from the criminal standard of proving beyond reasonable doubt to the civil standard of proving misconduct on the balance of probabilities. The Hon. Mr Gilfillan moved that the Commissioner should give to the Police Review Tribunal an intimation of the likely penalty that would be imposed by the Commission-

er if the tribunal finds the member guilty. The honourable member was arguing that that would assist the application of the Briginshaw principle about the standard of proof actually to be applied. There was concern on the part of the Government about that, because it tended to suggest that, once the Commissioner had given that indication, it was immutable. Notwithstanding that at the tribunal hearing other facts might be elicited that would change the Commissioner's view about the appropriateness of the penalty previously indicated, the Commissioner would not be able to make any change to that early intimation of penalty. That has now been overcome, and my understanding is that what we now have before us is what was always intended, that is, that the Commissioner is to give an indication to the tribunal as to which of certain categories of punishment, which are defined, the Commissioner considers would on the facts then known to the Commissioner most likely be appropriate if the tribunal finds the member guilty of the breach of discipline. So, it does not make the Commissioner's intimation immutable. It can be varied if new facts come to light.

The Hon. P. HOLLOWAY: Members will recall that when this matter came before the Legislative Council it was the Opposition's view that we should retain 'beyond reasonable doubt' as the level of proof when dismissal of an officer of the South Australian Police Force was the penalty. We were unsuccessful in our endeavours in that regard but did support the Hon. Mr Gilfillan's amendment, which was at least better than nothing, we thought. As a result of further negotiations, there has been a slight clarification of that amendment moved by the Hon. Ian Gilfillan. We understand that the Police Association and other interested parties are happy with this change, so we see know reason to oppose it.

The Hon. IAN GILFILLAN: I support the reworded amendment. It is improved wording and clarifies the intention and dispels some fears about the way in which it could have been misinterpreted, and I hope that it will offer the South Australian Police Association some sense that they will get an appropriate and fair hearing in front of the tribunal, relative to the seriousness of the offence for which they are accused, with the Commissioner being obliged to give an indication of the penalty level. There has been a minor adjustment in the contents of the categories (a), (b) and (c). I do not intend to go through those, but they were rather creditably picked up by Parliamentary Counsel and approved by the Police Association. So, it is with some satisfaction that I am able to say that both the Police Association and, obviously, the Opposition have agreed that the wording is improved. Therefore, I am confident that it is an acceptable compromise to the Bill.

Motion carried.

POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 August. Page 1554.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I wish to thank members very much for their support for this Bill, which is part of an ongoing package of measures this Parliament will have to address under the MARPOL agreement. The Hon. Sandra Kanck asked a question in relation to the policing of these measures. She rightly asked if a penalty system, which was a good thing, was in place, and how it was to be policed. I am advised that currently oil and noxious substances pollution incidents that occur in marine waters are reported to Marine Safety. They can be reported by anybody whenever they are spotted. In the case of waters under the control of the Ports Corporation—

The Hon. Sandra Kanck: Do they pay spotters' fees?

The Hon. DIANA LAIDLAW: No, just the feeling that you have done the right thing by the environment and certainly marine life. In the case of waters under the Ports Corporation, reports can be made through the Ports Corporation signal tower at Port Adelaide, or from other waters direct by using the 24 hour telephone number. These reports may come from boat operators, members of the public or aviators. Marine Safety's first priority is to assess the extent of the pollution, investigate a response, mitigate the pollution and clean up a spill as necessary.

On an assessment of the situation, a memorandum of understanding with the Police Technical Unit enables samples to be taken, analysed and the integrity of any evidence maintained. As a case warrants, Crown Law investigators may be called upon to investigate an incident. Where a significant spill has occurred and the polluter cannot be readily identified, police forensic expertise can be utilised to track down the offending vessel with a view to prosecution.

South Australia has approximately 40 reported oil spill incidents each year, with the number appearing to be on the increase. Marine Safety officers believe that that is due to an increase in community awareness and environmental consciousness. While it is on the increase, it is not thought that it is an increase of the incidents but an increase of awareness in regard to the reporting of these incidents. I suspect that anyone who has taken an interest in community welfare debates with respect to the abuse of children and domestic violence has also heard the same argument in terms of the increase in reported incidents of those offences. To date there have been no prosecutions for the spill of oil.

I am advised that the appointment of authorised persons under this section is to be reviewed to ensure it reflects administrative responsibility and organisational changes. Those changes relate to the formation of the Safety Strategy Unit within Transport SA. It is also envisaged that all Marine Safety officers and fisheries compliance officers—and we now have them doing similar work in exchange of responsibilities—will be authorised under this legislation to maximise the effectiveness of the provisions relating to the disposal of garbage.

In addition, it is required that vessels display a placard relating to their requirements for the disposal of garbage. A draft copy of this can be provided to the honourable member. It is believed that this placard will help to raise further the awareness of passengers and crew of their requirements in relation to garbage and other substances and the disposal of plastics generally into the sea, and that such actions are prohibited.

Bill read a second time.

In Committee.

Clauses 1 to 8 passed.

Clause 9.

The Hon. SANDRA KANCK: I move:

Page 5, line 10—Leave out 'and plastic garbage bags' and insert ', plastic garbage bags and plastic or synthetic strapping'.

I understand from my conversations with the Minister that the Government is prepared to accept this amendment. It arises

from the comments I made in my second reading contribution about how fishing fleets in particular are dropping bait boxes overboard, complete with the straps around them, and cutting them as the bait box drops to the bottom. Fur seals in particular are becoming entangled in these bits of plastic. For the most part the Government is loath to alter legislation like this where it is the subject of a treaty, so I express my appreciation to the Minister that she has given this the serious consideration that it deserves.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. DIANA LAIDLAW: I gave every one of the three amendments serious consideration. I advise all members that I took advice on this matter because there is always some concern if Bills before us arise from international treaties, as this Bill does. I was advised by Parliamentary Counsel that the correct wording relating to plastics includes other forms of plastics including plastic straps. However, it was further advice from Transport SA that there would be no objection to including plastic straps as a way to specifically raise awareness of the problems they create. I share all members' views that this is important in terms of raising awareness. However, the advice goes on:

> However, being unaware as to whether the straps are indeed plastic, it is suggested that the section be amended further to read 'plastic or synthetic strapping'.

That is exactly what the honourable member has done and I thank her for accommodating that concern and I thank all honourable members for accommodating this measure.

Amendment carried; clause as amended passed.

Remaining clauses (10 to 17), schedules and title passed.

Bill read a third time and passed.

NATIONAL PARKS AND WILDLIFE (BOOKMARK BIOSPHERE TRUST) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 August. Page 1563.)

The Hon. CARMEL ZOLLO: As indicated by the shadow Minister for Environment and Heritage, Mr John Hill, the member for Kaurna in another place, the Opposition supports this amendment Bill. I understand the Bill has come about because technical amendments were needed to enable the legislation to do what it was assumed it really did. For those members who do not know where the name comes from, the Bookmark Biosphere Trust is named after the Bookmark Station in the Riverland. The Bookmark Biosphere is a concept rather than a piece of land—a concept to support the environment in the area, some 6 060 square kilometres in the Riverland. It involves reserves, private property and other land tenures, large tracts of land with multiple owners, people committed to the environment in their area—people who need to be commended for their dedication, responsibility and vision. It is a unique piece of land contributing to the protection of our environment and engaging responsible people in our society.

As I understand it, this amendment Bill seeks to do two things: first, to allow the trust established under the Act the power to operate in relation to land that is national park or reserve land (at present the Act is limited to act in relation to the whole biosphere); and, secondly, to make clear that any trust established under the National Parks and Wildlife Act is able to enter into a contract for the purchase of land. Crown Law advice suggests that currently they may be acting illegally. Everyone assumed that trusts could purchase land. This Bill seeks to remove any illegality.

As a United Nations program, this initiative attracts commitment from all over the world. This Bookmark Biosphere is one of 320 biosphere reserves established under the Man and Biosphere Program—an initiative of the United Nations Educational, Scientific and Cultural Organisation (UNESCO)—dating from 1971. The Bookmark Biosphere Trust was created in November 1996 to replace the Murraylands Conservation Trusts. The Bookmark Biosphere Trust was given responsibility over management of the same reserves as the former Murraylands Trust.

I understand the Chicago Zoo wants to give $1 million to the trust to purchase land to construct an interpretive centre outside the biosphere just out of Renmark. The Bookmark Biosphere is a great asset for the Riverland, both in tourism and education. I understand that all the workers are voluntary.

By coincidence I was pleased and pleasantly surprised to catch up with two young ladies from different parts of the United States who had just arrived in Australia to be involved in research at the biosphere. They attended the recent South Australia Rural Women's gathering at Kadina. They are both delighted to be given the opportunity to be in Australia and, in particular, to be at the Bookmark Biosphere. I look forward to the Bill's passing, if for no other reason than to allow for the interpretive centre to go ahead. The education benefits are enormous. The Opposition supports the legislation.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank all members for their contribution to and enthusiasm for this Bill. The interpretive centre and the investment of funds, not only by this Government but also trust and overseas funds into this project, is excellent and there is no doubt that it will be an asset to the community at large and to the environment overall. I was particularly interested in the comments by the Hon. Carmel Zollo about meeting two volunteers from the United States. I am aware of the two young women to whom the Hon. Carmel Zollo refers attending the Kadina Rural Women's Conference but who are now working at the Bookmark Biosphere reserve in the Murraylands.

I remember a similar experience some years ago relating to volunteers who had come to Cape Yorke in Queensland from the Smithsonian Museum. I was taking part in a backpack tour of the Aboriginal rock art paintings in the Cape Yorke Quinkan Reserve and these volunteers had come to sketch Aboriginal rock art paintings to ensure that there was an exact copy of the work kept not only in Australia's National Library but also in the Smithsonian Museum. Certainly these projects are absolutely excellent in developing, understanding and preserving, in a range of forms, our culture, biosphere and environment.

The Hon. Angus Redford asked a number of questions relating to the trust as well as comments that had been raised with him by the member for MacKillop on behalf of constituents who had expressed concern about the association of the Bookmark Biosphere Trust with the United Nations Man project and UNESCO in general. I think that there were also suggestions of political overtones and questions as to why there should be an association, in any form, by the South Australian Government with this project.

As I say, I am very pleased that the contributions of all members in this place have been enthusiastic to this project. I respect the questions that have been raised through the Hon. Angus Redford and provide the following information on

behalf of the Minister for Environment and Heritage (Hon. Dorothy Kotz). The Minister's information states:

The Bookmark Biosphere Trust is not a 'creature of the United Nations'. It is a creature of South Australian statute—the National Parks and Wildlife Act—and an instrumentality of the South Australian Crown, responsible and accountable to the Parliament through the South Australian Minister for Environment and Heritage.

The trust is subject to the control and direction of the Minister, and must report annually to Parliament. The scope of the trust's functions is restricted entirely by the objects of the Act and the Notice of Assigned Duties, given by the Minister. In relation to reserves, the trust's powers are restricted further to those specific reserves that are nominated in the Governor's notice establishing the trust. Those reserves are listed in the Bill's second reading speech.

The trust's assigned duties relate firstly to the reserves for which the trust was first established and, secondly, to the Man and Biosphere program. These latter include, for example:

'*with the agreement of landholder participants in the Bookmark Biosphere, the trust will be the body responsible for coordinating and developing the Bookmark Biosphere project'*
(extract from the trust's Notice of Assigned Duties under section 45F of the Act, dated 11 December 1996).

The Minister has indicated to all members that she would be pleased to provide a full notice of these assigned duties, and the Hon. Mr Redford may wish to take that up with the Minister or her office. The Minister's statement continues:

The trust has no power whatsoever over private land. The Bookmark Biosphere reserve program operates entirely with the cooperation and goodwill of landowners, who request assistance from the trust, or seek participation in the program.

The trust's duties in relation to its reserves under the National Parks and Wildlife Act are to 'initiate, coordinate and manage programs designed to achieve the objectives set out in section 37 of the Act'. These objectives include such things as the preservation and management of wildlife, historic sites, features of geographical or natural or scenic interest, the control of weeds and vermin etc.

Again, I repeat that I appreciate the goodwill that all members extended to this project and the speed with which they have addressed this legislation.

Bill read a second time.

In Committee.

Clause 1.

The Hon. T.G. ROBERTS: I indicate my support for the concept of the plan. The Bookmark Biosphere proposal has been in place for some considerable time and enjoys bipartisan support. I can understand people being concerned about international treaties and obligations that are not scrutinised or that do not come under any examination at a local level, but this concept is loosely based on the concept that many Aboriginal groups around the world had as the basis for the protection of fauna and flora in their original states. Many 'no go' areas or reserves were built into their hunt and gather lifestyles in many countries around the world before they were invaded.

This project is one way in which we can join together with people and have similar concerns about the degradation of our planet's fauna and flora. The Hon. Carmel Zollo, who has already made friends with two volunteers from the United States, indicates that there can be cooperation between people of similar views and ideals, and to have crossover cultural expressions of support for any ideas in terms of the protection of our fauna and flora. The infusion of finance internationally certainly must be a consideration by parliaments and that is exactly the intention of this amendment.

It enables Parliament to make the consideration, and certainly I would not be hitting the paranoia button on this project as being some sort of international conspiracy that takes any of the control out of the hands of either local people or the parliaments that represent their interests. I join with the Minister and the Hon. Carmel Zollo in supporting this ideal.

Clause passed.

Remaining clauses (2 to 4) and title passed.

Bill read a third time and passed.

PASTORAL LAND MANAGEMENT AND CONSERVATION (BOARD PROCEDURES, RENT, ETC.) AMENDMENT BILL

In Committee.

(Continued from 25 August. Page 1573.)

Clause 1.

The Hon. M.J. ELLIOTT: The select committee on this Bill moved quicker than most, but I think that we met 10 times in total and had the opportunity—

The Hon. Diana Laidlaw: Twelve times.

The Hon. M.J. ELLIOTT: Was it 12?

The Hon. L.H. Davis: Over what period of time?

The Hon. M.J. ELLIOTT: Two months. In that period, we travelled to a number of centres in the north of the State and there were two disappointments in terms of the pressure of time. One was that we did not get to the very far north of the State and, as such, we did not get fully into the cattle country, although we were on the edges of it in Marree, where there were some cattle and sheep people. However, we did not get into the Far North around Innamincka or near the Northern Territory border on the Alice Springs road. The first disappointment was that we did not get to those areas.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: The second disappointment was that, when we visited those centres, we did not have the time that we wanted, and I am quite aware that the people who appeared as witnesses wanted more time. I assure any member who reads the transcript that all the members of the committee wanted more time to speak with the people and to explore the issues further. We would also have liked some time after the hearing to speak to the people, because it is not just what you pick up in the committee but what you pick up in further discussion afterwards that is important. That was all that was possible in the time that was available, grabbing off days in a sitting period. We covered a lot of ground and certainly—

The Hon. Diana Laidlaw: We had engine trouble.

The Hon. M.J. ELLIOTT: The flights were most entertaining: the plane would not start and when we came down there were kangaroos sitting on the strip, resulting in aborted landings. One way or another it was all entertaining.

The report is in two parts, as the instructions to the select committee required. The first was to examine the Bill itself and the second was to look at other matters which relate to the principal Act. When the Labor Party moved for the select committee, I supported it, first because although a great deal of consultation had gone on between Government bureaucrats and representatives of pastoralists, there had not been a great deal of wider consultation at that stage, and I was keen to see more time to ensure that there were no stings in the tail of anything that was proposed.

As I said during my second reading contribution, I believed that other matters deserved attention, although as I made plain at the time I was not suggesting that that would necessarily lead to amendments to the Bill. As it has turned out, one more change has been made to this Bill as a conse-

quence of new matters raised and, other than that, the committee felt that a number of other matters deserved further attention.

I will look at the issues in turn. As to rent determination, I was not overly persuaded by the argument about using unimproved land values versus the other system. There were some arguments about certainty, but there is a little more to it than that.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: No, I suspect that one way or another the return to the State was not going to be that much different. There is no doubt that over the last couple of years, because of the drop in wool prices and pressure on commodities generally, the rental returns to the State had declined markedly in any case. The unimproved land value will largely reap about the same return. I do not think that, at the end of the day, there would be any significant difference in the return to the State.

While we were taking evidence, it became apparent that there was an expectation of how the Bill would operate that did not quite match the wording of the Bill in terms of the frequency of rental determinations. The report recommends that determinations should as a matter of course be done every five years. If one reads the Bill carefully, one finds that that is not necessarily the case as it is currently drafted.

All members of the committee had the view that teleconferences give a great deal of flexibility and an opportunity for the Pastoral Board to meet more frequently and, if issues arise which otherwise could not be addressed without a formal meeting, as happens every two months, it can react more quickly to issues. Unanimously the committee was happy with what the teleconference had to offer, but I had a concern (and I think other members shared it) that the flexibility of teleconferencing should be seen as something additional to, rather than a replacement of, current activity.

It is important that the board meets face to face for these two-monthly meetings. Whilst we do not seek to change the legislation in relation to ensuring that happens, we have commented that at least four of those two-monthly meetings should be fully face to face meetings. That is important because, whilst the people on the board are not technically representatives, there are pastoralists and there are people from conservation groups, but they are not there technically to represent their groups. I believe that, by having pastoralists and conservation interests on the board who regularly meet with each other in a face to face manner, the level and quality of communication is much greater, and that reaps benefits for the workings of the board and improves the communication between pastoralists and people with conservation interests.

As to the extension of statutory time to complete the first lease assessments, it is quite plain that not enough money has been put into lease assessments, and that is why they are running behind. There is no way known that the lease assessments can be completed in the time required under the Act. I must say that there is a certain inevitability about passing this clause because that is what will happen anyway. The Government deserves to be condemned for that. The Act gave a clear instruction as to what should happen and it has been breached and the response now is to extend the time.

I note that these lease assessments in their early days caused a great deal of consternation in two regards: first, there was some resentment about the level of resource going into it (I will not comment on that matter at this stage) and, secondly, there was also a very deep level of suspicion about people coming from outside onto the property about what this will all mean and what will happen with it. However, it appears that, as the lease assessment process continued, there was an evolution both in process and also in communication. It appears to me that, while some people still had doubts about the lease assessment process, as I said, there seemed to be an increasing acceptance to begin with and even an acknowledgment that perhaps the data being gathered might have further application later on. Perhaps, in some ways, it has also been seen as something of an educative process, in terms of bringing in some new knowledge.

There is no doubt that the people who have lived and worked on those properties for a long time (and perhaps for generations) have a very deep knowledge of their properties which perhaps an outsider would not have. But then, if a person perhaps has training in areas of biological interactions and those sorts of things, they might bring in extra knowledge which the pastoralists also take on board and which becomes part of their knowledge base and enables them to be even better managers of their properties than they were previously.

As I said, there is no doubt that there has been a two way communication. There is no question that the academically trained people on the properties learnt an awful lot at the same time. I must say it would be a shame if the people who had been gaining that knowledge (that is, the people who had been doing the assessments) should be lost to the system in some way, because a continued working together and evolution of lease assessments can only be a good thing for the long-term condition of the land.

On the question of rentals, several witnesses commented that, as they saw it, rentals should not have to pay for all the lease assessment work, and so on. I would certainly agree that, considering that close to 60 per cent of the State (or something such as that) is under pastoral lease, the amount of money being spent on its oversight, whether it is by the Pastoral Board or anyone else, is very low. The fact is that the Department of Environment and Natural Resources has only one or two rangers permanently stationed in that country. Other than that, the Pastoral Board is almost it up there, in terms of anyone taking responsibility for land care, and that is not good enough.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: The soil boards mainly consist of the pastoralists and other people living in the area undertaking voluntary work. What I am saying is that, in terms of resources being put in for the land care of the State, not much is being spent on the northern 60 per cent. And I for one would not suggest that it should all come out of the rents of pastoralists. As I see it (and I have said so in this place on other occasions), some of the problems in the North are not created by the pastoralists—problems such as wild donkeys, horses, camels, goats, rabbits and so—and the only people who are in a position to tackle those feral pests effectively are the people living there who are managing the properties. It is one of the reasons why I support the activities of pastoralists because, as I see it, if we took the pastoralists away, the land condition would deteriorate quite dramatically in many areas. The Flinders Ranges would be totally eaten out by goats, and so on, if it was not for the work being done by the pastoralists, among others. Once again, I reiterate that sort of view.

What is desperately needed and what is not happening fast enough is an ability to bring together various interest groups. I have talked about various groups with interests in the North of the State, and I know some pastoralists get a bit twitchy when I say that environmentalists have an interest. They do have an interest, but it is not a land ownership interest *per se*;

rather, it is an interest in the existing biodiversity. I have as much interest in the biodiversity of the rest of the State as do the people in the North of the State, but the North is still important. What is desperately important is that, in some way, we improve the communications between those with conservation interests, the pastoralists and other people with interests in the North.

One thing that will improve this is the fact that this Bill will now contain a clause for the Pastoral Board to supply an annual report. It is quite amazing that the Pastoral Board has existed for so long and has never been required to produce an annual report. There is no doubt that a vacuum of information is one of the greatest ways of encouraging paranoia, concern and people worrying about what is happening, and so on. There was unanimous support for the concept of an annual report being produced, and I must say that many pastoralists would like to know what the Pastoral Board does, too. That is the one new addition to the Bill; the other amendments are minor improvements to what is already in the Bill. I think that the information that will then be available publicly can only be a good and positive thing.

In summary, I will look at other matters that were raised in evidence. It was never my intention that this committee would seek to resolve issues outside the Bill and, if anything, the annual report was a nice little bonus but it certainly was not contentious. However, a number of issues that were raised deserve further consideration and I stress the words appearing in the report on page 8, as follows:

> Committee members have not agreed on how these matters should be addressed or resolved, but there is general agreement that they may warrant further consideration.

While there are six recommendations under 'Other matters raised in evidence', it would be fair to say that probably every member of the committee did not agree personally with a couple of them. However, the committee as a whole agreed that some significant issues had been raised. It is my view that many of these points should be looked at not in isolation but as a package.

A proposal was put forward by several pastoralists—and it would be fair to say that a number of members of the committee felt very strongly in support of this notion—that mineral exploration companies working in pastoral areas should be paying some money towards the monitoring and rehabilitation of impacts that are additional to normal stock and public access management. In relation to the fact that insufficient money is being put into the North of the State, clearly one other source could be those mining companies that are reaping great benefits from the North, and not just those companies that are involved in active mining but also exploration. Some pastoralists made a point that, whilst mineral exploration practices have improved quite dramatically, damage is still done and sometimes the pastoralist, in some way, is held responsible for that damage.

The second matter raised related to tenure. I can only say that I would never agree to a change to permanent or continuous form of tenure unless it was part of a package of other reforms. So, I would never treat that one issue in isolation.

The third matter raised was public liability. I think that most members of the committee thought that this was an issue of great urgency. There has been much debate about issues of public liability on farm land generally, but the pastoral areas have special problems. The Pastoral Act gives rights to individuals to go on to pastoral property, travel along roads and so on, and the pastoralists are very worried about public liability issues.

One pastoralist (not in evidence, although I may be wrong) talked about coming across a couple of kids without helmets riding motor bikes along a track—not a proper road meant for public use—on his property and was concerned about the liability that he was up for should any injury occur. That was one of a range of concerns that was raised. On properties the size and complexity they are, one can understand that public liability causes a special problem in pastoral areas.

There was a suggestion that a set proportion of lease rent from each station or management unit should be refunded specifically for rabbit warren ripping or other designated rabbit control measures. I would be interested in rent rebates allocated for work of a conservation nature in relation not only to the control of rabbits but to other issues. It would be an interesting question to explore. I declare an interest in seeing this matter looked at further, but I have reservations about precisely how it would be administered so that it does not just become an excuse to grant cheap rents as distinct from a *quid pro quo*, where something of very clear benefit really is being done for the State, and the pastoralist are then rewarded—and rightly so—for it.

Finally, I address the growing interest in a broader program of measures to conserve those areas in the pastoral zones that are not grazed by stock. One witness—and as I recall it only one witness appeared from the environmental groups, and that was David Close, the Acting President of the Conservation Council—observed that there were still significant areas in the pastoral zone that were not being grazed by stock and, therefore, they were very significant in relation to biodiversity. He noted that, although technically the Native Vegetation Act applied, practically it was probably being ignored even more so there than anywhere else in the State.

Mr Close said that we should be looking closely at those ungrazed areas, and that is not to say that they should necessarily be conserved but that as they are there they deserve to be examined. In his evidence he acknowledged that there would have to be some form of compensation if that were to occur, and in my view that compensation could take the form of rent rebates or something else. I think the current rent structures allow for the fact that if you have areas that are not being grazed you can get a rent rebate.

Whilst I have some reservations about some parts of the report, on the whole it was adopted, except for clearly spelt out reservations, by all members of the committee. Although some members had a paranoia about what would happen, I think that those fears were proved to be unjustified.

Progress reported; Committee to sit again.

[Sitting suspended from 6 to 7.30 p.m.]

EVIDENCE (CONFIDENTIAL COMMUNICATIONS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

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

Leave granted.

In recent years, the law of sexual assault, be it substantive, procedural or evidentiary, has been changed by Parliaments and, to a lesser degree, the judiciary, to provide more protections for the complainants of sexual assault. Statutory provisions have precluded the use of evidence of general sexual reputation and restricted greatly the use of evidence of prior sexual history in particular, extended the notion of consent, protected complainants from extended and exploratory cross-examination in preliminary hearings, abolished the legal requirement of corroboration of the complainant's story, and modified the strict common law on the doctrine of recent complaint. In addition, in the area of law dealing with child complainant, the Parliament has substantially widened the ability of children to give sworn evidence, provided for the ability of children to give evidence while screened from the accused or via closed circuit television and created a wholly new offence of maintaining a sexual relationship with a child.

These reforms have, in many ways, changed the face and the balance of the criminal trial for sexual offences. Of course, they were designed to do that, but these charges are invariably serious and most often highly contentious. They go to the heart of the gender debate in this society, as well as to individual justice to the complainant and the accused. There are some who doubt the fairness and justice of them taken as a whole. Often, the trial will come down to the word of the complainant against the word of the accused and the presumption of innocence, and that is a highly subjective balance in any individual case. Nevertheless, Parliaments across the common law world, including the South Australian Parliament, have decided, in effect, to enact a wide range of measures, many of which are designed to greatly restrict the traditional ways in which the defence can seek to undermine the credibility of the complainant in cases of sexual assault allegations. Not surprisingly, defence counsel have sought ways in which to circumvent these restrictions. One of the main ways in which that has been done in recent times is for the defence to seek to undermine the credibility of the complainant by gaining access to the psychiatric or treatment history rather than the sexual history of the complainant. The point is to get hold of material which may be used to undermine the credibility of the complainant as a witness. These may be records made either before or after the alleged incident which is the subject of the charge.

The general legal technique involved in the defence attempt to gain access to the counselling or medical records of the complainant is the use of the legal order known as the *subpoena*. The *subpoena* is an order of the court directing the person or persons named in the *subpoena* to deliver the documents or things named in the *subpoena* to the court. It is issued on application by a party to an action or criminal matter, but it is vital to note at this point that the *subpoena* does not authorise the delivery of the documents or things named in the *subpoena* to the party who is the applicant for the *subpoena*. The *subpoena* is an order of the court and failure to comply with it is a contempt of the court. It is therefore an order with a sanction, disobeyed at peril.

The test for the issue of a *subpoena* is relatively clear in law. In order to justify this legal intrusion on the rights of a third party, the applicant for the *subpoena* has the onus of showing that they have a legitimate forensic purpose in the production of the documents or things which includes the notion that the applicant must show that access would materially assist the accused in his or her defence. The applicant does not have access to inspect the documents or things in order to get the *subpoena*. It follows, therefore, that the applicant must have some external information demonstrating the worth of the *subpoena*. Otherwise the application will be dismissed as what is technically known, in graphic terms, as a 'fishing expedition'. It is, therefore, usually necessary for the applicant to disclose, at least to some extent, its case to the court in order to get the order.

The documents produced in compliance with the *subpoena* are produced to the judge. The judge then examines them. Under South Australian law, the court must then rule whether the documents produced are 'relevant'. It is clear that does not mean that they are admissible in evidence. It does mean that there must be an assessment by the court that the documents in question must be capable of assisting in the proof or denial of some issue relevant in the proceedings. The test of relevance is evidentiary value not admissibility. For example, the documents may well be inadmissible of themselves but provide a basis on which a witness may be cross-examined as to credit. If the documents are relevant in that sense, or any part of them is, the court will release the whole or that part to the party for that purpose.

The specific problem in question is that some of those accused of sexual offences are employing the device of the *subpoena* to try to obtain copies of notes made during the counselling or treatment of the complainant or another person related in some way to the trial. This practice is causing serious concerns among the sexual assault counselling services and their staff and other concerned members of the community.

Their argument is to the effect that access to these records should be very tightly controlled. Some would have it prevented altogether. The substance of the arguments in favour of this general direction in the law are as follows. First, breach of the confidential relationship between client and counsellor would be detrimental to the effectiveness of counselling because the client would be likely to be less than full and frank in dealing with the counselling process Second, if the counselling records are made available to defendants, and that fact was known, there would be a substantial disincentive for victims to use counselling services or to report the assault at all. Third, disclosure of the records to the accused may lead to the granting of access to information which may place the complainant at risk or in fear of being at risk from retributive action, or may contain personal information, irrelevant to the case, which would lead to that result. Fourth, knowledge that the records could be disclosed will inhibit the rehabilitation of the victim and the effectiveness of the healing process generally.

In short, it is argued that if complainants are not guaranteed confidentiality within the counselling relationship, they will be inhibited in their discussions and unable to receive the full benefit of the counselling. Indeed, they may be deterred from seeking counselling at all. These are powerful arguments. But they do not stand alone or without contrary forces.

On the other hand, considerations of fundamental fairness and the right to a fair trial will sometimes dictate that any just system of law should grant access to counselling notes. The treatment to which the complainant has been exposed before trial may have had the effect of contaminating her memory to such a degree that her evidence, while genuine to her, is utterly unreliable. For example, the recollections that the complainant recounts and in which she firmly believes may have been obtained by hypnosis. There is a considerable body of very cautionary law about the admissibility of such evidence and the use to which it can be put. But there may be even more doubtful procedures. In, for example, *Cooper* (1995) 14 WAR 416, the complainant based her account on 'recovered memory' retrieved by Eye Movement Desensitisation and Reprocessing Treatment (EMDR). There was a wealth of expert evidence that this treatment was 'in an enthusiastic period of evaluation' and was not only unreliable, but could not be described as an established scientific body of knowledge. This information would be crucial to the case for the defence.

This is not a simple policy issue. Nor is it a simple legal issue. So far as policy is concerned, the general existing law designed by judges for ensuring a right to a fair trial for an accused charged with very serious offences collides with the equally compelling public interest in protecting victims from undue harassment and further victimisation and the public interest in the effective minimisation of harm to those who have suffered a traumatising experience. So far as the law is concerned, if action is to be taken, it must traverse with the most technical areas of law dealing with exclusionary rules of evidence, relevance, privilege and immunity and procedural laws such as those governing *subpoenas* in a specific area.

In the current environment, it is clear that action by Parliament is needed in order to make the rules clear for everyone—but the parameters of change require careful management as do the policy values in conflict—and the options for dealing with them.

In general terms, there are five alternatives that could be adopted. They are:

- Do nothing and rely on existing common law;
- Enact a complete and total prohibition on the release of counselling records;
- Enact a privilege in the counselling records similar to legal professional privilege;
- Enact an unstructured judicial discretion whether to admit the records or not; or
- Enact a structured judicial discretion whether to admit the records or not.

It seems clear that the first option is not tenable. The proponents of various possible positions are in conflict and it is up to parliament to resolve the conflict and clarify the position. The second option is equally untenable, despite the fact that it has some strong advocates. Not only will the taking of this position lead to unjust convictions and stayed trials, but also it ignores the fact that there is no established counselling profession with disciplinary procedures and an

enforceable code of ethics. No-one wants an increased number of convictions overturned as unsafe and unsatisfactory because of a legal technicality, but that is precisely what has happened a number of times when the tabling of victim impact statements at sentence have revealed sufficient information about the counselling process to lead to a finding that the verdict is unsafe and unsatisfactory and warrants a new trial.

Equally, the unstructured judicial discretion is not tenable. This is not all that much different from the status quo, which is not satisfactory. It will not go far enough to satisfy those who desire change, and experience in jurisdictions across Australia shows that it leaves too much discretion in a highly sensitive area to the individual views and proclivities of the judge who happens to be presiding at the trial.

The analogy with legal professional privilege is not sustainable on a number of grounds. Legal professional privilege is based on two vital factors. First, lawyers are "officers of the court" and second, they are bound by complex and strict rules of professional practice. Sexual assault counsellors have neither characteristic. Indeed, the lack of any recognisable professional body capable of setting and enforcing professional standards in the industry was a matter of adverse comment by the Wood Royal Commission in New South Wales. In addition, it should be noted that the lack of both characteristics has been the basis for the refusal to grant an analogous privilege to the priest/penitent, doctor/patient and journalist/source relationship. Any or all of these people would feel rightly aggrieved if an exception was made in this case. More importantly, the fundamental moral basis for legal professional privilege is that, in its absence, the operation of the rule of law itself is jeopardised. That is not so if the client/counsellor privilege does not exist—indeed the converse may be true—albeit that some negative consequences may flow to the relationship itself. Further yet, the notion of a privilege goes too far. It would not allow discretionary admissibility in cases in which gross injustice would result.

The only appropriate way to proceed is via structured judicial discretion. This is the path that has been taken in Victoria and New South Wales. The legal form which this should follow is public interest immunity. Public interest immunity protects information from being disclosed if, in the opinion of the court, the disclosure would injure an identifiable public interest. The immunity is most often used in cases involving confidential government documents when it can be shown that it is in the public interest for the information not to be disclosed, but there are instances where it can be invoked by private citizens. In such cases, the court is required to balance the public interest in the administration of justice in the particular proceedings against whatever public interest may be injured by the disclosure of the material. The fundamental principle is that the material may be withheld from disclosure only to the extent that the public interest renders it necessary.

The Bill before the House seeks to enact a specific public interest immunity model appropriate to the category of information with which it deals. The Bill enacts a two stage process for considering applications by anyone in litigation, civil or criminal, for access to what the Bill calls a 'protected communication'. In the first stage, the person making the application must seek leave of the court and show that the he or she has a legitimate forensic purpose for seeking access and that there is an arguable case that the evidence will materially assist the presentation or furtherance of the applicant's case. This test is very similar to the more familiar and colloquial judicial test for a *subpoena* where the court assesses whether or not it is 'on the cards' that the evidence sought will materially assist the applicant in his or her case. If that first stage of the test is not passed by the applicant, the matter should rest there.

If the test is passed, however, the court then has a discretion about what to do next, according to the case for leave made out by the applicant. The court can require the holder of the information to answer questions, produce the records to the court, or as a last resort, appear before the court to give evidence. At this stage, the question for the court is whether, despite the success of the argument for the applicant on the first stage, whether the evidence should be produced. The answer to that question depends upon a balancing test, and that is the second stage. At this point, there must be an assessment of the conflicting aims of public interest in the light of the particular circumstances of the case which will, of course, vary in individual cases.

The general balancing test is set out in what is proposed to be s 67f(5) and the balance is to be informed by the explicit listing of relevant factors in what is proposed to be s 67f(6). The general test is the balancing of the public interest in preserving the confidentiality of protected communications against the public interest in preventing a miscarriage of justice in the circumstances of the case. The list of relevant factors informs one side or the other of that balance. The onus to show the need to access the protected communication is to be placed on the party seeking access to that communication.

It is clear, therefore, that the definition of protected communication is important. honourable members will note that it extends to oral as well as written communication and that it extends beyond professional relationships to volunteers who work as counsellors. It should also be noted that the protection does not extend to a communication made for the purposes of or in the course of a physical examination of the victim or alleged victim by a registered medical practitioner, communications made for the purposes of legal proceedings and, importantly, communications as to which reasonable grounds exist to suspect that the communication will provide evidence of a criminal offence, such as fraud, perjury or an attempt to pervert the course of justice. This last is significant. It cannot be the case that the law of public interest immunity will operate in order to shield a person who is reasonably suspected of having committed a criminal offence from investigation and, if thought desirable, prosecution.

The Bill as a whole represents a reasoned attempt to reconcile what may seem to some irreconcilable forces and positions. It sets out a comprehensible middle ground, and articulates the policies which must be argued, contemplated and decided. It sets out the rules so that all who are involved know where they stand.

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Insertion of headings

Clause 3 divides Part 7 into separate divisions in view of the proposed insertion of a new division dealing with protected communications.

Clause 4: Insertion of Division 9

Clause 4 inserts new division 9 dealing with protected communications.

67d. Interpretation

New section 67d contains definitions required for the purposes of the new division.

67e. Certain communications to be protected by public interest immunity

New section 67e provides that a communication relating to a victim or alleged victim of a sexual offence is, if made in a therapeutic context, protected from disclosure in legal proceedings by public interest immunity. However, the public interest immunity will not extend to a communication made for the purposes of, or in the course of, a physical examination of the alleged victim of a sexual offence by a registered medical practitioner, a communication made for the purposes of legal proceedings or a communication as to which reasonable grounds exist to suspect that it evidences a criminal fraud, an attempt to pervert the administration of justice, perjury or another offence. New subsection (3) provides that the public interest immunity cannot be waived.

67f. Evidence of protected communications

New section 67f provides that evidence of a protected communication cannot be admitted in legal proceedings unless the court gives leave to a party to adduce the evidence and the admission of the evidence is consistent with any limitations or restrictions fixed by the court. Subsections (2), (3) and (4) provide for a preliminary examination of evidence of protected communications by the court. The new section goes on to provide that the court can authorise the admission of the evidence if satisfied that, in the circumstances of the case, the public interest in preserving the confidentiality of protected communications is outweighed by the public interest in preventing a miscarriage of justice that might arise from suppression of relevant evidence.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

LOCAL GOVERNMENT FINANCE AUTHORITY (BOARD MEMBERSHIP) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 August. Page 1570.)

The Hon. T.G. ROBERTS: I thank those who organise the Notice Paper for allowing me to attend to other matters before dealing with this very simple Bill. It allows the Local Government Finance Authority to co-opt two additional members with financial expertise to give advice when required to the authority and for an annual report to be made available within 12 sitting days of its receipt. The authority has indicated to me that, because of some of the exposure of some loans and some business dealings, it needs more expert advice than has been previously available. It still wants to maintain an elected component for the board but it also wants to co-opt two extra members from the finance sector to assist with its deliberations. I understand that there will not be any proxies for these two extra appointments, so we do not need to worry about any amendments. The Opposition supports the Bill.

The Hon. R.I. LUCAS (Treasurer): I thank the honourable member for his indication of support for the Bill.

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

SOUTHERN STATE SUPERANNUATION (MERGER OF SCHEMES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 August. Page 1565.)

The Hon. R.I. LUCAS (Treasurer): I thank members for their contributions to the Bill. The Hon. Mr Elliott raised a question to which he indicated he did not require a response during the second reading or the Committee stage of this Bill. He has subsequently provided me with some information on that request, and I have undertaken to take up the issue with my officers within Treasury and Finance, particularly those with expertise in the area of superannuation. I undertake to correspond with the honourable member during the coming parliamentary break.

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

PASTORAL LAND MANAGEMENT AND CONSERVATION (BOARD PROCEDURES, RENT, ETC.) AMENDMENT BILL

In Committee (resumed on motion.)

(Continued from page 1662.)

Clause 1.

The Hon. P. HOLLOWAY: I indicate support for the recommendations of the report of the select committee. When this Bill came before the Parliament the Opposition had a number of concerns, and I would like to go through what they were and how they were ultimately resolved. The Opposition's first concern was the lack of information on and the justification for the rent setting mechanisms that were to apply to pastoral lands under this Bill. Previously, pastoral land rents have been based on the stock capacity of the land. The proposal in this Bill was to make pastoral lands now subject to unimproved land value.

The second concern expressed by members of the Opposition related to the membership of the Pastoral Board. In particular, given the number of issues that have been raised in the last few years with respect to Aborigines, there was some concern about whether the board was in a position to adequately address Aboriginal issues. Our third concern was that whilst the new Bill allowed favourable treatment for pastoralists—that is, favourable in terms of reduced rents, where they would take conservation measures such as destocking land—there was some concern about whether there were adequate punitive measures against any abuse of lease conditions.

The final issue that concerned the Opposition was the accountability of the activities of the Pastoral Board. In particular, there was no annual report or very little information generally from which the public could get to learn of the activities within the pastoral lands. Given that the ultimate owners of the land are the people of this State—of course, we do lease the land, but the ultimate owner is the Crown—it is important that there should be some accountability as to what happens.

The Democrats raised the concern addressed by the select committee about other issues relating to pastoral management. In particular, the Hon. Mike Elliott raised issues such as the impact of tourism, mining and other activities on the pastoral land. They were the issues with which we were confronted. How were they resolved?

First, in relation to rent setting, the report states that the new system of basing rent on unimproved land values should hold. It became apparent during the course of the discussions on this Bill and the hearings of the committee that in fact changes to the system had actually been agreed to under the previous Labor Government at the end of 1993. Unfortunately, the Farmers Federation and others thought that that was sufficient reason that those of us in Parliament now should be aware of what was happening in the pastoral lands and that therefore we should automatically agree to the changes.

With hindsight, it was a great pity that those who were advocating this change did not make their views known, because it might have saved a lot of problems. In particular, it is a great pity that the Minister for the Environment, who is in charge of the pastoral lands (Hon. Dorothy Kotz), did not adequately brief the Opposition. When my colleague in another place, John Hill, sought information about these pastoral rents and the reasons for the change—I would have thought a fairly reasonable request—I understand that he had great difficulty in getting that information. Had he been given the sort of briefing that we got through the committee, maybe that particular issue need not have been raised.

Nevertheless, as far as the rent setting mechanism is concerned, there is fairly universal agreement that, if properly applied, unimproved land values is a reasonable way of basing rents. Of course, what came to light during the course of this select committee was that in fact a number of rates apply to the unimproved land value, depending on the purpose for which the land is used. It actually ranges from 2 per cent for land set aside for conservation purposes, whilst 2.7 per cent is now the average rate for pastoral activities, and 4 per cent for land that is used for tourism purposes. I am not sure that it was all that widely known in the pastoral lands that there are these changes.

While there is no doubt from the information the committee received on its tour—and it went to Glendambo, Marree, Port Augusta and Yunta to get a fairly representative sample of the views of pastoralists—that there is agreement about the bottom line position of the new rents, I am not all that convinced that many of the details are all that well known, but that is another issue.

In particular, the report makes mention of the fact that there is an expectation amongst many pastoralists that, under the new system, pastoral rent reviews would be conducted

only every five years. Certainly, the provisions of the Bill allow for the fact that the Valuer-General can value land when he determines it is necessary or at the direction of the Minister, but at least every five years. The final position of the committee was that we should retain the discretion for the Minister to determine the frequency of valuation of pastoral land. The reasons for that are fairly obvious. There might be movements in both directions. If there were, say, severe droughts or other conditions that affect pastoral returns, some allowance could be made for that by considering the valuations or the rates of return required. Alternatively, if we did not change the rate of return downwards, and if there was a highly inflationary environment, it might be necessary to revalue more frequently to reflect that fact.

It is worth pointing out—and this is covered in the report—that the cost of the Valuer-General's reassessing land can be quite expensive. In fact, about $90 000 has been spent over the past few years in valuations. The conclusion from that is that a sensible Government will determine the frequency of the valuation of pastoral lands, knowing that it is a very expensive exercise. A sensible Government will presumably wait until there is some significant movement before it does so. That will mean that there may be a greater period between a reassessment of pastoral rents. It could be anything up to five years. Obviously, that discretion will remain, depending on the two factors that I mentioned earlier. In the circumstances, the committee came down in favour of the existing provisions in the Bill, and they should work reasonably well.

As to the second issue concerning mechanisms for addressing Aboriginal issues, the committee report points out that five working pastoral properties are now owned by Aboriginal communities or groups. Given that the Pastoral Board has a high representation of pastoralists, in future when vacancies occur the pastoral interests that represent these Aboriginal groups will have the opportunity of being represented on the Pastoral Board. Perhaps a question to be addressed is: how does one address Aboriginal issues? During evidence taken by the committee, it was interesting to note that the Pastoral Board said that only two such issues had been raised in the past couple of years, and they had related to heritage assessments, and so on.

The main Aboriginal issue confronting the pastoral industry appears to relate to access, and those questions will be decided at a local level. In the report, reference is made to the fact that the Pastoral Board has the capacity to draw on the expertise of *ad hoc* committees when dealing with various issues—not just Aboriginal access issues but issues involving four wheel drives, the tourist industry, mining, and so on. That is the situation at present. The committee has not made recommendations into the changes there. However, that is obviously something that will need to be addressed in future.

The third issue is whether the Bill had adequate punitive measures, and the committee found that it did. An example is given in the report of how, in one instance, the maximum fine—a $10 000 fine—had been imposed and a number of destocking orders had been issued by the Pastoral Board. That means that in the view of the committee there are adequate punitive measures and there was no need for further measures.

In relation to accountability of the board, the committee recommends changes (and indeed changes are suggested to the Bill, which we will deal with shortly) that will provide for an annual report of the Pastoral Board. Not only is that a necessary measure for providing accountability but, if we had had at least some reporting in the past, it would have been useful in terms of understanding some of the issues in our pastoral lands: it would have been helpful for all concerned. I warmly welcome the fact that an annual report will now be produced by the Pastoral Board and at least give this Parliament and the people of this State some information on what is going on in what is, after all, a considerably large portion of the State.

The committee looked at other issues and reference is made to them at the end of the report. I will refer briefly to one of those issues, namely, the question of liability. A number of issues are facing pastoralists in relation to the liability question. One example given to the committee was where a person had sought to take camels across a property. The pastoralist had no knowledge of whether the camels were carrying disease that might be transmitted. Clearly, there was a risk to the pastoralist's livelihood as a result of that activity. Examples were given of tourists coming onto pastoral land and falling down the mine shafts or getting lost without the pastoralists even knowing that they were there. But the question of liability has not been settled. That is one of the most serious issues that needs to be addressed in relation to pastoral lands. Because it was agreed by the committee that we needed to resolve the issue by tonight so that we could get the Bill through by the end of the session, we were unable to address that issue and others like it in the detail we would have liked.

The issue of liability facing pastoralists is a serious one and one that the Government should address as soon as possible. I suggest that the Minister responsible should seek Crown Law advice on the issue as soon as possible. It is clearly a highly technical issue and needs careful consideration. Given the way our society is moving more and more to litigation to solve problems, it is an issue that should be of high priority in relation to pastoral lands.

I make a couple of final observations. Some of the information that came out of the report and evidence is that there is to be yet another review of this Act under national competition policy later this year. I am not aware of issues that may come out of that, but that will be facing the industry. It is interesting to look at the papers attached to the report to see how the Valuer-General goes about the business of assessing pastoral land. A number of questions are raised in relation to that. Given that there are only about 300 or 400 pastoral properties in this State, it is difficult to determine unimproved value. Much information is contained in this report and the attached evidence that explains how it is determined.

In relation to the budget, some statistics are included in appendix C of the report that give information about the rent collected and the expenditure by the relevant department on pastoral lands over the past eight or nine years. We see that in the early years, in 1990-91 and 1991-92, the budget branch was as high as $1.8 million, whereas the rent collected in those years was $1 million and $759 000 respectively. Whereas the rent collected has remained reasonably static since 1991-92, the Pastoral Branch budget has fallen quite substantially.

It is interesting also that, according to the information we were given, since this new system has been in operation over the past couple of years, the total assessed value of unimproved land increased from $20.5 million in 1996-97 to $23.868 million in 1997-98. That is an increase of about 16 per cent or 17 per cent, which is rather interesting, although the rent collected did not increase commensurately because

the rate of return factor was reduced to reflect conditions. I make the point that the assessment of pastoral rents is a highly complex matter and, if anyone wishes to get to the bottom of it, certainly plenty of information is provided in the report. I found this a very interesting committee from that point of view. I was certainly much better informed as a result of being a member of the committee, and I am sure that applied to the other five members.

In conclusion, I think the committee worked fairly well; we had a tight timetable. We were able to address the issues and resolve them in an efficient manner so that we could have this Bill completed by the end of the session. As a result of the increased knowledge that all of us gained and the amendments and recommendations that have come out of this report, I think that it will be in the best interests of the pastoral industry of this State. With those comments, I commend the report and the recommendations of the select committee.

The Hon. R.R. ROBERTS: I do not intend to elaborate on the whole report; it has been well covered in the contributions of the Minister, the Hon. Mike Elliott and my colleague the Hon. Paul Holloway. I do wish to comment on a couple of areas to do with the setting of rents. During our deliberations, we heard evidence from the Assistant Valuer-General, who pointed out that the valuations had been subcontracted to an independent expert in this area. I note that the Valuer-General employed the services of a private valuation consultant at a cost of approximately $90 000 over the past two years to undertake this assessment, which was worked out on the basis of a rental determination that was fair and equitable when the property applied. The committee noted that the consequent rental income derived will cover the varying proportions of the cost of the State's current pastoral program, depending upon the unimproved value.

It was an interesting exercise to go through. I was intrigued that, when the valuer does these valuations, he does it on a fairly unpredictable schedule. There is a whole range of factors, and I am sure that some of the valuation principles that are used entail looking at properties outside South Australia and discounting some of the high prices and the low prices that may be received. I noted also that five properties owned by Aboriginal interests were excluded from the valuer's considerations. There were also three or five properties which have been bought by mining companies and which were also excluded because of the prices paid by the mining companies. I do not want to speculate why the mining companies bought them, but most of them are in the Roxby Downs area where there is great mineral potential.

I am not aware precisely of the circumstances, but I am sure that the value of the New South Wales properties that were included were accurate when the valuer was making his assessment. I do not know whether those properties were located on the site of potential mineral wealth, in drought areas, or what the circumstances were, but I find it rather unusual that the properties bought for the interests of Aboriginals were valued by the Commonwealth Valuer-General. If someone was to tell me that the price was too high, I would want to know why there was such a vast difference between the Commonwealth and State valuations. That is a reasonable question.

The important aspect of this final recommendation is that there is a formula which is now known and which will be based on the unimproved value of the land, whatever that may be, and probably we can all argue about how we proceed from that basic starting point. There was also some discussion—and there was certainly an expectation by pastoralists—about valuations taking place every five years, but that was not what the Bill proposed. The Bill proposed that valuations would take place at least every five years but that the Minister had a discretion to order valuations and changes if circumstances so warranted.

At one stage a proposition was put to make it five years, but I did not support it. After some deliberation the committee determined to stick with the original clause of the Bill which gives a Minister, in changing circumstances, the opportunity to order a valuation. I do not see that this will be abused, but I think it is an important device to enable a Minister to handle changing circumstances from time to time.

The other issue which I want to talk about—and which was included in matters for further consideration but not for deliberation in this Bill—relates to item 5.1 in the report, which states:

> That a proposal that a portion of the moneys received by Government from companies and groups involved in mining exploration on pastoral leases be transferred to the pastoral program funding base towards the monitoring and rehabilitation of impacts that are additional to the normal stock and public access management.

This subject was raised at every forum which the committee attended and there was certainly, in almost every case (there may have been one or two exceptions), agreement that pastoral land management was important. I believe the pastoralists see themselves as important custodians of the land and that there is a legitimate expectation that, with the further use of and access to land in the areas of tourism, exploration and mining activities, that some of the moneys collected (and I know that the mining companies make contributions to the Government) ought to be directed to the maintenance and care of the pastoral environment, and my colleague the Hon. Mike Elliott touched on this aspect.

I draw evidence for that concern from something the Hon. Paul Holloway talked about, and it is something about which I deliberately asked a number of questions at almost every forum, namely, the difference between what is called the program budget and the rent collected. I note that in 1990-91 the program budget was $1.49 million, and at that stage rent collected totalled $1.6 million. Since the printing of the report someone has gone to the trouble of calculating the percentage of rent collected for 1990-91, and it was 71 per cent of the program budget.

The worrying part is that the program budget has dropped to $911 443 and the rent collected has dropped massively to $644 485. That is also 71 per cent of the program budget. I am not suggesting that anything naughty has gone on but, to me, it indicates the problems that we often have with figures and what people can do with them. What we are really talking about is 1990-91 dollars and 1997-98 dollars. In relation to the budgets, if we are to achieve the same outcomes with the same amount of people, one could expect that those dollars would have risen drastically.

I raise this issue because it is becoming a concept, especially within this Government (and it was also something towards which the previous Government was working), that there ought to be a cost recovery in primary activities. Indeed, if we are to have this very important part of our State's heritage areas—or the people's estate, if you like—looked after properly, I find it a very worrying concept that the programs are being cut, and I can understand the pastoralists being quite happy to pay much reduced rents than they were paying in 1990-1991, even putting aside the value of the

1990-91 dollar and the 1997-98 dollar. That is something that I put to a number of people.

At Port Augusta, in particular, I put it to one witness, and I was somewhat shocked to hear him say, 'That is not our worry.' It is certainly the worry of the committee and of any Government, I believe, to ensure that a proper amount of money is spent on the proper maintenance and care of the public estate. That is why I linked the two issues together: moneys from other people accessing pastoral lands are being collected, and I believe that some of that ought to be moved into that program budget to look after our pastoral lands.

By and large, when we arrived at each venue we were met, I believe, with the usual suspicion with which select committees are often met when they arrive to talk about things which will cost people money. I am delighted to be able to report that, by the time we left, I believe a certain trust and some confidence had been established between the people. I think they realised that the committee was there not to pick their pockets but to have a proper look and find out what they thought about the problems facing their industry and to identify some issues which are in the appendix and which may need further investigation by and consultation between all players in the pastoral industry. In that respect, I believe that we were successful.

I would like to thank the Chairperson of the pastoral lands select committee. I thought that she conducted this investigation in a very professional manner. She was able to maintain everyone's confidence and her impartiality, and her effort to obtain the information was quite apparent. I also believe that all the other members worked in a very cooperative way, and this is reflected in the fact that the report has been produced in such super quick time, compared with the history of select committees in this Parliament. I recommend to the Parliament the adoption of the committee's report and the recommended amendments to ensure that our pastoral lands are managed properly and fairly in the future.

The Hon. CAROLINE SCHAEFER: I, too, would like to add my thanks to the Chair of the committee and the other committee members and to Leith Yelland and Chris Schwarz. I do not propose to speak very long tonight: I am cognisant of the fact that we have a long night ahead of us. When this committee was established I said quite vehemently that I could see no reason for it to be set up and, on a personal level, I would maintain that. However, I certainly enjoyed travelling to those areas and speaking to the people who live and work in the pastoral lands. I recognise full well that, while it was a subject that I believed that I understood, had the select committee been set up to look into, for instance, an industrial matter at Port Pirie or something in which other members of the committee had greater expertise than I, I would have been grateful to speak to some of those people.

We have discussed and all agreed on the matters that were raised within the committee. Perhaps the only area of contention is those matters that we have recommended that may need to be revisited and further investigated at some other time. Some of us felt that certain recommendations were very important and some of us felt that others of them were less important. However, it was a very good committee which reached a unanimous verdict, as the Hon. Ron Roberts said, in super quick time and, as such, I express my gratitude to those involved.

Clause passed.

Clauses 2 and 3 passed.

New clause 3A.

The Hon. CAROLINE SCHAEFER: On behalf of the Minister for Transport and Urban Planning, I move:

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

Insertion of s.18A

3A. The following section is inserted in Division 2 of Part 3 of the principal Act after section 18:

Annual report

18A. (1) The Board must, no later than 30 September in each year, furnish the Minister with a report of its operations during the preceding financial year.

(2) The Minister must, within 12 sitting days of receiving a report, have copies of it laid before both Houses of Parliament.

As has been discussed, this legalises the system of valuing pastoral lands which has been in place for the last two or three years, and that is a system of unimproved values as opposed to a system of stocking rates as being the method for determining the rental for pastoral leases.

New clause inserted.

Clause 4 passed.

Clause 5.

The Hon. CAROLINE SCHAEFER: On behalf of the Minister, I move:

Page 4, lines 24 and 25—Leave out paragraph (b) and insert paragraph as follows:

(b) by striking out from subsection (3) 'A lessee who is dissatisfied with the decision of a licensed valuer on a review under subsection (2)' and substituting 'If a lessee or the Valuer-General is dissatisfied with the decision of a land valuer on a review under subsection (2), he or she'.

This amendment arose as a result of a concern raised with us by a member of the pastoral industry. Previously the right of review was referred to as a right of review between the lessee and/or a person. The intent of the Act as we understood it was for the right of review always to be between the Valuer-General and the lessee. This amendment simply tidies that up to make it quite clear that the review should always be between the key players, that is, the lessee and the Valuer-General. It removes any assumption that any other person could be involved.

Amendment carried; clause as amended passed.

Clauses 6 and 7 passed.

Schedule.

The Hon. CAROLINE SCHAEFER: On behalf of the Minister, I move:

Page 6, line 1—Leave out all words in this line.

This amendment is consequential.

Amendment carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

CRIMINAL LAW (SENTENCING) (VICTIM IMPACT STATEMENTS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

EDUCATION (GOVERNMENT SCHOOL CLOSURES AND AMALGAMATIONS) AMENDMENT BILL

The House of Assembly disagreed to the amendments made by the Legislative Council.

CRIMINAL LAW CONSOLIDATION (INTOXICATION) AMENDMENT BILL

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

STATUTES AMENDMENT (MOTOR ACCIDENTS) BILL

The House of Assembly, having considered the recommendations of the conference, agreed to the same.

Consideration in Committee of the recommendations of the conference.

The Hon. R.I. LUCAS: I move:

That the recommendations of the conference be agreed to.

The other Chamber reported on this some four or five hours ago, so, on this occasion, we are old news in the Legislative Council. Because the Bill was introduced initially in the Legislative Council, the report of the conference of the managers first reports in the House of Assembly, which, I understand, occurred some time earlier this afternoon. We have now received the message and it has come back with the recommendation to support the recommendations of the conference. I must say that it is with some reluctance, but nevertheless, I have done so.

I will make some initial comments before I address some of the particular issues. This was a most complex matter. I think all members of the conference will acknowledge that this is a most complex area. Members approach this from a number of different directions. In the end, ultimately, most members acknowledge that there is some need for a balance between premium increases and what is the appropriate level insurance cover that can be provided for by this insurance scheme. Clearly, members of this Chamber and another Chamber make different judgments about the appropriate balance between what are conflicting goals, but nevertheless, I think the conference generally was conducted with goodwill. There was a refreshing lack of acrimony from amongst those who toiled away over the past week or so in an endeavour to get that balance right, as I said, in terms of what are obviously conflicting goals for this compulsory insurance scheme.

The reality is that it is impossible for motorists to be able to afford the sort of cover that I am sure some in the community would wish to see from a compulsory third party insurance scheme. Some members of the community would want to see even more generous benefits for those who are the victims of road accidents, but, in the end, over the years, Governments of both persuasions have had to make difficult decisions about the level of those benefits, the affordability of the premiums and the solvency of the scheme. Because Governments have not got the balance right with the WorkCover scheme—albeit, I acknowledge it is different in some respects—over a period we have seen the continuing wrestle between the cost of premiums, the viability of the scheme (whether it is funded or unfunded) and the level of benefits that are—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: The honourable member says that the scheme is fundamentally flawed. I am sure there are many members of the Plaintiff Lawyers' Association who would agree with that view. I am sure that there are some members of the union movement who would also share that view about the WorkCover scheme. But my point is that this balance between the viability or solvency of the scheme, the cost of the scheme to those who have to pay the premiums—whether it be WorkCover or CTP—and the level of the benefits is a very difficult equation to balance. There will be some such as the Hon. Mr Xenophon and others who will argue that even the existing level of benefits within WorkCover and within the CTP scheme are not generous enough in terms of the compensation paid in certain circumstances.

Inevitably—and we have seen this with WorkCover—we will see continuing pressure on Governments, whether they be Labor or Liberal, to ensure that these schemes are funded, that they are viable and that in this case they meet appropriate solvency measures. In relation to the WorkCover scheme—and I am not an expert on WorkCover; I bow to the greater knowledge of the Hon. Mr Xenophon in this area—I understand that a previous Labor Government introduced a maims table or something to that effect, and this is something that the Plaintiff Lawyers' Association has railed against for some time. I am only guessing, but the Hon. Mr Xenophon may well be an opponent of that; however, a Labor Government introduced such a measure in the WorkCover scheme—

The Hon. P. Holloway: Do you want to throw it out?

The Hon. R.I. LUCAS: No, I am highlighting the difficulties of these schemes. This is not an ideological Liberal versus Labor issue: in the end it is an issue of Governments versus Oppositions, because when you are in Government you have to take the responsibility for your advice about solvency, viability or whether or not the scheme is funded. So, in government the Labor Government introduced that. This is not the Government's position, because I am not an expert on the maims table, but some people are already urging that Governments look at similar provisions for the Motor Accident Commission in relation to the CTP scheme.

The Hon. Nick Xenophon: The bean counters.

The Hon. R.I. LUCAS: No, not the bean counters. If the Hon. Mr Xenophon wants to make that criticism of the Labor Government in relation to WorkCover he can. There are people in the community who are already saying that in terms of this being a viable scheme Governments—whether they be this Liberal Government or a future Labor Governments—will have to look at these significant changes as the previous Labor Government made in relation to WorkCover. I would be very pleased at some time during the recess to sit down with the Hon. Mr Xenophon and hear his reasons why such a change to this scheme by a future Government would be unacceptable to the Plaintiff Lawyers' Association and to others. As I said, I am not an expert in relation to this area of the law and how it might operate in relation to insurance, but there are people who are saying, given the unwillingness of Parliaments to tackle some of these difficult issues (as evidenced by this debate), that ultimately the pressure will come on a future Government. As I said, we have already seen from one Labor Government before its willingness to accept that sort of advice in relation to a WorkCover scheme and to introduce this notion of a maims table.

It may well be that with the Hon. Mr Xenophon's proposal for a select committee into the Motor Accident Commission, which is pretty broad and all embracing, some of these people in the community who argue for these sorts of things may want to put submissions to this forum. It would give them an opportunity to canvass a range of options which these people believe ought to be incorporated in our scheme to ensure that

we can, in some way, limit the legal costs, which I think even the Hon. Mr Xenophon would acknowledge are—

The Hon. Nick Xenophon: The defendant's or the plaintiff's costs?

The Hon. R.I. LUCAS: All legal costs. I am sure that the Hon. Mr Xenophon would acknowledge that lawyers do not come cheaply, that they are not an inexpensive part of any scheme.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: Or, indeed, plaintiff lawyers. I have received some advice on fees charged by plaintiff lawyers for services that are offered. It may be that the Hon. Mr Xenophon and others whom he knows pitch their fees below the market rate. I do not want to inquire about particular service fees—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: No. That's—

The Hon. Nick Xenophon: You're casting a slur on the profession.

The Hon. R.I. LUCAS: No, that's not a slur. To make a statement that the level of legal fees is a not insignificant part of the cost of the scheme hardly amounts to a slur on the legal profession. The honourable member could refer to dozens of reports of commissions and inquiries over the years that regard legal costs and access to the law as significant issues for Australians and South Australians.

I am surprised that the Hon. Mr Xenophon with his well-known willingness to defend the little person in society in many areas would not similarly take a view on behalf of consumers of legal services in terms of the cost of such services in this area. Clearly, there are other significant costs. This scheme tries to tackle things such as medical and physiotherapy costs. During the conference, we heard examples from some members who are well versed in this field of a number of practices in terms of costing arrangements which even the profession was open enough to say that it did not support. That was openly discussed with individual members of the conference.

So, it will be a continuing issue. There is no doubt that the unwillingness of this conference to take the hard decisions and tackle the increasing costs of the scheme for consumers will inevitably mean that at some stage in the future the Government—and I suspect that it is more likely to be a future Labor Government given its history and record on these issues (WorkCover, in particular, and the notion of the maims table)—will start to look at these sorts of changes in the operation of this scheme.

I hasten to say again that, to my knowledge, the Government has no intention of moving in this area. I have indicated my willingness to be better informed by the Hon. Mr Xenophon about the evils of the maims table as it might apply to this scheme. I have had a private discussion with him and indicated that I would be willing to sit down with him, should he be able to spare the time from his pokies crusade, to discuss this element of such a scheme.

The Hon. Nick Xenophon: Will you support the select committee?

The Hon. R.I. LUCAS: I am happy to debate that when the honourable member seeks a discussion on it.

The Hon. Nick Xenophon: Next Wednesday.

The Hon. R.I. LUCAS: The honourable member provided me with a couple of different times. He gave me a time different from Wednesday when I last spoke to him. If he has changed that view, he might like to discuss it with me, but that is not the time he indicated to me when we discussed this issue. As I said, there is this constant battle. In this regard, the Government took advice from the independent Third Party Premiums Committee which said that we would have to have a 12.9 per cent premium increase.

The Government thought that in the interests of social justice and in trying to defend the workers of South Australia, whilst acknowledging because of the difficulties of the budget that we had already had to increase significantly in some cases the cost of car ownership, we did not want to impose even further imposts on car owners than had already been inflicted on them through the State budget. In June or July, the Government agreed to an increase of only 8 per cent. We introduced this package of savings to ensure that we did not have to increase premiums by 12.9 per cent this year.

In other general comments before I address the specific issues, I indicate that I learned two lessons from the conference. First, it was quite productive in terms of lack of acrimony, with people working together. The format of the conference—and the shadow Treasurer has acknowledged this both publicly and privately—enabled us to make available informally to the shadow Treasurer and others legal, financial and management advice in relation to the scheme so that members could ask their questions and get immediate responses. Whether members accepted that information is a judgment ultimately for them, but the shadow Treasurer and the majority of members of the conference who have spoken to me indicated their support for the manner in which it was conducted. Members did have access to experts to answer questions and we did not have to rely on second and third hand versions of information.

This has been a continuing trend in our conduct with conference managers between the Houses, and the shadow Treasurer has been good enough to indicate from his viewpoint anyway that it was productive in providing access to experts and information to members of the conference. Sadly, the other point that became clear from my view was the inability of the shadow Treasurer to carry any weight within his own Caucus. It became quite apparent—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am not being nasty; it is a statement of fact.

The Hon. Nick Xenophon: You're supposed to be statesmanlike.

The Hon. R.I. LUCAS: Who said that?

The Hon. Nick Xenophon: You said it at the conference.

The Hon. R.I. LUCAS: This is as close as I could ever get to being statesmanlike. We saw the inability of the shadow Treasurer to carry in any leadership way a view within his own Party, and it may well be—

Members interjecting:

The ACTING CHAIRMAN (Hon. T. Crothers): I draw the Treasurer's attention to the debate: that the recommendations of the conference be agreed to.

The Hon. R.I. LUCAS: I will try to be more succinct, concise and direct in relation to the recommendations. Ultimately, as they came from the Australian Labor Party, views were driven very much by the group the Hon. Mr Cameron has referred to so frequently recently as the Socialist Left within the Labor Party Caucus. There was no doubting the drive of Mr Patrick Conlon, who has spoken on this issue in another place, both during the debate and in response to the recommendations of the conference.

Their view has held sway in relation to this balance between what is affordable for ordinary working South Australians in terms of premiums as opposed to the level of

benefit that can be provided through the insurance scheme. As I said, it is disappointing that Mr Foley was unable to hold sway in terms of support for at least some reforms to make the scheme more viable and to try to ensure that we would see a lower level of premium increase for South Australians. The Government was looking for cost savings of the order of $16 million to $17 million from the package of amendments introduced in the legislation. What we have seen through the conference has been an effective gutting of the Government's proposals.

The Hon. Nick Xenophon: They did deserve gutting.

The Hon. R.I. LUCAS: The Hon. Mr Xenophon acknowledges the word 'gutting'. He says that from his viewpoint they did deserve gutting. The Hon. Mr Xenophon has acknowledged that the Bill has been gutted, and that is a pretty apt description of what has occurred. The scheme will now only achieve savings of just on one-third of the total level of savings that the Government had hoped to achieve from the cost savings package. Therefore, it has been my sad duty today to announce that, as a result of the decisions of the Labor Party, the Democrats and the Hon. Mr Xenophon, I will have to sign a direction to the Motor Accident Commission to impose a further 3.1 per cent increase, when compared to June of this year, on the long suffering car owners of South Australia. For those who take their taxis home at night, this will mean a further $56 increase in the premium for taxi owners; a $19 premium increase for heavy goods carrying vehicles; and a $34 premium increase for a large school bus in the metropolitan area.

Let me assure members that we will be ensuring that not only car owners but also taxi and bus owners know that the responsibility for this premium increase, not only this year but in future years, rests with Mr Rann, Mr Elliott and those who have supported them.

The Hon. Nick Xenophon: Include me.

The Hon. R.I. LUCAS: If you supported them, you come under the definition of those who supported them. The Hon. Mr Xenophon, the Hon. Mr Elliott and others have been saying that this is only—

The Hon. M.J. Elliott: Why don't you stop playing games: you're a disgrace. You're an absolute disgrace!

The Hon. R.I. LUCAS: You can't take the pressure, can you, Mike?

The Hon. M.J. Elliott: An absolute disgrace. What you're trying to do to people is just a game for you.

The Hon. R.I. LUCAS: You can't take the pressure.

The Hon. M.J. Elliott: You don't believe in anything. You don't believe in a damn thing: it is just a game.

The Hon. R.I. LUCAS: You can't take the pressure.

The Hon. M.J. Elliott: Even your own people know it's a game. It's very clever, but it is just a game.

The ACTING CHAIRMAN: Order!

The Hon. R.I. LUCAS: The Hon. Mr Elliott just cannot take the pressure when—

The Hon. M.J. Elliott: I can't handle lies.

The ACTING CHAIRMAN: Both speaker and interjector will come to order. I ask the Committee to return to the debate.

The Hon. R.I. LUCAS: The Hon. Mr Elliott is being unruly in his behaviour in this Chamber this evening.

The ACTING CHAIRMAN: You should not be paying any attention to interjections.

The Hon. R.I. LUCAS: It is hard when you get constant interjections from the Hon. Mr Elliott.

The ACTING CHAIRMAN: I will handle the interjectors.

The Hon. R.I. LUCAS: The point I was trying to make before being interrupted by the Hon. Mr Elliott is that the Government will ensure that car owners, taxi owners and bus owners will know that this particular premium increase was imposed upon them by Mr Rann and Mr Elliott and others who supported them. Not only this year but in every subsequent year, when the premiums necessarily increase, we will remind the car owners, the taxi owners and the bus operators that their premium increase in every future year will be higher than it should have been because of the irresponsible actions of Mr Elliott, Mr Holloway, Mr Rann and others who have supported them. That is the reality.

The Hon. R.R. Roberts interjecting:

The ACTING CHAIRMAN: Order! If the honourable member wishes to enter the debate he may do so when the present speaker resumes his seat.

The Hon. R.I. LUCAS: No amount of squirming and squealing by the Hon. Mr Elliott will get him off that particular hook. It is a decision that he has taken, together with others who have supported him, and they will have to accept the responsibility for this premium increase that will be imposed on long-suffering car owners in South Australia. As I said, this is a premium increase not only for this year but for every year, because this particular cost claim measure was something that would have been ongoing in terms of reducing the sort of pressure that we see on our compulsory third party scheme here in South Australia.

I now want to address some of the issues that the Hon. Mr Elliott and his supporters have imposed on the scheme. The biggest single saving element in this scheme was the provision in relation to pain and suffering—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Yes, a reduction in benefit, but also a reduced premium for all car owners throughout South Australia. A reduced premium: something that the Hon. Mr Ron Roberts would not want to support.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Let us talk about the sort of evidence we had. Let us talk about the scheme that the Hon. Mr Elliott wants to support. He wants to support a scheme whereby a person with a minor injury such as a sore or stiff neck for a period of only two weeks, with no long-term problems, would be able to seek compensation for pain and suffering in addition to all medical and related expenses, as well as any economic loss.

The Hon. Mr Elliott was given an example, by people who know how the scheme works, of how the courts operate in South Australia, and he deliberately chose to ignore the evidence he was given. I want to quote from this case the sort of scheme that the Hon. Mr Elliott and others are supporting in relation to this particular provision. As I said, the scheme requires you to have a significant impairment for a period of seven days. I want to quote from a case in 1991 of *King v. Deguglielmo* in the Full Court of the Supreme Court in South Australia.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: No. There are plenty of examples, but this is the sort of case that the Hon. Mr Roberts is supporting. This is the sort of case for which the Hon. Mr Roberts wants everyone to pay increased premiums, because someone has a sore neck—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Yes, here it is, and here is the decision. That is why we tried to change it. Come in, Spinner!

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Exactly! It was tested, and that is why we are trying to correct it. This is the sort of case you are supporting.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Roberts is reverting to type: when he loses substance, he resorts to abuse.

The ACTING CHAIRMAN: Order! This is a heated debate. I want to draw members' attention to the rules of debate. Mr Roberts, if you wish to rebut the present speaker, you will best do that when you reply, because it will then be recorded in *Hansard*. If you interject—and you know the rules in here—and your interjection is not taken up by the speaker, it is not recorded in *Hansard*. It does your case no good to make repeated, unanswered interjections.

The Hon. R.I. LUCAS: I will quote from the decision of the Full Court of the Supreme Court, as follows:

> In the present case the respondent suffered what was described by Dr Crea, the general practitioner who had the care of his condition, as a soft tissue damage in the neck. The doctor described the discomfort and restriction, which he observed in his care of the appellant, as being mild to moderate. At the time of a report dated 9 October 1987 the doctor considered that the symptoms which were present were significant because he considered that they would persist for a further period of time being not more than a further three or four months. He considered that the limitations would continue to remain minor, and eventually reduce to an insignificant level. He expressed the opinion that his problems would eventually become insignificant.
>
> The respondent gave evidence that he was shaken by the accident and that he had soreness in the neck following it. He was unable to work for a period of two days, and was given a medical certificate by Dr Crea for that period of time. He was a little sore over the next few days, but became better as time went on. He did not have any further time off work. He gave account of his symptoms to Dr Crea, and in cross-examination he verified in substance the account of the symptoms which he had given to Dr Crea. Dr Crea's description of them is that when he saw the respondent on 24 June 1987 which was the day after the accident, he said he was very shaky and felt weak. He saw the doctor again on 10 July 1987, which was just over two weeks after the accident, and he told him on that occasion that he began to have neck pains on the night of 25 June 1987, and that these gradually worsened over the next few days with associated headaches and dizziness. The pains responded to an analgesic drug and muscle relaxant drug. He told the doctor that after about one week those pains gradually improved, although he was quite stiff and sore by the end of a day's work. The respondent's symptoms continued for a period of time, and he describes that in his evidence.

I might interpose that, not having been involved in an accident myself, I can still relate to these symptoms after a day at the office or a day in Parliament. The final paragraph of the judgment states:

> It seems to me that the account which the respondent has given of his disability, and the opinions expressed by Dr Crea, are sufficient to justify the finding of the learned judge that the respondent's ability to lead a normal life was significantly impaired for a period of seven days and more. It is clear that he was unable to work for two days, and that he was able to work after that for a period of seven days or more only at the price of being stiff and sore at the end of a day's work. In other words, he was unable to perform his normal work without significant pain and discomfort. The description that was given of the pain and discomfort which he suffered in the days following the accident seems to me to justify the inference that his normal life was impaired to a significant extent. In my opinion, therefore, the appeal should be dismissed.

What we have here, under the current legislation, supported by the Hons Mr Elliott, Mr Roberts, Mr Holloway, Mr Xenophon and others, is something that is acknowledged by the practitioner and the judges' saying that the person had a stiff neck and had some problems for a short period of time but that, eventually, it would become insignificant. The Hon. Mr Elliott is saying that everyone in South Australia should have to pay increased premiums so that there can be compensation for pain and suffering.

Members interjecting:

The Hon. R.I. LUCAS: That's what you're saying; that's what you're supporting. The Hon. Mr Ron Roberts is supporting exactly that sort of provision. Nobody on a matter of fact can challenge that.

The Hon. M.J. Elliott: I will.

The Hon. R.I. LUCAS: Nobody can, because that was a court judgment. I just read it word for word. I have not left a word of it out at all; no-one can say I have quoted it out of context. It is the whole of the last page.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: It is not an inference but a statement of fact. The Hons Mr Elliott and Xenophon cannot deny that somebody suffering from a sore neck for a period of more than seven days will not, under the current arrangements, be able to apply for pain and suffering. The Hon. Mr Xenophon is honest enough to say that he will not deny that. The Hon. Mr Xenophon nods because he knows that what I have said is true. At least the Hon. Mr Xenophon has the integrity to acknowledge that that is true. That is more than the Hon. Mr Elliott will do. The Hon. Mr Elliott will not, and sadly he lacks the integrity to at least acknowledge, as the Hon. Mr Xenophon has, that that statement is true.

The difference is that the Hon. Mr Xenophon and others will argue that that is appropriate. The Hon. Mr Xenophon and his supporters will argue, 'Yes, so what?' If they have suffered discomfort to a significant extent, as interpreted by the courts, for a period of seven days or more, the Hon. Mr Xenophon and others will argue that that is appropriate—that the scheme should pay for it and that we should pay the premiums to pay for it. In New South Wales, the provision of seven days is now 12 months. I acknowledge that the maximum level of the benefit there is higher than in South Australia: the Government did not go to 12 months but to six months in its Bill.

The Government indicated when we were last in this Chamber that it was prepared to compromise. The RAA in South Australia, which is an independent organisation not beholden to anybody and which looks after the long suffering consumers in South Australia—

The Hon. R.R. Roberts: Injured drivers.

The Hon. R.I. LUCAS: Injured drivers as well as those who have to pay the premiums. The RAA put forward a compromise and argued that three months or $3 000 as the monetary level should be provided. The conference was not prepared to contemplate the reasonable compromise that the RAA put down to individual members of the Chamber; obviously, it was possible for the conference to consider that as a compromise position.

In a number of other States, similar restrictions or restrictions from another viewpoint have been introduced. In New South Wales there is a 12 month impairment period before any pain and suffering awards are made. An impairment level of at least 30 per cent has been instituted in Victoria. Western Australia, I understand, has a minimum award of $10 000 before any money can be paid. An extensive scare campaign was mounted during the lead up to the debate in Parliament and in the conference of managers. I heard the view put by one of the members of the Labor Party in the House of Assembly that the Government through this

provision was seeking to reduce benefits for those people who had some level of permanent impairment.

That member of the Labor Party knew that that was not true. I do not think anybody in this Chamber would say that the Government was trying to reduce benefits for people with permanent impairment or disabilities, yet this afternoon a member of the Labor Party in another place stood up and said that the Government was seeking to reduce benefits for some individuals who had suffered permanent impairment or permanent disability.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That is not true, because there is a provision of seven days at the moment, and the Government sought to extend that to a period of six months and was prepared to compromise at somewhere between seven days and six months. Sadly, the conference was not prepared to consider that compromise position.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Outvoted, I think, rather than outsmarted.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: There was never any support in this Chamber for three months: it was 21 days. Another issue involved the awards for loss of earning capacity. The Government proposed to restrict payments for substantial damages for future economic loss in those cases where the degree of probability of financial loss occurring is slight or remote. The Government proposal was identical to a provision in the New South Wales Motor Accidents Act 1988. The rejection of the Government's proposal leaves the CTP fund exposed to awards of substantial damages, even where financial loss is unlikely to occur. Thus, in *Nicoloulias v. Milanese* the Supreme Court awarded $15 000 for future loss of earning capacity to a woman, notwithstanding that she was able to perform all her work duties without much discomfort. The court held that the chance of the woman losing any money as a result of her neck injury was relatively remote.

The Motor Accident Commission advises that between 1994 and 1998 there has been an increase of 30 per cent in the number of future loss of earnings capacity claims and that the aggregate value has increased by 60 per cent over this period. So, we are talking about future economic loss in the case of a particular individual where the court found that the chance of that woman losing any money as a result of her neck injury was relatively remote.

The Hon. Mr Elliott and his supporters would argue that, even in that case, where a court finds that the chances of the person losing any money are relatively remote, all car owners in South Australia should pay higher premiums so that person in this case can get a $15 000 payment. That is exactly the legal advice that has been provided to the Government in relation to this issue.

What the Government sought has occurred in New South Wales. This is nothing new: the identical provision exists in the New South Wales Motor Accidents Act. I presume that on a daily basis plaintiff lawyers in New South Wales happily manage to negotiate their way around the New South Wales Act. But in New South Wales they have stopped this sort of court decision where, although the court finds there is a relatively remote chance—virtually no chance—of this person's losing any money under this provision, car owners must pay higher premiums to provide that sort of benefit in those sorts of circumstances. We have seen an increase of 30 per cent in the number of those claims, and I am told that the aggregate value has increased by 60 per cent over that period from 1994 to 1998.

Another issue concerns motorists who cause accidents and injuries through reckless indifference. Often this arises through driving with a blood alcohol content over what is generally accepted as the very dangerous level of 0.15 per cent. Under the current law, these people can be required to pay to the CTP fund any damages paid out as a result of any such accidents caused by them. This is a long-standing arrangement, the effect of which is to say that those who do not care about the consequences of their actions should pay for the costs incurred rather than having the motoring community bear those costs. A number of individuals find themselves in these circumstances through their own irresponsibility and then become entitled to a separate award of damages.

The Government proposes that these irresponsible people should have the separate damages payable to them automatically reduced by the amount owed to the CTP fund as a result of their recklessness or drunken driving. For reasons which I am unable to comprehend, those who oppose this were not able to understand the common logic of this proposal. What they are saying is that the motorists of South Australia must pay compensation bills created by the reckless indifference or drunken driving of certain irresponsible individuals and then, if those individuals become hurt and entitled to compensation, the motoring public must pay compensation directly to them again. This seems closely akin to the old saying, 'Heads I win and tails you lose.' That is the sort of case—

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: —that the Hon. Mr Holloway and the Hon. Mr Elliott are seeking to defend. They seek to defend someone who is recklessly indifferent with a blood alcohol content greater than 0.15 per cent.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: That is the sort of case the Hon. Mr Holloway, the Hon. Mr Rann and the Hon. Mr Elliott seek to defend. Shame on them for seeking to defend drunken drivers in those sorts of cases. Those sorts of people deserve all they get and that is what the Government wants to do. The Government does not want to defend those sorts of people. We will not defend those sorts of people, and the responsibility rests with the Hon. Mr Rann, the Hon. Mr Holloway and others who stop the Government from tackling this issue.

The Hon. R.R. Roberts: You hide behind a corkscrew.

The Hon. R.I. LUCAS: There are a few corkscrews on your side that I can hide behind. At the present time SGIC has four recovery actions under way for a total of $80 000, and the failure to pass these amendments means that these sums will potentially be more difficult to recover. Failure to recover simply results in higher premium costs to South Australia's motoring public.

Loss of consortium is a legal term which describes the condition experienced by the partner of an injured person who is no longer able to render sexual services or, on some occasions, companionship. Awards for this type of damage increased in number by 100 per cent from 1994 to 1998, and over the same period by 140 per cent by value.

The Government was advised that in comparison to pain and suffering payments that are awarded on a points scale there is no such limit on payments paid for loss of consortium. It was also advised that in New South Wales, Western

Australia, Tasmania and the ACT loss of consortium is not compensable.

Three other States and one Territory in Australia have already removed this particular provision. The Government felt that elimination of this form of compensation was inequitable but that continuation of potentially unlimited payments was also inequitable and proposed to place a limit on the amounts payable.

The Opposition and those on the cross benches opposed the Government's proposal altogether. They were not even prepared to consider a compromise in any way. Although the amounts involved are not currently large, they believe that the motoring public should continue to pay the rapidly escalating costs of awards in this category, together with the costs of all the legal argument and other evidence necessary to establish such claims.

Nervous shock is a recognised psychiatric condition for which compensation is payable by the CTP Fund. The Government had no intention of eliminating payments of this nature, but there are signs that creative lawyers are seeking to expand the scope of this type of compensation. The Government proposed a measure which would have clearly defined the bounds of this type of compensation but again its proposal was rejected. The conference heard evidence of the experience in other jurisdictions where claims are now being made when people were not even at the accident—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No—were not even at the accident—

The Hon. M.J. Elliott interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: No, that is not true.

The Hon. M.J. Elliott: That is exactly what you were going to do.

The Hon. R.I. LUCAS: That is a lie.

Members interjecting:

The CHAIRMAN: Order! I am sure that the Hon. Mr Elliott will have plenty of time to say what he wants to say when he gets the chance. There is no time limit.

The Hon. R.I. LUCAS: The Hon. Mr Elliott knows that what he just said is not true. Evidence was given to the conference of other jurisdictions involving people who had not been at the accident scene and had not had to view the accident or the bodies; telephone calls were being made and, we were advised, claims for nervous shock were commencing. They were the warnings—and, as I said, the advisers were not saying that, in the Government scheme in South Australia at this stage, these claims were of a significant nature but, once clever lawyers (to give them due credit) find a foot through the door, they make sure that the door is well and truly open. Mark my words (and I will be in this Chamber for the same length of time as the Hon. Mr Xenophon for the next seven years) that over the next seven years we will see (and I will have a bet with him) a growth in these sorts of claims, and—

The Hon. Nick Xenophon: I don't bet.

The Hon. R.I. LUCAS: I am happy to bet on it. I am not sure how we can organise this, but let us at least compare in seven years who was right and who was wrong. I will bet that in seven years time we will see within our scheme in South Australia a significant growth in these types cases and claims that I have listed tonight as increasingly they are publicised and utilised by plaintiff lawyers and others to exploit these issues. I will be happy to sit down in seven years and obtain the advice from whoever is the Minister responsible for MAC at the time and compare those figures with the current figures and the figures of four years ago.

To acknowledge that there were at least a smaller number of areas of agreement—involving, as I said, less than about a third of the total cost savings that the Government was seeking—I should, on behalf of the conference of managers, place that on the record, and I thank members for their willingness to support the following measures.

The most significant measures which achieved successful passage included compulsory deductions for drunk drivers and their passengers; compulsory reductions for people who decide to ride outside of the passenger compartment of a vehicle or choose not to wear a seat belt or helmet; capping of damages for future economic loss at $2 million; and measures to control medical costs and overservicing. The compulsory reduction through alcohol will be a minimum of 50 per cent for drivers with a blood alcohol reading of .15 or more, and at least 25 per cent for drivers over .8 but under over .15. Passengers who choose to travel with drunk drivers where they know, or should have known, that the driver was over the limit will lose 50 per cent of their benefits if the driver is found to have a .15 blood alcohol content or higher, and 25 per cent if the driver's blood alcohol content is at least .8 but less than .15. Failure to wear a seat belt in a motor vehicle, a helmet on a cycle or motorcycle or to ride in the passenger compartment of a motor vehicle will result in an automatic reduction of 25 per cent of benefits.

The Government considers these to be important measures, which will reduce in part the obligation of the CTP Fund to pay compensation to people who choose to break the law and knowingly place themselves at greater risk of having an accident or receiving more severe injuries. These amendments are in line with other road safety measures, and I have asked the Motor Accident Commission to take steps to advise the public of these changes.

As part of the agreement reached to achieve passage of the medical cost control clause, the Motor Accident Commission has agreed to pay fees for physiotherapy services at rates established through the latest fee survey for South Australia of the Australian Physiotherapy Association for 12 months from the date of proclamation of this Bill. I have also agreed to write to the Minister for Administrative and Information Services to seek his cooperation in assisting to ensure that a mutually satisfactory arrangement on fees is reached between the Australian Physiotherapy Association and WorkCover.

The Bill provides for compulsory acquisition of motor vehicles by the Motor Accident Commission in certain circumstances. Where the Motor Accident Commission exercises that right, it has agreed to make available the vehicle, or any parts thereof, for inspection by a claimant or plaintiff within seven days of a request for a right to inspect those parts or that vehicle. Throughout the debate, the Government has stated repeatedly that it was flexible on the way in which savings could be achieved.

In conclusion, the Government is disappointed that, whilst it indicated its willingness to compromise and its willingness to be flexible on these issues, while still trying to achieve the bottom line of minimising cost increases to the long-suffering motorists of South Australia as a social justice initiative that this Government has pledged to support, we are disappointed that the opponents of the Government's measures have acted against the best interests in trying to get this balance right between a scheme which pays pain and suffering and which now will be required to continue to pay pain and suffering for the sort of cases that the Full Court decision that I have

placed on the public record this afternoon has demonstrated will continue to apply in South Australia.

I am happy to be judged by this. I am prepared to bet anyone in this Chamber, including the Hon. Mr Xenophon, who is not in a position to take up the bet or the challenge, that in seven years time the sort of warnings that Stephen Walsh and the other legal advisers who are experts in this area, who practise in it on a daily or weekly basis, who know the area backwards—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Stephen Walsh is not paid to cut people's benefits. The decision to cut benefits is for this Parliament to take. It is not a decision for lawyers who are not in Parliament. They operate within the ambit of the law that exists. I reject criticism of Mr Walsh and others. I happily accept criticism myself as a representative of the Government, but I think that it is beyond the pale when the Hon. Mr Holloway criticises Mr Walsh and others—

The Hon. P. Holloway: Don't bring him into the debate.

The Hon. R.I. LUCAS: I was not criticising Mr Walsh.

The Hon. P. Holloway: You have brought him into the debate to try to justify your arguments.

The Hon. R.I. LUCAS: I did not criticise him. The Hon. Mr Holloway criticised him, and I reject that criticism. I think it is cowardly for the Hon. Mr Holloway to attack somebody who is not here to defend himself. If you want to attack somebody, attack me. I am big enough and ugly enough to take you on any day of the week.

The Hon. R.R. Roberts: You got the second part right.

The Hon. R.I. LUCAS: Yes, I am big enough and ugly enough to take you on any day of the week. I am happy to dish it out and I am happy to receive it, as I have done for 16 years, but I do not accept the view that somebody who is not part of the debate ought to be criticised by the Deputy Leader—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am allowed to introduce him into the debate. There is no Standing Order which says that I am not allowed to quote somebody else who is not part of this debate. There is no Standing Order which prevents that. It is therefore not—

The Hon. P. Holloway: He advised the Motor Accident Commission.

The Hon. R.I. LUCAS: So what? The Hon. Mr Xenophon advises plaintiffs.

The Hon. P. Holloway: Exactly.

The Hon. R.I. LUCAS: You are not criticising him.

The Hon. P. Holloway: Well—

The Hon. R.I. LUCAS: No, there is no answer to that, is there?

The Hon. P. Holloway: You should not bring him into the debate.

The Hon. R.I. LUCAS: That is just a silly response. The only point I am making is that—mark my words in seven years time; at the end of our current parliamentary term—the warnings that we have been given by eminent experts such as Mr Walsh and others who practise in this particular field is that we will see growth in these sorts of cases that I have placed on the record tonight. I am happy to be judged in seven years—that is, if there are no changes to the scheme—as to the correctness of the views that I have placed on the record tonight and I would challenge any member in this Chamber to put a different view in relation to these sorts of cases.

The Hon. P. Holloway interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: The Government, whilst recommending the conference proceedings to the Chamber, remains mightily disappointed at the inability of the scheme finally to achieve the significant cost savings that would have prevented not only a further significant increase in premiums this year but also further significant increases in premiums every year from now on. What has happened will remain the responsibility of Messrs Rann, Foley, Holloway, Elliott and Xenophon.

The Hon. P. HOLLOWAY: If there is a sewer around, this Treasurer will be the first to jump into it—right up to his neck; and, of course, that is exactly what he has done tonight. What an appalling performance by the Treasurer tonight. I doubt this Treasurer is capable of ever being responsible; I do not think he is capable of not playing games; I do not think he can treat any subject seriously. This Treasurer is incapable of dealing with the subject of innocent victims of car accidents seriously. In a moment we will go through some examples of accidents in which people are involved—people to whom this Treasurer wants to deny benefits. We will look at the other side of the equation in a moment.

This Treasurer seems to believe that it is absolutely dreadful that the victims of road accidents, who paid their premiums, should be granted payments. If one takes it to the logical conclusion, if one takes away all benefits from road accident victims, the Government will not have to pay anything. If cost is the only concern, why have a scheme at all? Let people go to the street corner and beg.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Exactly. I think the House ought to know what has happened. The Treasurer has issued a press release already; no doubt it was prepared really in advance—

The Hon. M.J. Elliott: Just a game.

The Hon. P. HOLLOWAY: Exactly. As the Hon. Mike Elliott interjects, the Treasurer is playing his games as always; politics is a game, even if the people with whom we are playing the games and over whom we are riding are the innocent victims of road accidents.

The first point I want to make is the total hypocrisy of this man about concern for what motorists will have to pay. This is the Treasurer who a few weeks ago increased the stamp duty from $15 to $60—a $45 increase in stamp duty alone for the average motorist. In his press release, the Treasurer says that we are responsible for an increase of about $7. This is the man who has just taken $45 from the average motorist; this is the Government which announced in the budget the introduction of a levy on mobile property from 1 July next year. That will be about $15 to $20 on top of it. The Treasurer has just increased registration by 4.5 per cent, and he has increased the premium on insurance. So, if one goes to insure one's motor vehicle, one is copped there as well. I think it adds up to about $100 that this Treasurer is taking from motorists, yet he has put out a press release which blames us for an increase of $7 for the average motorist because we protected the benefits of people who are injured in car accidents.

This is not a no fault scheme—it is a scheme of fault—and they are innocent victims of road accidents. These are the people who are injured by other people who are at fault. He wants to take the benefits off those people. He has slugged motorists by nearly $100 as a result of measures he has taken and then he has the gall to come into Parliament to express remorse and regret. He will not get away with it—he does not

deserve to get away with it. Of course, it was inevitable that the Treasurer would carry on like this. It was interesting that, when this debate was conducted in the House of Assembly, members in that place made a reasonable response to it. Of course, this Treasurer was not capable of doing that.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: That is right. He has stood here for the past 1½ hours reading out the notes that had been prepared in advance by the Motor Accident Commission and the very expensively paid lawyers, who, I might say, work for that scheme. I can assure members that certainly the people who have been advising the Treasurer how to cut the benefits of road accident victims do not go hungry. Let us look at what this conference actually achieved.

The Hon. R.I. Lucas: It won't take long!

The Hon. P. HOLLOWAY: We will see about that. What this Government proposed to do when it introduced this motor accident Bill was to not cut costs but cut benefits. It was all about cutting benefits and it set out to do a number of things. Most of the money that was to be saved under this particular package came from the cut in relation to pain and suffering. If one is talking about the total premium, the premium equivalent, if I can call it that, of this package, it is about $11 to $12. Two thirds of it or so came from this Government's proposed cuts in relation to pain and suffering. Under this measure it wanted to take it from 52 per cent of all claimants; that is, 52 per cent of people, who, in the past, have had a successful claim for pain and suffering, would have lost it under this Government.

Let us look at some of the examples of these sorts of people. The Treasurer took the extreme of some people right at the edge who could claim under pain and suffering, but let us look at the sort of people from whom this Treasurer wants to remove benefits. Let us take Mrs Black, a 70 year old grandmother residing in the country. In May, she was a passenger in a motor vehicle which was involved in a collision. She was wearing a seat belt at the time and liability for the accident was not an issue. She sustained a fracture to her left tibia and left fibula, the left leg, a fracture to her sternum and a minor fracture to her sacrum. She suffered extensive bruising over the lower abdominal area and interior chest wall. She was transferred from the country hospital to the Royal Adelaide.

She was treated by an orthopaedic surgeon at the Royal Adelaide Hospital, and she was immobilised in plaster from May until August. She was then placed on a tendon bearing cast which was removed in October. By February 1997, the fracture was united, non-tender and she had a good range of movement of her leg and an excellent walking gait. Her daughter drove her to Adelaide on at least two occasions during the period of convalescence. Mrs Black has no claim for economic loss. If the Treasurer had had his way, Mrs Black would have had no claim at all for damages, save medical expenses and perhaps a small contribution for family assistance, even though she was significantly immobilised for five months. She is the sort of person from whom the Treasurer wants to cut benefits.

Now let us consider Mrs North. She is aged 61 years, retired and widowed and lives in a home unit in a north-eastern suburb. She was a pedestrian crossing a city street when she was hit by a car. She sustained two fractures of the left ankle and bruising of the right thigh and shoulder. She was hospitalised for six days. She was discharged on a frame with her left leg in an ankle cast. She stayed at her son's home for one week and then returned to her home unit. The cast was on for six weeks. She continues to suffer ongoing problems with the ankle and shoulder. She does not drive. She is limited to walking and household chores. Prior to the accident she was very fit and active for her age. The doctor who treated her at the hospital finally assessed a 5 per cent shoulder disability and a 5 per cent ankle disability. Medical expenses were approximately $1 500.

Now what would have happened to her? She would have had no claim as the injured person's ability to lead a normal life was not seriously and significantly impaired by the injury for at least six months. She would have had no claim for economic loss.

The Hon. R.I. Lucas: Get a good lawyer!

The Hon. P. HOLLOWAY: As the Treasurer has told us, the problem is that all the good lawyers are in the Motor Accident Commission writing speeches for him so that he can come up with the sort of garbage he did tonight—and I am sure he pays them much more than the plaintiffs do.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I am sure that the Hon. Mr Xenophon would have charged his clients a lot less than the people who are giving the Treasurer advice and who wrote that speech for him tonight. Let us take the case of Mr Blue. Mr Blue is aged 64 years and is retired. In March, he boarded a bus. During his journey the driver suddenly and without warning applied the brakes with considerable force in order to avoid a collision. Mr Blue was thrust out of his seat and his head hit a stainless steel bar. He suffered a superficial abrasion measuring 10 centimetres by 5 centimetres over the left frontal region of his head. He developed ringing in his ears, significant headaches and required dental surgery.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Believe me, these people are every bit as real as the people you used in your shoddy press release tonight. Mr Blue had significant limitations in eating for a period of approximately four weeks. His condition improved after his dental surgery. He would have received nothing for damages and nothing for non-economic loss.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: That's right. But these are the people that the Treasurer wanted to remove. Let us take one more case: after all, the Treasurer wanted to go on at length about these things, so why should we not? Nicholas was 4½ years of age when he was involved in a serious accident in 1987. He was in his seat belt in the back of his grandfather's car when it was reversed from a driveway into the path of a bus. Nicholas was knocked unconscious and rushed to the Women's and Children's Hospital. He was *non compos* for three days, and on the fourth day he acknowledged his parents who had been with him continually. He began to eat orally five days after the accident. He was released nine days post the accident, but he became withdrawn and would not socialise. He was removed from kindergarten for three months. His condition then improved. He has no apparent long-term problems. The medical expenses were $2 200. The claim was settled for $6 000, plus medical costs. If the Treasurer had had his way, this claim would not have met the proposed threshold to entitle Nicholas to any award of damages for non-economic loss.

Brian is a six year old boy whose left ankle was run over by a motor vehicle. As a result of the accident he suffered a degloving injury to his heel. The skin and flesh were pulled away from the bone, thereby exposing the bone. He was treated at the Women's and Children's Hospital and his leg

placed in plaster for approximately three months. He has made a good recovery and is now playing junior sport. His schooling was interrupted for a short period. He was in considerable pain immediately following the accident and during his convalescence. If the Treasurer had had his way, Brian would have received nothing for pain and suffering and, in fact, nothing other than reimbursement of medical expenses.

These people—and I guess in the case of children this includes their parents—were all victims of road accidents who had paid the premiums for their insurance, and the people are entitled to get some return from that insurance. These are the people whom this Treasurer wanted to cut out. The Treasurer has the gall to come into this place tonight and criticise the Opposition, the Democrats and the Hon. Nick Xenophon for standing up for these people when he is the person who has just raised taxes and charges on motorists by about $100—and he is saying how dreadful we are for protecting these people from getting their benefits at a cost of about $6 or $7. What hypocrisy!

During the conference there were a number of other issues apart from pain and suffering, but it is important that those people who were not at the conference understand that the costs in relation to motor vehicle injury are not increasing in the area of pain and suffering. The Treasurer was at the conference and he heard the CEO of the commission concede that that was not the growth area. In terms of costs to our compulsory third party scheme, the growth areas are, first, medical costs, which are rising because people are living longer. I do not think that is something we should regret: we should be pleased that people are living longer; but it will be more costly to keep them, and that means premiums will increase. I am happy to pay higher premiums if the benefits of technology keep people alive a bit longer and if we can support paraplegics.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I do not think I am anywhere near as wealthy as the Leader, but we will not get distracted by that. The fact is that we are standing up for these people who through no fault of their own are injured in a car accident.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: What a farce! This Treasurer says that he is standing up for the workers when he has increased the cost of owning a car by $45 and, if they have a boat, by $10. If they have a caravan or a trailer, the premiums will increase by $10 because of the increase in stamp duty. Then they will be hit next year by the emergency services levy of $15 to $20. This is the Treasurer who says, 'Who's looking after the workers?' It is not the Treasurer who is looking after the workers: he has just belted them for an absolute six. So, do not give us that garbage. The Treasurer does not give a damn about these people, and he has shown that by his actions.

Earlier today, the Treasurer threatened members on this side of the Chamber by saying that he would tell motorists that as a result of decisions made on this Bill third party premiums would have to rise. We will tell motorists where the real slug comes from: it is not from this legislation but from all the taxes and charges which the Treasurer has put up. You would have to go a long way back in the history of this State to find a Treasurer who has hit motorists as hard as this one. I doubt that there is anyone in this State's history who has done as much as he has to harm the pocket of the motorists of this State.

The point I was making earlier is that the areas of growth within the compulsory third party scheme relate to medical expenses—people are being kept alive for longer—and economic earnings. Because wages are rising faster than the CPI, claims for loss of economic earnings are growing. The Treasurer failed to mention during the debate that the Opposition, and, I believe, all Parties, supported a capping of $2 million on economic loss. As time goes by, that will involve considerable savings to this scheme, because, although few would claim this now, inflation will put more and more people under that limit.

The point is that they are the two areas in which the cost of third party insurance is rising the most. If we are to grapple with the rising cost of compulsory third party insurance, clearly those areas need to be addressed. This Treasurer took the one area of pain and suffering, which is the area on which the poorest motorist relies to make his saving. I say 'the poorest motorist' because if someone is injured in a car accident they can claim for medical costs, loss of earnings or economic loss, or pain and suffering. If you are unemployed, in receipt of a pension or retired, there is no loss of earnings or economic loss. The only loss those people can incur is for either medical costs or pain and suffering.

The Hon. R.I. Lucas: Millionaires.

The Hon. P. HOLLOWAY: The Treasurer refers to millionaires. The fact is that the great majority of claims which this Treasurer wanted to cut out, 52 per cent of all claims for pain and suffering, he knows full well come from ordinary people: the unemployed—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If the Treasurer wants to dispute it, let him put it—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The point I make is that the only way people who will get anything from a motor vehicle accident, if they are unemployed or a pensioner, is through a claim for pain and suffering, because there will be no loss of economic earnings. The Treasurer knows full well what the situation is but, as always, he has chosen to misrepresent it.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Treasurer is not helping anyone. He is particularly not helping the victims of motor vehicle accidents one little bit. However, I would like to think that members on this side of the Committee and members of the other Parties have done something to help those people.

I come back to the point that the real growth areas are in respect of medical costs and loss of economic earnings. If anyone is serious about addressing this problem, obviously it is those areas that we will have to look at in the future. What is needed is a good look at this scheme, perhaps along the lines of the select committee proposed by the Hon. Nick Xenophon. Maybe we can do some lateral thinking, look at the real problem areas where costs are rising, and come up with something. The point that needs to be made is that, even if the Government had its way and cut out benefits to the people I mentioned earlier, it would have been a stopgap measure. The Treasurer knows that at the conference the CEO of the Motor Accident Commission admitted as much. He said that all this would do was cut out a few benefits now but, sooner or later, the costs in these other areas would blow out and we would have to face that problem further down the track anyway. The Treasurer is not fooling anyone in his comments tonight.

The Treasurer has politicised the entire debate. Originally I was going to go through the conference decisions in some

detail and explain why we made them, but I guess there is no point in doing so now because the Treasurer is just going to turn it all into politics. There is simply little point in it. All the Treasurer is interested in doing is trying to play politics out of it and use it for his own ends. Doubtless, with a Federal election coming up shortly he thinks that this might be of some assistance to his Party.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I conclude on this note: all I can say is that when I go home tonight at least my conscience will be clear. When I have weighed up the decision between protecting the benefits for the victims of road accidents and reaching a reasonable level of premium, I think I have done the best. The Treasurer very patronisingly referred to this, but a number of concessions were made in regard to people who were not wearing seat belts, people who were above the prescribed alcohol content or people who ride outside of a vehicle, and the Opposition has supported considerable cuts to their benefits.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Yes. Even if people were not wearing a seat belt but that did not contribute to their injuries in any way, they will still lose 25 per cent of their claim. We supported those measures to try to get some balance between costs and reasonable premiums. It is just wrong for the Treasurer to suggest that we have not made any hard decisions in relation to this matter. Indeed, we have, and it ill behoves him to try to suggest that the economic cost of this scheme should be the sole driver of a compulsory third party insurance scheme.

As I said earlier, if one wanted to reduce premiums to zero, all we would have to do is not pay any benefits. The scheme is not there to save money: the reason we have a compulsory third party insurance scheme is to provide benefits to injured victims of motor accidents. That is why the scheme is there and we should never lose sight of that fact. Of course, a balance needs to be made and difficult decisions are necessary but we are prepared to do it. We should perhaps look at other means of dealing with costs, rather than cutting benefits to victims. During the second reading debate I put on record a couple of examples where I thought we could make savings to the compulsory third party scheme but, of course, these were never taken up by the Treasurer. All he wanted to do was cut the benefits to innocent victims.

I could say much more about this conference but there is not any point. The Treasurer has timed his statement; the media release is out; it is all set up for the political game and that is all the Treasurer is interested in. If we come to the seven year period and the Treasurer wants to make a bet, at least I will know that what the Opposition, the other Parties and I have done is to protect—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Let that get on the record. The Treasurer interjects, 'A lot of sore necks will have been compensated.' That is the sort of attitude that the Treasurer has. People could have been seriously and significantly injured for up to six months, yet the Treasurer says, 'a sore neck'. That interjection by the Treasurer really sums up his whole attitude. That is the Treasurer's attitude towards innocent victims of car accidents. He does not give a damn. All he is interested in is the bottom line: he knows the price of everything and the value of nothing. I think on that I will rest my case. Sadly, this has become a political game. The Opposition will support these amendments but I guess the political game can be played outside this place now.

The Hon. M.J. ELLIOTT: I guess the truest thing that the Treasurer has said—and perhaps the only true thing he said tonight—was that he was happy to dish it out, and that is certainly true. But, in relation to this Bill, he really should be, although I am sure he is not, ashamed. It is quite plain that either the homework had not been done before this Bill came into the Parliament or it was just downright plain meanness. I do not think there is any other explanation. It is quite possible that in fact both explanations coincide. We know that when the Bill came into Parliament there had not been any consultation. Had there been, many of these problems would have been pointed out before it ever got into the Parliament.

However, rather than admit that he had made a mistake he is just running this game through, right through to the end, right down to the press release that he put out today, which totally misrepresents the heart of what this conference was about and what the real problems were. It is time that he stopped playing political games. Yes, we have political points to make but, as for the political games, it is for that reason that so many people are getting turned off politics. It is for that reason that we see the Hansons of this world starting to make progress.

This Bill is about money but it is not just about premiums. There are two sides to the ledger; there are people being injured in accidents, people being injured through no fault of their own, and our society says that when a person is injured by another person, through no fault of their own, they should be compensated. That seems to be a reasonable proposition. We happen to have a compulsory third party scheme to ensure that a person will be compensated and not rely upon whether or not the person who actually did the injury has any money, to start off with, and I think it creates far more efficiency than we would get in a system where we relied upon people having insurance, in which case we would have some real cost blowouts in terms of the legal battles that would be going on in trying to chase money.

So we have a scheme, and it must be paid for, and it is paid for out of premiums. Those premiums are paying for fairness. Yes, we have to be fair to people paying the premiums and yes we have to be fair to the people who are injured, and it is a balance, but all I heard from the Treasurer concerned the cost of the premium. We heard nothing about the costs to the people who are injured. It was all one-sided, because I suppose he knows that a headline about premiums going up and that it is all the fault of the others is a very easy line to run.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It is a very easy line to run and, if he is happy to live with that, that is up to his own conscience. But I can say that I have absolute pride with the outcome of that conference, and I believe that almost all the other members, certainly the non-government members, feel pride with what came out of that conference.

There was very little debate about the substance of the legislation during the passage of the Bill through the two Houses, largely because a deal had already been done to take it to a conference, so it was at the conference that we were supposed to get all the facts. It then became really intriguing when we started asking questions such as: where are the blowouts? The blowouts are happening with serious injuries and the fact that people who once died are now living. That is where the blow-out in costs is happening. It involves people with quadriplegia, paraplegia, severe brain injuries. People who once died are now living, and that is where the costs are.

The Government then desperately went looking to try to save some money. So what is it doing? They take people who have been seriously injured for up to six months and say, 'We will give you no compensation whatsoever,' in terms of non-economic losses. There were a whole lot of cases read in, and in fact I could read in a whole lot more, but I think the point has already been made. These involved severe injuries; you could have every bone in your body broken but as long as you were back on your legs after six months you would have no compensation whatsoever. You could have had your life destroyed and receive no compensation. That is the sort of thing that the Government was proposing.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: That is exactly what it was going to do.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: If it was less than six months—

The Hon. R.I. Lucas: How do you destroy a life in less than six months?

The Hon. M.J. ELLIOTT: It would be pretty close to destroyed if you were in a full body cast, if you had every bone in your body broken. Perhaps 'destroyed' is a slight exaggeration; you are still alive, but what are you doing? I mean, you are having a thoroughly enjoyable time. What a really stupid interjection! Clearly, people have suffered very serious injuries, and they have been in great pain. They have had their whole life disrupted, and the Treasurer thinks that is okay because we have to get the premiums down.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Another inane interjection: someone has to look after the workers. Mr Lucas is so well known for looking after the workers! Every morning the workers get up and say, 'Thank God we have Mr Lucas as Treasurer, because he is always there fighting for the small man.' There are little shrines in workers' homes, and people bow before the shrine to Mr Lucas who is battling so hard for the workers.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That would be the only rational explanation, but otherwise it is a fantasy which Mr Lucas can thoroughly enjoy if he likes. I took up an offer to speak personally with both lawyers and doctors who represent the MAC and started to explore what would be the result if we came down from the six month limit. The advice I got from the doctors, who were provided by the MAC, was, 'Frankly, if you go from one week up to eight weeks, it will make almost no difference to the type of injuries covered, and at eight weeks you then get into broken bones and so on.'

On the Government's own figures, for those people who are significantly impaired for less than one month, we are actually talking about 20¢ a year. Let us not presume that all those people fit into the category that Mr Lucas tried to describe. He is saying, 'We have cost everybody $7 a year, or taxi drivers a heap more—'

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: He takes these sorts of cases and then the extrapolation is supposed to be drawn that all this terrible impost that has been put onto drivers is because of people with a sore neck. He knew that, while the case of the sore neck was an actual case—and I will not argue the legalities of it: I will leave that for somebody else—he also knows that that is no way near representative of the sorts of injuries he was going to cut out. He also knows that, even if you could identify those particular cases—and you would need some pretty good lawyers either way to actually identify them—you would make almost no savings. He should know that.

If every case for less than one month fitted into that category, it would be equivalent to saving 20¢ a year on the premium. That was the big case. That was the one that was supposed to win the whole argument for him. What a load of nonsense! What a gross exaggeration! What a gross misrepresentation! And he knows it. I do not know whether he is covering up for his own meanness or his own embarrassment for not having got things right to start with.

There is only one way that we can get premiums down fairly, and that is to reduce not only accidents but the severity of accidents. That is the only answer. It is very much like workers' compensation. The only genuine way of getting costs down is to ensure that there are not accidents or that there are fewer accidents, and we should be constantly attacking that. The Government has had a report on road safety for some two years which it referred only in recent months to the ERD Committee. It just sat on it.

Meanwhile, more people are being injured, many of them in this serious category, and surviving, and that is where the costs are incurred. However, the serious thing we should worry about is not the cost of premiums or the money being paid to these people: the serious thing is that they are being injured to start with.

The MAC is only about bean counting. It is simply about dollars and cents. In the sort of climate that we have and with the sorts of people we have in Government at the moment, it is all about wanting to reduce premiums. They got out their pens and said, 'We could save a million dollars here. What about non-economic loss? We will cut out everyone in the six months or less category, and that will save $10 million. That will be good.' They just worked their way through and said, 'We have saved $13 million to $18 million. That is equivalent to $7 premium: haven't we done well!' Well, that is bean counters at work for you. It is an absolute disgrace.

I will take the same approach as the Hon. Mr Holloway and not go through the individual components of this measure. I can only say that there has been an honest attempt to see whether there were identifiable areas where one could legitimately save money. If anything, I would have to say that the conference still erred on the side of being mean to injured people. As Mr Holloway said, a person not wearing a seat belt involved in an accident will automatically lose 25 per cent, whether or not their wearing that seat belt contributed to the injury. We know that people should absolutely be wearing seat belts. However, a side-on accident is the one sort of accident where a seat belt might be harmful if you are on the side of the vehicle that was hit. In that case, rather than saving lives, which seat belts do most of the time, a person could be seriously injured. In such a case, their not wearing a seat belt would not in any way have contributed to the injury and, if someone was seriously injured, it could cost them an absolute mint.

Normally, if you do not wear a seat belt, you are fined about $30 or $40. However, if your car happens to be hit and you are not wearing your seat belt, the fine could represent tens of thousands of dollars. We have been mean, and the conference actually agreed to those sorts of cuts. I agreed to them, and I do not feel absolutely right about that. Frankly, I do not think a lot of people in the opposition Parties or Mr Xenophon felt that this was quite right either. To some extent, we still fell for the bean counters' trick.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Absolutely! I can only say that most members of the conference made a genuine effort to see whether some legitimate savings could be made in the system. Frankly, if anything, we erred too far on the side of trying to reduce costs and reduce premiums to the detriment of injured people. Ultimately, that is what was done, and the Treasurer said, 'It's not enough.' He said, 'We haven't been mean enough.' I note that today, by happy coincidence, we have a further announcement from the Government about road safety. I am sure it is only coincidence that we have this coming in at the same time as the Government knew that it would get lambasted because it has not been doing its job in that area. That is where the savings are. If the Government is serious, we will look at what it does over the next couple of years. We should not talk about the next seven years in terms of some of the claims. Let us look at the road safety record over the next couple of years and what the Government has done about that. That will be the real measure.

There has been an awareness for a couple of years now that 10 per cent of people in serious accidents were not wearing their seat belts. What has the Government done about it? It has said, 'We will reduce the benefits by 25 per cent.' Where are the education programs on the streets of South Australia to tell people that they should be wearing seat belts? We should not just be talking about people who are dying. Why are we not running campaigns talking about the people who are flat out in beds with quadriplegia, paraplegia and severe head injuries? Why are we not communicating with people about this and really working it hard? Why are we not getting serious about speed limits and other things? Why are we always making excuses? It is because we are too busy conducting these bean counting exercises that are helping absolutely nobody. The Treasurer should be ashamed of himself.

The Hon. NICK XENOPHON: I agree and commend whole-heartedly what the Hons Paul Holloway and Michael Elliott have said this evening. I am proud to stand by them in their stance on this issue, and I endorse thoroughly what they say. I endorse what they say for their passion and commitment, and for the cogency of their arguments.

I am bitterly disappointed that the Treasurer failed to include me in his media release of 27 August headed 'Rann and Elliott force further CTP premium increases'. I can only implore the Treasurer to rectify that and include my name on it, because I am very proud to have been involved in an exercise which involved gutting this rotten piece of legislation. In terms of an analogy, this is a rotten fish and a piece of legislation that deserved to be gutted. It was an ill thought out, mean piece of legislation that would have been devastating in its consequences if it was passed in the form that the Government wanted it to be passed.

I will not go through all the cases that have been set out by the Hon. Paul Holloway and the Hon. Mike Elliott in terms of the sorts of victims who would have been prevented from claiming compensation. This Bill ignores the fundamental basis of compensation and the fundamental basis of the common law system that looks at principles of equity and fairness in compensating victims of road trauma. I will reflect on a few points that the Treasurer made and on his media release, which is simply outrageous in the assertions that it makes.

The Treasurer said earlier tonight that the conference had a refreshing lack of acrimony in its deliberations. I think his media release shows a stunning abundance of cynicism. Let us look at some of the matters raised by the Treasurer in his media release which must be challenged. He speaks in terms of a person with minor injuries, such as a sore and stiff neck for a period of only two weeks with no long-term problems, being able to seek compensation for pain and suffering in addition to medical and related expenses to any economic loss.

The Treasurer made much of the test case of *King v Deguglielmo* from a decision of the Supreme Court of 4 September 1991. That case needs to be put into some context. In that case it was made clear that a court would not be giving an award of damages for trivial complaints of very minor aches and pains. The victim in that case had an injury involving soft tissue damage to the neck. A soft tissue injury to the neck can still be significant in the effect that it can have on a person's amenities of life and their ability to interact with others, their family, go about their household chores and undertake their employment.

In that case the medical evidence was very clear. The medical evidence was that this person would have an acute period of incapacity for up to three to four months before the symptoms would eventually become insignificant. In that case the victim—and I do not think the Treasurer mentioned this—received all of $2 000 by way of compensation. That is not unreasonable and we must remember that, unlike other systems, we have the lowest level of pain and suffering compensation of any Australian State for serious injuries. A young child who becomes a quadriplegic will receive a maximum payment in the vicinity of $91 800. That is the lowest level of any Australian State. Let us get this in context: what the Treasurer is saying is very misleading.

The Treasurer also refers in his breathtaking media release to a recent court decision which found that a person was entitled to compensation for future loss of earning capacity even though the court believed the chance of the person losing any income was relatively remote. The Treasurer ought to have his legal team and advisers walk him through the High Court decision in *Malec v Hutton*, which is very clear in what it says, namely, that if there is a minimal chance of future loss of earning capacity the court will take the degree of chance into account in making an award of damages. So, if there is only a 5 per cent chance that you will have a loss of earning capacity you will receive damages for future loss of earning capacity to that extent only.

I do not think there is anything unreasonable about that. The formula of the High Court in Malic and Hutton was thought out carefully by the High Court. The decision was based on principles of equity and fairness, and the Government was trying to turn that on its head and raise yet another hurdle—another bar—for victims of road accidents in this State before they could claim.

The Hon. M.J. Elliott: There's no evidence that it's out of control or being abused, is there?

The Hon. NICK XENOPHON: Absolutely. The Hon. Michael Elliott is quite right: there is no evidence that it is out of control or being abused. This is just another exercise by the bean counters to rein in expenditure from claims that have not been the cause of premium increases. The reasons for the premium increases have been articulated by both the Hons Mike Elliott and Paul Holloway. The issues relating to serious claims where victims of road accidents, thanks to medical science, are fortunately now living for longer periods have not been addressed by the Treasurer; they have been conveniently overlooked. Those victims of road accidents at the lower end of the scale have been the attempted scapegoats of the Government.

The third misleading example to which the Treasurer refers is that under the current law a seriously negligent driver can inflict severe injuries on innocent third parties and still receive and enjoy compensation from a claim against the CTP fund with no automatic obligation to pay back the losses resulting from the drink driving. What the Treasurer did not tell us is that he is talking about a different claim—a different accident—where the wrongdoer in the first accident is injured in another accident through no fault of his or her own and that the CTP fund can snatch that money. The savings that the Government was looking at making from this amounted to $100 000 a year.

For goodness sake, the Government should get real on this. The effect of this proposed amendment, if passed, would have been to allow an automatic recovery in cases where a victim of a road accident, notwithstanding that they were a wrongdoer in an earlier accident, would have the money snatched away. Never mind if the victim of that accident has a family to support and has a devastating claim for economic loss; they would lose out entirely through this very arbitrary measure, which could cause significant injustice. The MAC has every entitlement to bankrupt a driver in those circumstances; it has methods of recovery. It seemed a particularly cumbersome and unworkable amendment.

I will refer to a number of other amendments, but I am conscious of the time and the Notice Paper. I say this with respect to the Treasurer, in the sense that I believe he has misunderstood what has been meant by serious and significant impairment for a period of six months, as proposed by the Government amendments. The Treasurer is of the view that, if a person does not get over the previously proposed six month hurdle, that person would not have a permanent impairment.

The fact remains that, if the Government's proposals went through, there would be many cases where a person had one or more broken bones, a broken arm or broken leg, was in a plaster cast for a number of months, was left with a permanent impairment which was of the order of 10 or 15 per cent but which was still not serious and significant for a period of six months, and that person, with a permanent impairment—a permanent disability—would not be able to receive one cent of compensation for non-economic loss. It is outrageous that the Government was proposing that.

Clearly, this is an area that we will revisit but, rather than letting the bean counters at the MAC rule the roost, it is important that we look at this sensibly, and consider the issues that the Hons Mike Elliott and Paul Holloway were talking about in terms of accident reduction and road safety. In that way we can ultimately reduce premiums and have a system of compensation that is fair in the circumstances. Given the Treasurer's comments this evening, that is why it is doubly important that we have a select committee on the Motor Accident Commission.

It is a method of handling claims and a range of other matters pertinent to road safety and to the compensation payable to victims of accidents and, in those circumstances, I think that we can achieve some long-term reforms. I would like to take the Treasurer to task on many issues but, dealing with one issue for the time being, the Treasurer said that there was no movement on the part of Opposition, Independent and Democrat members on the issue of loss of consortium. I ask that the Treasurer withdraw that statement, because I consider that he has made a fundamentally misleading statement. The Treasurer ought to be reminded, and I hope that he is listening—

An honourable member interjecting:

The Hon. NICK XENOPHON: I hope the Treasurer is listening. I know that he is hiding behind the column. I ask that the Treasurer have the decency to acknowledge that, on the issue of loss of consortium, an offer was made to consider some amendments to the Government's clause which would have resulted in some cost savings. That offer was not taken up by the Government. The Treasurer is clearly not interested: I can see that he is too busy talking to some of his colleagues. However, when the Treasurer eventually reads my remarks or reflects on this issue, I ask that he have the decency to withdraw his remark and to correct the quite misleading statement he made that no offer was made in relation to loss of consortium.

In relation to the issue of nervous shock, I am very proud to have maintained the *status quo*, given the devastating consequences of that change and the savings the Government would have achieved in the order of $100 000 or $200 000 at the most. If a parent loses their child in a motor vehicle accident they ought not be precluded from claiming damages for nervous shock, which is a recognised psychiatric condition, simply because they were not at the scene of the accident or at the scene of the accident shortly thereafter. Those of us who have dealt with parents who have lost a child and who have had to deal with the devastating impact of that death would realise that to narrow claims to this absurd and draconian proposal of the Government is obscene.

I am very proud to have been involved in this process. It may well be the first and last conference in which I will ever be involved. In the circumstances, I stand by the Hon. Paul Holloway and the Hon. Mike Elliott (the Opposition and the Democrats) in relation to the amendments that have been moved. I again implore the Treasurer to amend the media release to include my name, despite the fact that he says that it is a little too long for him to include, because I am happy to take the blame with my parliamentary colleagues.

The Hon. R.R. ROBERTS: I congratulate the previous speaker on his absolute demolition of the Treasurer's ridiculous outburst and explanation. We are seeing a very fast learning curve by the Hon. Nick Xenophon in the ways of this Government and this Treasurer in particular. I congratulate also the Hon. Mr Elliott on his assessment and comments. Being involved in the conference, he, the Hon. Nick Xenophon and the Hon. Paul Holloway tried to look at this proposal as a constructive piece of legislation and to find some reasonable savings.

They tried to reinforce the benefits in South Australia for injured motorists and their passengers, whereby they can expect a level of reasonable compensation, which in most cases does not come as an automatic entitlement: it must go to the courts. The Treasurer ripped out a recent case, which he cites in his press release, to try to justify this outrage, and which he says commenced in 1987 and concluded in 1991. The Treasurer had to go back about eight years to find a recent case. He has cited one case. I challenged the Treasurer in his contribution to cite another case and he could not come up with one, and there is a good reason for that: he does not have one.

The Hon. Nick Xenophon and the Hon. Mr Elliott have fallen for the three card trick of this Government. They really ought to look at the record. This was never an exercise about having a conference and resolving the issues of proper compensation for injured drivers: it has been a cynical exercise from the start. Quite clearly, what this Government is about to do with the MAC is set it up to flog it off. I remind

members that we have in place, as we speak, a scoping study on the operation of the Motor Accident Commission to see whether we can sell it. Let us look at the history of this Government.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: This monopoly situation has a long history, and we have to look back. When there was an open market for insurance, the mainstream operators decided to get out: they said that they wanted to leave it to the Government. Everybody on both sides of the Parliament agreed that there had to be a proper system of insurance for third party and accident victims in South Australia. The system that we have come up with is not exactly the same: we now have the automatic deduction of 25 per cent and, if the alcohol level is higher, it is 50 per cent. I have previously pointed out some of the problems involved with that.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: Or even higher, as my colleague points out. That deduction will be automatically taken out. If we look at the figures in seven years time, as the honourable Treasurer wants to do, I bet it will not be the $2 000 claims, as in that case of some 10 years ago, where the big savings will be made: it will be the automatic deductions involving people who might be just over .05 on a reading of an alcotester (with all its faults and frailties) and who decided, maybe because they were under the influence of liquor, that they did not want to take a blood test. If they decide not to take a blood test, they then face the irrebuttable position that the alcotester was right. They can no longer elicit evidence to prove their case scientifically or for any other reason.

So, it is bad enough that that is occurring. But what the honourable Treasurer said when he started out on this exercise is that we have to do all this—'I won't put it up to the full 12.1 (or whatever it was supposed to be); I'm only going to .8. But if we don't sell ETSA we'll have to put it up the full 12 per cent.' That was his first proposition. Now he comes into this place and offers hardly any argument or debate on this, on the agreement that we will go to the conference. During the conference he is as nice as pie—like a black widow spider. Then he comes in here and makes this attack, on top of the press release that he had issued before he even walked into the place.

The fact of the situation is that he was always going to do this. It would not have mattered if he had never derived one benefit out of that conference: he was going to do it. He was always going to blame someone else. If members believe that that is a preposterous suggestion, they should look back at the history of this Government and see what it has done. During the election campaign it put some political untruths to the people of South Australia. We challenged the Government and said that it would sell ETSA. 'No', they said, 'The Labor Party is lying.' It was everyone else that was lying—never the Government. The Government came back in, and two minutes later it was going to sell ETSA. Then it announced that it would scope all the rest of the family silver, including this.

This Government is about reducing the benefits to workers so that the MAC becomes more attractive to the private insurance companies, and when it becomes more attractive to the private insurance companies it becomes more saleable. That is what this is about. The Government never went into this exercise with any integrity whatsoever: it was always going to impose a 12.1 per cent increase.

What is the Treasurer complaining about on this occasion? He is complaining that the system and the level of benefits that have been there since the MAC was set up are still in place. His most feeble effort was to find one case that occurred in 1987 and was completed in 1991 which cost $2 000—a $2 000 pay-out. It went to the court and was reviewed, and the court applied all the principles of the law. And that is what will happen to every other victim: they will have to meet all the standards of the law.

The Treasurer's proposition is that in every other case they should apply the law—until they get something that they do not agree with. One flimsy case and they justify putting up the premiums for all motorists in South Australia. He was dishonest enough, or mischievous enough, when he was explaining the case in point to quote the judge, saying that, for that reason, we have to put up the premiums—as though the judge said it. The judge did not say that at all. The judge said that, in all the circumstances and in the law, and given what the regulations and all other manner of statutory vehicles provide, this is the judgment. He provided his judgment separate from the legislation—it is called the division of powers, for those who are interested.

When the Government wants to save money in a whole range of areas, particularly in the driving area, there is a reverse onus of proof. We have it with speed cameras, with alcotesters, and, if you drive past a school, the presumption is that you are guilty until you prove yourself innocent. The Treasurer is now saying that the judge ought to be able to look at the circumstances and apply the Act, so we ought to be able to reduce those benefits at the expense of injured drivers and their families.

The Hon. Nick Xenophon did an admirable job in his contribution. He absolutely demolished the rubbish that was put up by the Treasurer trying to justify the unjustifiable. If the Treasurer or his predecessor had done the right thing before the last election and applied a CPI increase, we would not be talking about these amendments. They have milked this scheme, and this is not the only Government to have committed that sin. We have looked at this scheme over the years, but they have had the reins for the last four years. Last year they said that they would not put up the premiums, purely to try to gain some political advantage. Because of that, there is already a component that has to go into the premiums.

This is a cynical exercise by a cynical Government. This Treasurer would make Shylock look like a sissy. He only wanted a pound of flesh: this Treasurer wants to deceive the people and take the heart and all. He also wants to take away the benefits for injured workers, and that is another system that needs mentioning. When the Government gutted the benefits for workers in the workers' compensation legislation, one of the things they said was that, because it is covered under journey accident provisions and third party insurance, it is not needed under workers' compensation. If a person is not bedridden for at least six months, there is a fair chance that that person will get absolutely nothing there, either.

The Government has used some of the conditions under WorkCover to justify third party insurance, but it has missed one point. WorkCover is a no-fault scheme: this a fault scheme in every instance. There is an automatic deduction for driving under the influence of liquor, driving without a seat belt and riding a bike without a helmet, but in all other circumstances there is a discretion. You have to prove it. If the circumstances change, the judge can apply justice in all of the circumstances.

I agree with the Hon. Mike Elliott. By introducing these automatic deductions for alcohol, seat belts and helmets, we have automatically deducted a significant amount from these injured people. Their families will not be any less disadvantaged; they will not suffer. Their medical bills and all their other expenses will be exactly the same whether or not they had alcohol in their blood, they did not wear a seat belt or they did not wear their helmet. That will play no part whatsoever.

If there was any justice in the proposal it could be that the judge could deduct up to 25 per cent on the basis of the merits of the case, using his discretion as he has to in every other aspect of this legislation. One could actually justify that, but these imposts will rip millions of dollars not out of MAC but away from injured workers and their families. They will suffer a double whammy in this situation as a result of the automatic deduction because they have to face the court—

The Hon. T. Crothers: Is it not the case that if an injured worker does not get insurance cover, the only taxpayer—the State—will have to pay in respect of treatment for his injuries in any case?

The Hon. R.R. ROBERTS: Under the social security system and Medicare, that is probably right. In these situations, the worker gets an automatic deduction; he will face the court because he is over the limit; he will probably receive a significant fine; he will probably lose his licence and that may lead to loss of income from his job which imposes more imposts on his family; and he will lose 25 per cent of his benefits. If someone else in the car has some good reason to suspect that he might be drunk, with all the vagaries of different metabolisms of different people, he will also lose 25 per cent. I think that is an outrage. The Government, which wants to reduce the benefits for injured drivers and their families, has done reasonably well.

The exercise that the Treasurer has gone through with this particular press release, which he released before this matter even got back to the Parliament, is an outrage and ought to be revealed. I only hope that a few journalists are still awake at this ungodly hour and that they can understand the absolute tyranny of the Government in this cynical exercise. I repeat finally: the Government was always going to do this regardless of this result. It is about setting up the Motor Accident Commission for sale. I asked the question in the House some weeks: will the scoping study be taking into account the changes proposed in this Bill or is the scoping study being done on present conditions? We received no answer. The scoping study will continue. The Government will make money out of this and it will blame its inadequacies on those injured workers who claim $2 000. It will rip millions of dollars away from workers or injured drivers and their families through these imposts on the automatic deductions for seat belt and alcohol situations, and it will take away benefits from children who are riding bicycles without a helmet. That is a disgrace. This Treasurer ought to hide his face in shame—but he will not—because during his contribution he made a remark about my returning to my kind. He was one of my kind at one time. Amongst all his other sins, he ratted on his class and anyone who rats on their class cannot be trusted to put an honest proposition about taxation. This bloke, as I said before, would make Shylock look like a sissy. I think this ought to be condemned.

The Hon. A.J. REDFORD: I know that the Hon. Ron Roberts and various other members of this place have their point of view, but what concerns me about this whole system of compensation is where we want the loss to fall. It can fall on an insurance company, it can fall on an individual or it can fall on the community at large. It concerns me that we have become very emotional this evening, particularly during the last contribution, and, dare I say, during the contribution of the Hon. Nick Xenophon.

We need to look at where the loss falls. It can fall on only three particular areas: the individual, the community at large and the various insurance schemes that are devised. I sincerely hope that over the next couple of years we can take the politics out of this and, as a community, develop some degree of consensus. The way in which the Treasurer has approached this whole process will enable us to look at how the scheme operates so that we can develop some community consensus about where the loss might fall. I have to say that, in the whole of this process, the Treasurer has been very fair and—

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and says, 'And the press release was a pretty obvious thing.' We had a hard choice. The Treasurer made the choice and the Opposition made another choice and, on this occasion, the Opposition won. The Treasurer, quite rightly, pointed out the consequences of the Opposition's decision.

The Hon. P. Holloway: Does the honourable member fully support the Treasurer's decision?

The Hon. A.J. REDFORD: The Treasurer's original position as always stated to me was that he put a position to this Parliament and allowed this Parliament to decide.

The Hon. P. Holloway: Yes, but did you agree with it?

The Hon. A.J. REDFORD: No, I did not agree with the initial decision. I agree with what has come out of the conference of managers, but he gave this Parliament an opportunity to discuss this issue. He could very simply have said, 'I will put up this premium and not discuss this whole issue.' The Treasurer—and I am grateful to the Treasurer—has put this issue in the public forum, and I think some benefits will come out of it. I hope members will see some improved dialogue between the Plaintiff Lawyers' Association and the Motor Accident Commission. As a consequence of that I sincerely hope that, when this issue confronts this Parliament again, we will have a greater amount of information.

The Hon. M.J. Elliott: The information was pretty thin.

The Hon. A.J. REDFORD: I do not know whether or not it is thin, and that was the problem under which I personally laboured.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: I think that is a fair interjection. But, at the end of the day, the Treasurer brought it to this place and it is now at the feet of Parliament. If he had simply increased it, we would have had the community screaming about the system. To be fair to the Treasurer, at least he brought it into this Parliament and gave us the opportunity to address it. At least we have had an opportunity to discuss this as an issue rather than it simply being a line item in the budget. At the end of the day, I think the Treasurer deserves to be congratulated for that. Some of the comments made about the Treasurer in the course of this debate have been disappointing to say the least.

Motion carried.

SUBORDINATE LEGISLATION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

New clause 2A.

The Hon. R.R. ROBERTS: I move:

Page 1, after line 14—Insert:

Amendment of s. 10—Making of regulations

2A. Section 10 of the principal Act is amended by inserting ', or any part of that regulation,' after 'that regulation' in subsection (5a).

This amendment seeks to allow a process for a package of regulations marked 1 to 10 to come into this place, or, indeed, before the Legislative Review Committee for consideration where it can be recommended that all or part of the regulations be disallowed. Briefly, the history of this is that we have had situations—and I cite the regulations in respect of the scale fishery some years ago—where a whole range of things were capable of standing alone and the committee of this Parliament decided to disallow only that regulation in respect of net fishing.

We had to knock the whole lot out and then the regulation had to be reinstated. On that occasion the Minister very wisely separated the regulations. My amendment will allow Parliament to make a deliberation so that that part which offends Parliament can be disallowed. It will be much cleaner, and the rest of the regulations can proceed without all the pitfalls and traps to which the Attorney alluded.

The Hon. K.T. GRIFFIN: The Government is vigorously opposed to this amendment for reasons which I have already explained during the second reading debate. If it was not so late, I would call for a division and fight this amendment even more vigorously. I do not believe it is an appropriate approach to subordinate legislation where a House can disallow only part of a regulation rather than the whole. I think it will distort significantly the process.

The Hon. M.J. ELLIOTT: I recall a number of occasions where there have been quite lengthy regulations comprised of many parts and of which only one part has caused concern. I think it is true to say that the Parliament has sometimes been reluctant to disallow regulations because they contained many components with which they had no difficulty. From time to time, that has left the Parliament in something of a quandary.

I have made the comment that when Governments know that there are aspects that are likely to be contentious they should not bury them in what is often a lengthy set of somewhat unrelated regulations, but that has happened from time to time.

The Hon. K.T. Griffin: It hasn't happened very often.

The Hon. M.J. ELLIOTT: It's happened often enough. In those situations, I think the Parliament would weigh up the consequences of disallowing the whole regulation or part of it.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Absolutely. There may be times when the Government might take offence at a regulation being partly disallowed, but the Government is always in the position to revoke the whole lot if it wishes. The Parliament might say, 'We have a problem with only one bit, so we will knock that out rather than the whole lot.'

I do not think that there are the sorts of problems to which the Government has alluded. I think that what is proposed is very sensible. At one stage, the Hon. Mr Roberts proposed the potential to actually amend regulations, but clearly you cannot have one House amending a regulation, and I think the Hon. Mr Roberts now acknowledges that. When he made that—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I don't think that is the case. I said earlier that I had problems with that, and I note that the Hon. Mr Roberts has taken that on board, but I am not persuaded that revocation of part of a regulation creates any special difficulty.

New clause inserted.

Clause 3.

The Hon. K.T. GRIFFIN: I move:

Page 1—

Line 16—After 'amended' insert:

—

(a)

After line 17—insert:

(b) by inserting the following subsection after subsection (1a):

(1b) Whether a Minister has set out his or her reasons in sufficient detail for the purposes of a report referred to in subsection (1a) cannot be called in question in any legal proceedings.

The first part of the amendment is dependent on the second part. The object of my amendment is to ensure that there is not another basis upon which the validity of a regulation can be challenged because they are *ultra vires* the principal Act. It would seem to me that there is always the possibility, if the Act requires detailed reasons as to why a certificate is given, to bring a regulation into effect earlier than four months after it has been promulgated. In those circumstances a procedural issue might form the basis upon which a court might determine that regulation is therefore invalid. We ought to be looking at the substance and not allowing regulations to be set aside only on the basis of procedural defects. This does not alter the powers of either House of the legislature or the Legislative Review Committee but merely puts in a safeguard against procedural defects being the subject of challenge which results in a regulation being declared invalid, even though not disallowed by one of the Houses of Parliament.

The Hon. R.R. ROBERTS: I am not persuaded to support the Attorney's proposition, for a couple of reasons, not all reasons of my own, because I have taken some advice from our shadow Attorney-General.

The Hon. K.T. Griffin: It can't be very good advice.

The Hon. R.R. ROBERTS: You may wish to denigrate and make a personal attack at this late hour, but I have also taken advice from professionals within the Legislative Review Committee.

The Hon. K.T. Griffin: Professional whats?

The Hon. R.R. ROBERTS: One is the lawyer and one is the research officer for the Legislative Review Committee and, if you want to denigrate those good officers of this Parliament, it is up to you.

The Hon. K.T. Griffin: I denigrate the advice.

The Hon. R.R. ROBERTS: You may denigrate the advice. This is what the Minister proposes:

Whether a Minister has set out his or her reasons for insufficient detail for the purpose of the report referred to in subsection (1a) cannot be called in question in any legal proceedings.

What we are talking about is not just whether the Council decides—it is the responsibility of the Legislative Review Committee to review all of these regulations and on occasion to recommend to the Parliament disallowance. There is also the proper right of any other member to move for a disallowance. It seems to be fairly obvious that, if the Legislative Review Committee is equipped with other tools that are

provided by this new piece of legislation, which says there must be good and proper reasons, then, taking the Attorney-General in good faith on what he said in his second reading speech, there should be administrative direction by the Executive of the Administration to advise all departments to provide proper reasons.

Hundreds of regulations come before the Legislative Review Committee. Thankfully, there is a diminishing number of those not accompanied by proper reports. It would seem to me that, if the Legislative Review Committee, which views all these committees, is satisfied that detailed and sufficient reasons are supplied to the committee, it would make a recommendation that no action be taken. If that is not the case, in the normal course of events the committee would advise the offending department and seek further detailed reasons. If those reasons were accepted by the Legislative Review Committee and no action was to be taken, there is a very strong precedent for those persons charged with judging whether a Minister has properly discharged his lawful duties. The prospect of litigation about legislation is always present. I understand that there are very few occasions when people seek redress against a regulation, whether it be *ultra vires* of the principal Act or—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: Understandably so. As a citizen, he has a right to do that. If it is *ultra vires* of the principal Act, he is entitled to the decision going in his favour.

The Hon. K.T. Griffin: There is no quarrel with that.

The Hon. R.R. ROBERTS: If there is another legal reason why a Minister has not performed his proper legislative requirements, and if it impinges on the rights of a citizen or a group of citizens, it is my belief—and I would have thought it would be supported more by the Attorney-General than I, with his legal background—that there ought to be a right of redress in a legal forum.

The Hon. K.T. Griffin: Why?

The Hon. R.R. ROBERTS: A thing called natural justice, for a start.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: There is a right of natural justice. Why should a Minister be unchallengeable? Every other citizen in the community is challenged on whether or not he has acted legally or properly. I am not persuaded by the argument that this is a necessary thing. While I am on my feet, I see that No. 4 contains basically the same proposition, and I will be opposing both those propositions.

The Hon. M.J. ELLIOTT: I support the amendment. I know that it has the potential to allow some forms of abuse that the Bill is largely trying to stop, but I think now that some pretty clear guidance is given about the need for detailed reasons, and in my view it is really up to the Subordinate Legislation Committee to enforce this issue if it becomes a problem. I can say as a member of the Environment, Resources and Development Committee that there have been times when we have been irritated by the procedures of some Government departments and whether or not they are doing what they should be doing under legislation. The challenge for the committee, in my view, is to become insistent and ultimately to report back to the Parliament about the process.

I would not want to see it become a question of legal proceedings unless I was absolutely convinced that the parliamentary process itself was not capable of resolving the issues. At this time I will support the amendment, but if in 12 months I see that there is real abuse, and abuse that the Subordinate Legislation Committee is not able to address, I will then be looking for further solutions.

The Hon. K.T. GRIFFIN: I appreciate the Hon. Mr Elliott's indication of support for the amendment. I think that the Hon. Mr Roberts has missed the point I was trying to make. It is about ensuring that the validity of a regulation is not subject to challenge on the basis of a technicality, and a very fine procedural point as to whether or not the reasons which the Minister might have believed were detailed and which the Legislative Review Committee believed were sufficient can be challenged by someone out in the community on a procedural basis. That is what it is all about. I thought the Labor Party from time to time criticised those who fought battles on the basis of legal loopholes and technicalities. Apparently, it has changed its view and it will be interesting to see what happens in the future.

Amendments carried; clause as amended passed.

Clause 4.

The Hon. R.R. ROBERTS: I move:

Page 1, lines 22 and 23—Leave out 'disallowance, having the same substance as the disallowed regulation, will have no effect unless the House of Parliament rescinds the' and insert:

disallowance that has the same substantive effect as the disallowed regulation or any part of it will not come into operation unless the House of Parliament that disallowed the regulation rescinds its

This follows on from the first amendment that I moved in part. I do not want to go over it again.

The Hon. K.T. GRIFFIN: Opposed.

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

Page 1, after line 24—Insert:

(2) Whether a subsequent regulation has the same substance as a disallowed regulation for the purposes of subsection (1) cannot be called in question in any legal proceedings.

I move the amendment for the same reason as I moved the amendment to the previous clause. It does not in any way compromise the rights or powers of the Legislative Review Committee or a House of the Parliament. What it seeks to do is to avoid a technical debate in the court where a regulation may be challenged on a procedural point. Where a regulation has been disallowed but subsequently remade and has not been challenged thereafter by the Legislative Review Committee or a House of the Parliament, why should a citizen be able then to challenge it on the basis that it did not in the view of that challenge satisfy the provision that the Hon. Mr Roberts is proposing?

The Hon. M.J. ELLIOTT: I support this amendment and my reason is similar to the reason I gave in regard to the Attorney-General's previous amendment. I am supporting the change proposed by the Hon. Ron Roberts but I also understand the caution being shown by the Attorney-General, and I think that, in the first instance, if a problem arises, it is one for the Parliament to seek to address and not one to be fought out in the courts. I guess once again I will watch to see whether or not the Bill as amended works in the way I hope it does.

The Hon. R.R. ROBERTS: I understand the position of the Hon. Mike Elliott. We could argue about the position but, for the sake of consistency, could I suggest an amendment on the run now? I have not sought to do this previously. I was relying on my amendments being passed. The Attorney has moved 'whether a subsequent regulation has the same substance as a disallowed regulation'. We have established in our discussion 'a regulation or part of a regulation'. I seek

leave of the Committee and the Attorney to incorporate that, to be consistent with the others. That maintains the consistency of what we have established.

The Hon. K.T. GRIFFIN: There has been a bit of debate about it, but I suggest that, away from the turmoil of the night and the pressure of the last day of sitting, we leave it to the House of Assembly to be sorted out there. I think it is okay, but there is an argument that it needs some modification. However, it can be looked at on another occasion.

The Hon. R.R. ROBERTS: I accept that we have agreement that it needs to appear somewhere. I accept also that there is agreement that we will sort it out in another place.

Amendment carried; clause as amended passed.

Title passed.

The Hon. R.R. ROBERTS: I move:

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN (Attorney-General): I oppose the third reading of the Bill. It has been improved on what it was when introduced into the Legislative Council, but it is still in my view a poor piece of legislation which ought not to be supported. I can recognise that numbers are against me and, in view of the hour, I will not divide. However, I want it on the record that the Government does not support the Opposition's Bill.

The Hon. R.R. ROBERTS: I disagree entirely with the Attorneys-General's comments.

Bill read a third time and passed.

LEGISLATIVE REVIEW COMMITTEE: REGULATIONS

Adjourned debate on motion of Hon. A.J. Redford:

That the policy of the Legislative Review Committee on examination of regulations be noted.

(Continued from 1 July. Page 906.)

The Hon. K.T. GRIFFIN (Attorney-General): I support the motion to note the report. I put on the record some observations about the Legislative Review Committee's policy for the examination of regulations. They are my personal views and not necessarily the views of the Government. There may be an opportunity at some time in the future to give further consideration to them but, under matters to be considered when examining regulations, paragraph (d) indicates that one of those items is whether the regulations are in accord with the intent of the legislation under which they are made and do not have unforeseen consequences. The question whether or not they are in accord with the intent of the legislation is not such a problem, because I have always understood that the old Subordinate Legislation Committee had the responsibility of determining whether or not they were within power and not *ultra vires*.

I suppose one can describe intent as not so much what might be perceived to be the general purpose of the legislation but really whether or not the regulations are within power. But the difficulty I have is with that part of paragraph (d) which relates to a determination as to whether or not the regulations have unforeseen consequences. I do not see how that is capable of being achieved. The question quite obviously arises as to how the Legislative Review Committee proposes to find that the consequences are unforeseen. Unforeseen consequences are deemed unforeseen because it is not until the difficulty or benefit arises in practice that the consequences of a particular act are fully realised. So, it is a curious provision. It may well be that the consequences were intended by the Government of the day but not necessarily established publicly or in other ways on the record as the consequences and may be judged (when they become obvious) by the committee as being unforeseen.

The next issue is paragraph (f) because, when looking at regulations, the matters to be considered include whether the objective of the regulations could have been achieved by alternative and more effective means. I am a little concerned that that might be a matter where the Legislative Review Committee puts itself in the place of the Government to determine that an objective which the committee believes might be sought to be achieved can be achieved by other means and therefore takes a decision to disallow. I think that would be a most inappropriate course of action to follow. There is no reason why the Legislative Review Committee should not raise issues about what it sees as possible alternatives, but to disallow regulations on the basis that it sees that there is an alternative and what it would regard as a more effective means might well fly in the face of the advice which the Government has received, or even the Government's intention about the way the way in which it would seek to achieve a particular objective. So, I have a concern about that. In his speech moving to note the report, the Hon. Mr Redford said:

> I see it as the role of the committee to protect the Minister of either political persuasion from some of the excesses of public servants at that level, albeit from well intentioned excesses.

I question whether that is an appropriate objective. If the committee is making a judgment about what might be regarded by the committee as an excess, it may be that the Government of the day or the Minister in particular wishes to achieve an objective by that regulation which might not, in the circumstances in which that objective has been developed by the Government, be regarded by the Government as an excess. I should say at this point, however, that some very extensive procedures have been developed for proposals to be considered and ultimately brought through Executive Government and for the Cabinet consideration of those proposals.

It is not to be denied that mistakes are made; it is not to be denied that misjudgments occur; and it is not to be denied that, on occasions, the regulation may in fact be *ultra vires* and, to that extent, one cannot complain about a decision by the Legislative Review Committee which might relate to the question of whether or not a regulation is *ultra vires*. Ultimately one must be cautious about disallowance and, in my view, such disallowance should occur only in circumstances where the regulation is not within power or there is an injustice created, an injustice which is not something that might be developed from some rather circuitous reasoning process. I am not asserting that that is the case so far as the Legislative Review Committee is concerned, but it is important that the full context be achieved before disallowance occurs.

The only other issue I raise, which is the broader issue, is that the Hon. Ron Roberts proposes that the policy should be formalised. He believes that the Chamber may determine the best method to formalise the policy. The options are to either adopt the policy as Joint Standing Orders or to enact a policy in legislation. I suppose there are these two issues. Should the policy be formalised? I question whether the policy should be formalised. I recognise that the Joint Standing Orders

which dealt with issues relating to the old Subordinate Legislation Committee did, in fact, set out the policy objectives of that committee. It may be, on the other hand, that there would be some value in trying more clearly to enunciate them, but we do have to be careful in trying to identify those policies without imposing unnecessary constraints or, for that matter, broadening unreasonably the scope of the legislative authority of the committee. I believe that there must be a balance.

The other question is: if the policy should be formalised, how should it be formalised? That is not an easy question to answer. I suppose that if one were to move down the path of formalising it, perhaps the Joint Standing Orders might be the appropriate place for that to occur. For fear that what I have said might be taken to be a criticism of the Legislative Review Committee, let me hasten to say that I think that the Legislative Review Committee does work particularly well and has done for many years. It goes about its work without significant publicity or breast beating and that, I think, is important because the decisions which it then takes are obviously decisions which are more widely respected because of the way in which it undertakes its work. I support the noting but wish to put those cautionary remarks on the record.

The Hon. A.J. REDFORD: I thank the Attorney-General for his comments. I know that the committee is searching to achieve an appropriate and proper role in assisting in good government. It is difficult to ensure that the Legislative Review Committee does not become partisan, that it applies not only a cautious but also a vigilant role in the supervision of subordinate regulation. I hope that the committee will receive in the future some constructive suggestions, not that the last contribution was not constructive, about the objectives and the policy of the committee.

Motion carried.

MULTILATERAL AGREEMENT ON INVESTMENT

Adjourned debate on motion of Hon. M.J. Elliott:

That this Council—

1. Opposes the Federal Government's signing of the Multilateral Agreement on Investment (MAI) until this Parliament and the people of South Australia are fully cognisant of the implications the MAI will have on policies under State jurisdiction; and

2. Urges the State Government not to support the MAI if it is found that the governance of this State is severely impaired.

(Continued from 19 August. Page 1469.)

The Hon. K.T. GRIFFIN (Attorney-General): I rise neither to support nor oppose the motion of the Hon. Mr Elliott. Obviously there will be no division on this motion. It expresses concern and sets out a course of conduct that the Hon. Mr Elliott believes ought to be adopted by the Legislative Council seeking to oppose the Federal Government's signing of the Multilateral Agreement on Investment until the Parliament and the people are fully cognisant of the implications that MAI will have on policies under State jurisdiction. In respect of that, it is not quite clear how the people are to be fully cognisant of the implications. Obviously, it is much easier to make the Parliament cognisant than the people. I suspect that most people in the community will not know what the Multilateral Agreement on Investment is or what it does and many of them would not care, but it is an important agreement where caution has to be demonstrated.

So far as State policies are concerned, I indicate that the State Government is undertaking very extensive consultation on the multilateral agreement within South Australia and with other Governments around Australia, including the Federal Government. One of my officers in my legislation and policy division has been providing advice to the Department of The Premier and Cabinet in its intergovernmental relations branch and I know also that Treasury has been very much involved.

I do not think it is appropriate for me to explore in any way the current state of the consideration of the issues by the State Government except to say that, as far as I can recollect, we have not finalised a policy position upon it but we do recognise that issues must be addressed in the interests of the State. Whether that means that the Parliament should be involved in making a decision before the Federal Government signs the agreement, if it does so, is an issue about which we might have some debate.

My main purpose is to indicate that the State Government is conscientiously considering the issues raised, consulting on it and endeavouring to reach a final position before the Commonwealth Government makes its own decision about the signing, or otherwise, of that multilateral agreement. That is really the position. I suppose it is somewhat ambivalent, or, should I say, not as directive as perhaps the honourable member may wish it to be, but it may provide some comfort that we are conscientiously working through the issues.

The Hon. M.J. ELLIOTT: I thank members for their responses and particularly members of the Opposition for supporting the motion. I do not think there is any need to restate what has already been said and I do not think anything has been raised which requires response other than noting that now the State Government is considering the matter. Obviously I cannot ask questions because we do not have a Committee stage with these motions, but I will make a suggestion that I hope the Government might consider; that is, that the Government may on some sort of semi-regular basis provide reports to the Parliament on the progress of its considerations. I mean, if we are to have a Parliament and a community which are aware of the MAI—and it would probably be true that even a significant number of MLCs at this stage do not know a great deal about it—I think a reporting process to the Parliament which could be picked up and also covered in the media would be a very useful step.

I know the Attorney cannot respond, but in wrapping up the debate I suggest that that would be a very useful thing to do. When the Liberal Party was in Opposition it was very concerned and critical about the then Federal Government signing Federal treaties that had implications on the State. I note that the now Federal Liberal Government has got some processes that mean at least there is some discussion at a Federal level. We do not have structures at a State level at this stage which reflect that and there is no doubt that the MAI has the capacity to have significant impact at a State level.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Someone might but, if things are under way now—and in fact the Federal Government has been involved in talks for a considerable period—then the information process at a State level should be going now as well. I just say that in wrapping up the debate and I thank those members who contributed.

Motion carried.

INTERNATIONAL TREATIES

The PRESIDENT: Although it is a fairly late hour to do it I think I ought to say something about treaties in general. I can report to the Council that some months ago I had a letter from the Australian Parliamentary Treaties Committee asking whether I could facilitate setting up some process in this Parliament. To cut a long story short, my advice is that the Legislative Review Committee has a reference in relation to inter-governmental relations and the Government has agreed that that committee, if it wants to, can look at international treaties; in fact it is encouraging it to do that. It is probably slightly premature because the Presiding Officer of the committee is not here at the moment to directly report. However, I wanted to indicate to the Parliament that this is not a Government to Government thing—although the Premiers under COAG have their relationship with the Commonwealth Government under the Treaties Council and they are looking at treaties—but that the Parliament is able to look at treaties Parliament to Parliament.

It is well under way in Victoria, where they have a very good advance model. I hope that our Legislative Review Committee will look at that model and at treaties. Perhaps the Hon. Mr Elliott might like to ask the Hon. Mr Redford where his committee is in that respect. I would like to put something a little more formal to the Council on our return.

CONSTITUTION (PROMOTION OF GOVERNMENT BILLS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 August. Page 1348.)

The Hon. R.I. LUCAS (Treasurer): Because of the negotiations going on with an important piece of Government legislation, the mover is unable to be here. However, I understand that he intends to have a vote at the second reading and then to adjourn this matter (and this is based on my most recent discussion with him; I am not sure whether he has changed his mind) until the October session, when we will deal with some suggested amendments which he might contemplate and which the Government and others who might be interested in this Bill might also like to contemplate. On that basis I will speak, and I am sure that the Hon. Mr Xenophon will be able to read my comments at a later stage.

The Government opposes the Bill but, obviously, will be happy to allow it to proceed through the second reading so that we can explore it in much greater detail during the Committee stage of the debate which, as I said, based on the advice of the Hon. Mr Xenophon, is likely to occur when we return in October for the new session.

There are a number of significant drafting problems with the Bill, even if one were in broad agreement with the underlying principle. What I seek to do in the spirit of goodwill, as always, is comment for the benefit, or otherwise, of members—they can take it as they wish—in relation to the legislation that we have before us.

Under clause 3, the Bill seeks to prevent a public authority from spending any public money on an advertising campaign that promotes a Government Bill or its underlying policy. That is an issue that I will be wanting to explore in some detail with the honourable member when we get to the Committee stage in October.

Further on in subclause (2), it defines advertising campaign to be in television, radio or printed form. Interestingly (and I will explore this later), 'Government Bill' means any Bill introduced by a Minister of the Crown or other member of the Government'. So, under this definition, even a private member's Bill introduced by a Government member is defined to be a Government Bill. We can also explore that in the Committee stage of the debate.

I want to highlight some of the significant drafting problems and some of the significant problems that will be caused should this legislation eventually pass both Houses. Because of the relatively short space of time that has been available to me, and also because a number of other issues to which I have been applying my mind over the past three or four weeks, I have been able to come up with only a handful of examples at this stage, but they are an indication of the sorts of problems that this Bill in its current form would cause.

In the first case, I want to refer to the annual Appropriation Bill, otherwise known as the budget Bill. This legislation would prevent what has become a long-standing practice of Governments being able in effect to publicise and advertise key features of its budget, which is, after all, the major financial statement made each year by the Government. There is a right in the Government's view for members of the broader South Australian community to be able to receive information about their State budget which has been brought down by their State Government in their State Parliament.

The convention has been that, for example, advertising material has been produced in printed form that has comprised printed leaflets which were distributed in the early days by members of Parliament and, in more recent days, by the Government and by members of Parliament through paid mechanisms. Clearly, the intention of this Bill would be to prevent the dissemination not only of that information to households but also a business brochure which is usually produced and made available to members to circulate to the business community (generally the small business community) at various lunches, breakfasts and other fora.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, it is distributed every year so it is made available. The business brochure is made available to members of the business community or anyone else who might be interested.

Thirdly, I think only in the last two years, a leaflet that highlights the regional initiatives and impacts of the State budget to be circulated in rural and regional communities has been made available. Again, this Bill would prevent the distribution of that material to country constituents in terms of providing advice on what in the State budget shows how their money is being spent on improving facilities and services in their communities.

Also, for some time now the Premier of the State has generally made a televised presentation. In recent times it has only been of about two minutes' duration, and it is generally made on the Sunday following the budget, when the Premier puts to the people of South Australia a paid message as to how their money is being spent by their Government in their State budget.

This legislation is intended to prevent all of that information being distributed because the Appropriation Bill, as the Hon. Mr Xenophon would know, has a long and tortuous path through the Parliament. It is introduced in the House of Assembly, which then adjourns for about three weeks or almost a month when it goes through the estimates process. It comes back and considers the Estimates Committees through another process in the House of Assembly. It is then

transferred to the Legislative Council, which at its leisure, which is generally many weeks, can consider it and we can sometimes see the Bill passed by around the end of July, some two months after the introduction of the legislation.

This Bill would say that no advertising of the budget, the Appropriation Bill, could be undertaken before the passage of that legislation through the Parliament. I will turn to this other issue in a moment, but it does prevent opposing or third parties using taxpayers' money to attack the budget through paid forms and I will tackle that deliberate inequity, as I see it, in the legislation. I raised this issue with the Hon. Mr Xenophon and it is of great concern to me that this proposal has been drafted in a most unfair way in relation to the Government's being prevented from publicising its budget but allowing Opposition and third party representatives the opportunity to attack ruthlessly and mercilessly the State budget and using taxpayers' money to do so. This Bill would sanction such activities by opposing and third parties but seek to tie the hands of the Government.

The Hon. Nick Xenophon: How so?

The Hon. R.I. LUCAS: I will explain that. I am not a lawyer, but I will explain the drafting for the Hon. Mr Xenophon. He is much too clever to not know the impact of the legislation he has drafted for consumption in this House and in another place. It is wrong in principle that any Government should be prevented from actually providing information about the key financial Bill, decision and package in the State budget to the people of South Australia through a number of mechanisms that have been used for many years.

I do not think anyone can say that it gives Governments unfair advantages. In the past four years the Government has been using it and there was still a significant swing against the Government at the last State election. I do not think anyone can say that the money spent at budget times informing people and providing them with information in some way gave the State Government an unfair advantage over other taxpayer funded activities the Opposition is allowed to undertake in an on-going way throughout the year.

I turn now to another example. I can highlight in my time a number of examples where Governments have introduced Bills into the Parliament and for a variety of reasons the passage has been delayed, for example, where a select committee has been set up. We had the example of that with the pastoral Bill. The Parliament may decide that it wants to advertise the activities of the select committee and the underlying policy of the pastoral legislation or whatever legislation may happen to be seeking submissions. Under the current drafting there would be some question as to whether, given that the Bill has not passed, the underlying policy is certainly being highlighted, that that expenditure would not be able to be undertaken, unless we go through the proposal where the nature and extent has been approved by resolution of both Houses, that is, we would have to put a resolution through both Houses in that case, as I understand it, to authorise the nature and extent of the advertising. I think that that is an issue, too. I go back to the budget provisions. Paragraph (a) provides:

> the nature and extent of the advertising campaign has been approved by a resolution of both Houses of Parliament.

When we get to the Committee stage in October I think that we will need some precise advice from the honourable member as to what he intends by 'nature and extent'. Does it mean that a televised script from the Premier has to be personally approved by a majority of members in both Houses of Parliament? Is that the interpretation, extent and nature of the advertising? Or is he talking about, at the other end of the continuum, just the fact that—

The Hon. Carmel Zollo interjecting:

The Hon. R.I. LUCAS: Well, no, we are talking about the budget which occurs every year. ETSA occurs once in a lifetime—well, we hope it occurs only once in a lifetime. If it is rejected it may well occur every year. The Hon. Mr Xenophon will have many more sleepless nights, given his first experiences that he recounted to the media and the community.

I think that the interpretation of 'nature and extent' is an issue that the Hon. Mr Xenophon will need to explore when we come back to it in the Committee stage of the debate. He will need to explain exactly how he would see it operating in terms of the approval of both Houses of Parliament. If it comes down to the stage where it is the actual wording and the drafting of advertisements, leaflets or speeches to be delivered that will have to be approved, he would know, given the partisan nature of the Parliament, that it is highly unlikely that any Parliament would approve the drafting of an advertisement or the wording of a speech on the budget. If it comes to the stage where the Parliament is to redraft the speeches of the Premier or an advertisement, then I think even the Hon. Mr Xenophon would agree that that is probably unworkable.

We need to know not only what he means by 'nature and extent' but what the legal interpretation of it would be. In the interim, between now and October, we will be looking for some Crown Law advice. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 12.41 to 1.35 a.m.]

EMERGENCY SERVICES FUNDING BILL

Bill recommitted.

Clauses 1 to 3 passed.

New Part 1A.

The Hon. IAN GILFILLAN: I move:

Page 3, after line 11—Insert new Part as follows:

PART 1A
THE EMERGENCY SERVICES FUNDING ADVISORY COMMITTEE

The Emergency Services Funding Advisory Committee

3A.(1) The Emergency Services Funding Advisory Committee is established.

(2) The committee consists of six members appointed by the Governor of whom—

(a) three have been nominated by the Minister; and

(b) one has been nominated by the Local Government Association of South Australia; and

(c) one has been nominated by the South Australian Farmers Federation Incorporated; and

(d) one has been nominated jointly by the Property Council of Australia Limited and the Real Estate Institute of South Australia Incorporated.

(3) The Governor will designate one of the members to preside at meetings of the committee.

(4) A member of the committee will be appointed for a term of office, not exceeding three years, specified in the instrument of appointment and, on completion of the term of appointment, will be eligible for reappointment.

(5) The Governor must remove a member of the committee at the request of the person or body or bodies who nominated the member.

(6) A person or body may request the Governor to remove a member of the committee appointed on his, her or its nomination on any ground that the person or body considers sufficient.

(7) The office of a member of the committee becomes vacant if the member—

(a) dies; or

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

(c) resigns by written notice to the Minister; or

(d) is removed from office by the Governor under subsection (5).

(8) On the occurrence of a vacancy in the membership of the committee a person will be appointed in accordance with this section to the vacant office but the validity of acts and proceedings of the committee is not affected by the existence of a vacancy or vacancies in its membership.

(9) A meeting of the committee will be chaired by the member appointed to preside, or, in the absence of that member, a member chosen by those present.

(10) A quorum of the committee consists of four members of the committee.

(11) A decision carried by a majority of the votes of the members present at a meeting of the committee is a decision of the committee.

(12) Each member present at a meeting of the committee is entitled to one vote on any matter arising for decision at that meeting.

(13) The function of the committee is to consult and advise the Minister under section 9.

(14) A member of the committee is entitled to such fees and allowances as may be determined by the Governor.

It would probably be better to explain briefly to the Committee that this amendment is to establish the advisory committee which I promoted in the earlier debate on the Bill. There has been some minor alteration after discussion with other interested parties. I point out that the composition of the committee is, to a certain minor degree, altered, but there are still representatives nominated from the Local Government Association, the Farmers Federation and the Property Council of Australia. A chair will be appointed, but that chairperson will not have a casting vote. I do not believe that there is anything else in the amendment that I have not discussed and promoted in the previous debate.

The Hon. K.T. GRIFFIN: I support the amendment. The Government indicated in the first run through in Committee that we would tend to prefer the Opposition's amendment to involve the Economic and Finance Committee, with that committee having power to recommend disallowance and for the House of Assembly to be able to move to that point. When one came to look at some of the consequences of that, it became clear that that was an inappropriate process to adopt and I was anxious to ensure that some less troublesome mechanism was put in place.

The object is to ensure that there is adequate scrutiny and that the processes are as transparent as possible. That is the object of the committee which the Hon. Mr Gilfillan has moved to establish. I point out that the transitional committee which has the responsibility for sorting out some property issues between Government and local government will remain. It will comprise representatives of Government and local government and its life will expire in two years.

The Emergency Services Funding Advisory Committee is a permanent committee comprising six persons and it has responsibility for advising the Minister and, where the Minister in relation to the declaration of the levy or the values of the areas factors and the land use factors disagrees with the advice, that advice will be in the public arena. This process brings pressure to bear upon the Government without the adverse consequences of disallowance, particularly as that may occur over a long time and also because disallowance has the potential to undermine the integrity of the emergency services levy system which is not in the interests of providing emergency services to the people of South Australia.

The other point is that the amendments made by the House of Assembly to clauses 9 and 23 relate to the capacity for the House of Assembly to disallow a levy after the first levy has been made where the subsequent levy is an increase on the base levy. That protection is retained so that, in addition to the scrutiny by this funding advisory committee, there is scrutiny by the House of Assembly.

In any event, this new scheme will be watched with great interest and will be carefully scrutinised by members of Parliament, particularly the Economic and Finance Committee, because members will be looking to find any flaws in the system, whether for political or other purposes, and I am confident that the sorts of concerns that members have raised in the course of the debate will prove to be groundless. If they are not, there deserves to be criticism of the Government for creating those concerns. I indicate that, subsequently, I will be supporting the amendment to leave out the reference to the Economic and Finance Committee's assuming the responsibility which is now to be given to this funding advisory committee.

The Hon. P. HOLLOWAY: I will briefly put the Opposition's viewpoint on the record. When this Bill emerged from the Committee stage earlier this evening, the Government had accepted the amendment moved by the Opposition to refer the emergency services levy to the Economic and Finance Committee of the Parliament, and that was the accountability mechanism which the Opposition preferred. Subsequently, as a result of negotiations between the Government and the Hon. Mr Gilfillan, that has now lapsed.

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: Well, that is an interesting point. It is probably not the time of day to spend too much time considering that point but, nevertheless, as a result of extensive discussions between the Hon. Mr Gilfillan and the Government we now have this outcome. Incidentally, I will take this opportunity to speak to all the clauses so that I will not have to get up again. Given that agreement has been reached between the Government and the other Parties, the Opposition clearly does not have the numbers so we will not be calling for a division.

I make the point that we now have two committees, including one which will be a paid committee. The Attorney-General told us that it would have been inappropriate and troublesome for this to go to the Economic and Finance Committee. I find it rather curious that it should be troublesome and inappropriate for something as basic as a levy, which affects nearly every taxpayer in the State, to go to a parliamentary committee for scrutiny. I would have thought that was absolutely the appropriate body to consider such matters. That is what we have got, like it or not.

When the ratepayers of South Australia get this levy in the post on 1 July next year, it will be up to them to judge what they think of this levy and the form in which it comes. It now owes nothing at all to any suggestions which the Opposition has made, so the people of this State will make their own judgment on it.

The Hon. T. CROTHERS: Now that the taxpayers of the State are funding the emergency services, should a fire brigade arrive late and as a consequence a house or business premises burns down, does the fact that this levy now exists pave the way for litigation in respect of people being able to sue for damages caused by the late arrival of whatever particular emergency service is involved?

The Hon. K.T. GRIFFIN: The answer is, 'No.'

New Part inserted.

Clauses 4 to 8 passed.

Clause 9.

The Hon. IAN GILFILLAN: I move:

Page 8, lines 8 to 11—Leave our subclauses (4) and (5) and insert:

(4) The Minister must, before making a recommendation to the Governor under subsection (1) determine—

(a) the amount that, in the Minister's opinion, needs to be raised by means of the levy under this Division to fund emergency services in the relevant financial year; and

(b) the amounts to be expended in that financial year for various kinds of emergency services and the other purposes referred to in section 27(4); and

(c) as far as practicable, the extent to which the various parts of the State will benefit from the application of that amount.

(5) Before making a recommendation to the Governor under subsection (1) as to the amount of the levy and the values of the area factors and the land use factors to be included in the notice published under that subsection and before making the determinations under subsection (4) the Minister must consult and consider the advice (which must be in writing) of the Emergency Services Funding Advisory Committee.

(5a) A notice published under subsection (1) must—

(a) include a statement of the amount determined by the Minister under subsection (4)(a); and

(b) include a description of the method used in determining that amount; and

(c) where the Minister did not follow the advice of the Emergency Services Funding Advisory Committee referred to in subsection (5) in making one or more of the determinations under subsection (4) or in his or her recommendation to the Governor as to the amount of the levy or the values of the area factors or the land use factors—include the advice or that part of the advice of the Committee referred to in subsection (5) that relates to the matter or matters on which the Committee's advice was not followed and the Minister's reasons for not following that advice.

(5b) The Minister must, as soon as practicable after the publication of a notice under subsection (1), cause a copy of the notice and the Committee's advice referred to in subsection (5) to be laid before both Houses of Parliament.

I indicate that it was, quite genuinely, an explanation of how this committee could work which persuaded the Government that this was a better course. In this amendment there is the requirement for reporting to Parliament of not only the advice where the Minister has a disagreement but also the advice given by this committee on which the Minister has reflected in his or her judgment. So, subclause (5b) will be the best safeguard for the Parliament and the public of South Australia to know whether the Government and the Minister of the day are distorting or abusing the authority and the power to determine the levy, the method of its collection and the means of its expenditure.

I am as content as I can be that in this legislation we now have the best safeguard to prevent abuse occurring, without taking away from the Minister the authority to make the decision at the end of the day. I commend the amendment to the Council.

The Hon. K.T. GRIFFIN: I indicate support for the amendment, which clarifies the role of the new funding advisory committee to ensure that the processes are transparent.

Amendment carried; clause as amended passed.

Clause 10.

The Hon. K.T. GRIFFIN: I move:

Page 8, line 26—Leave out '20 per cent' and insert:
11 per cent
Page 9—After line 4 insert:
(5) This section expires on 30 June 2002.

The Bill as it passed through the first run through the Committee ended up with a figure of 20 per cent in clause 10 as the liability of the Crown. It is important to recognise that this clause provides that the Crown is exempt from paying the levy for a financial year, in respect of the land referred to in subsection (2), which deals with certain Crown lands, if it pays into the Community Emergency Services Fund in respect of that year an amount that is equivalent to 10 per cent (as amended)—it was 20 per cent—of the amount determined by the Minister under section 9(4) for that year, that is, the total amount of the fund.

There has been a great deal of discussion about whether the figure should be 20 per cent, 12.5 per cent, 10 per cent or some other figure. In the end, this will be important for the next two or three years whilst the Government is undertaking evaluation of its property upon which the levy may then be more appropriately based. This is designed to be transitional and to ensure that there is a fair and equitable contribution by Government without all the hassles of dealing with land which is presently not valued and properly recorded.

The final figure that I believe is appropriate is 11 per cent. That is an additional $1 million cost to the Government and thus the whole of the taxpayers of South Australia; it is $1 million less which the property owners around the State will have to contribute through the levy to the emergency services, but, in the end, I think that is a reasonable compromise.

I indicate that the second amendment provides for this section to expire three years after the Act comes into operation, namely, 30 June 2002. I can indicate that the Government will be diligently endeavouring to value its property and, if the valuation is completed before that time—

The Hon. P. Holloway: You try to undervalue it now.

The Hon. K.T. GRIFFIN: Well, the Valuer-General will have that responsibility and, quite obviously, under the amendments we passed last week or the week before, he cannot be subject to direction. So, there are some safeguards against pressure by the Government to undervalue a property. However, I return to the point that the sunset clause will apply. If the Government's valuation of its property is concluded before the expiration of three years after the legislation comes into effect, it will use its best endeavours to have its property rated according to the complete valuation.

The Hon. IAN GILFILLAN: I move:

Page 8, line 27—Leave out 'section 9(4)' and insert:
section 9(4)(a)

This is a consequential amendment. The actual amount of the percentage for the levy is really a stop gap until the Government's assets are valued, because that is the principle which the Bill is espousing, namely, that people, including corporate entities, councils and Government, will pay the levy at a rate based on the capital value of their assets. As it has been an extraordinarily long time, even until now, and the valuation is not complete (and I am not sure whether a Valuer-General has been appointed)—

The Hon. K.T. Griffin: I have no idea.

The Hon. IAN GILFILLAN: It is a bit much to expect Deputies and Acting Valuers-General to do it but, if that is completed, with the sunset clause the Government at least will be obliged to pay the rate, the same as any other property owner in this State. It is difficult to get, from the figures that I have been shown, a reliable estimate of what percentage the Government has been paying. I do not think any other member in this place has made available really reliable

calculations as to the exact percentage. It appeared to the LGA that it was around 12.5 per cent—and that is what we would have an argued for—but I think that 11 per cent is a reasonable compromise. At least it is a little more than the 10 per cent. I support the amendment.

The Hon. K. T. Griffin's amendments carried; the Hon. Ian Gilfillan's amendment carried; clause as amended passed.

Clauses 11 to 26 passed.

Clause 26A.

The Hon. IAN GILFILLAN: I move:

Page 16—Leave out this clause.

I move the deletion of this clause. This is consequential in so far as it deletes the procedure that we put in to refer matters to the Economic and Finance Committee. That is no longer supported by the Committee and has been replaced with the procedure that was the subject of my earlier amendments.

The Hon. K.T. GRIFFIN: The Government supports this amendment.

Amendment carried; clause negatived.

Clause 27 passed.

Clause 27A.

The Hon. IAN GILFILLAN: I move:

Page 17—Leave out this clause.

I have the same justification for this as for the last amendment.

The Hon. K.T. GRIFFIN: We support this.

Amendment carried; clause negatived.

Remaining clauses (28 to 32), schedules and title passed.

Bill read a third time and passed.

CONSTITUTION (PROMOTION OF GOVERNMENT BILLS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1689.)

The Hon. R.I. LUCAS (Treasurer): Before we adjourned this debate to consider the Emergency Services Funding Bill, I highlighted the problems in relation to the Bill as it would apply to the Appropriation Bill. I highlighted concerns potentially in relation to individual Bills that the Parliament might adjourn for further consideration or discussion, whether it be by way of select committee or further gathering of evidence and information.

I want to highlight a third category of Bills or issues. The best examples I could give is the legislation that the Bannon Government introduced in relation to the MFP, the Roxby Downs legislation, which was originally introduced by the Tonkin Government in 1979 to 1982 and, potentially, the legislation entered into by the Bannon Government regarding what was known as the Ophix development at Wilpena. All three are examples of significant and in many respects controversial issues of a development nature.

The Roxby Downs legislation involved a decision and vote ultimately by the Parliament on an indenture for Roxby Downs. The MFP debate was an interesting one because of the huge controversy at the time. My recollection is that, prior to the passage of legislation in the Parliament, a significant sum was spent by the Government of the time in managing the communications message, because there was a huge scare campaign mounted by opponents of the MFP. The Japanese were going to come down from the north of Australia to take over and a number of people, including some fringe dwellers in the South Australian community, had taken a position that in some way the MFP was something to be feared. That may or may not have been true in the end, but that was what those groups were concerned about at the time.

I remember attending a number of functions: public meetings were held and international and national speakers were invited. I remember attending a big function in the Port Adelaide area attended by hundreds of people, during a televised event with invited speakers, at which the fears of the opponents of the MFP in that area were to be placated. My recollection was that advertising was undertaken by the then Bannon Government not only to highlight the meeting but to seek to placate the concerns, and in some respects the unreasonable concerns, of some people about that project and also, just as this Bill refers to a Government Bill or its underlying policy, the subsequent legislation which related to the MFP.

Again, time has not permitted me to refresh my memory, but I recall in general terms the nature of the debate on the Ophix development in Wilpena. The Bannon Government was anxious for a major tourism development. I have a clear recollection that public relations companies were employed and that communications tasks were given to people. Advertising material was produced and disseminated to try to placate what the Government of the day—in this case it was the Labor Government—saw as unreasonable—

The Hon. P. Holloway: Was it money well spent?

The Hon. R.I. LUCAS: I am not sure. The Hon. Mr Holloway will have to make a judgment about that.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That was not a view you were putting at the time. There were unreasonable concerns by some who the Government of the day believed were opposing the Ophix development in Wilpena. I recall attending a number of briefing sessions where paid consultants, working on behalf of the Bannon Government, were paid to communicate the message in relation to the importance of the development.

Printed advertising material was circulated to members of Parliament, journalists and the community in general. I have no criticism of that. It was a difficult and controversial issue. I happened to be one member of Parliament who tried to support the Bannon Government in that development. In my judgment and in the view of the Bannon Government some unreasonable scare tactics were used by opponents of that development.

The Government took the decision that printed advertising material should be made available to the broader community, members of Parliament and others. Under this legislation, that sort of action would not be allowable because the underlying policy of the Government's legislation which had to be considered by the Parliament would not have been passed and either it would have had to be prevented or, again—and this is where we come back to clause 10B(1)(a) of the Bill—we would have to ascertain from the Hon. Mr Xenophon what the nature and extent of the advertising campaign would be, and we would need to have a vote of approval of a majority of both Houses of Parliament before we could proceed.

I am aware of another significant development which is awaiting Government legislation and which is likely to be controversial. This issue will probably become apparent before October. So, when we reconvene in the Committee stages in October, we should be able to talk about it in detail. The Government is already considering a communication strategy to try to allay the concerns of local residents and the sorts of groups who would oppose this type of development.

A range of communications messages are already being contemplated including, at the very least, advertising in a printed form, whether that be by way of leaflets or printed advertisements.

I have been able to quickly highlight half a dozen examples of where Governments, such as the Bannon Labor Government and the current Liberal Government, have, in my judgment, properly taken a decision that information should be shared with the constituents of South Australia about a particular policy and/or piece of Government legislation. This Bill strikes at the very heart of being able to provide that sort of information to our constituents in South Australia.

When we resume this Bill in the Committee stages in October, I will be able to provide more detail because I will have had a couple of more months to go through my memory bank of the past 16 to 18 years and give members some other examples of Labor Governments that have used advertising material prior to the passage of legislation. I am sure that the Hon. Terry Cameron with his elephantine memory will be able to assist with that task as will a number of other members.

As I have said, when we come to the Committee stage of this Bill in October I am sure that I will be able to provide some further examples for the Hon. Mr Xenophon of where I think this would be unreasonable, should it be passed, in terms of being able to inform voters of major projects and developments which are inextricably tied up with Government legislation.

As to the final two issues I want to raise—and it will be a Committee debate—the public authority definition refers to a publicly funded body. My understanding of that is that it refers to any body or organisation which receives even a small amount of funding—grant funded organisations, for example. For example, I can think of what would be seen to be independent associations such as SACOSS, the Farmers Federation, SACOTA, the Youth Affairs Council and a range of others, where I should imagine some of those may well be funded by their own fee and income that they generate, but might only have a very small component of their funding being provided by the State Government as a publicly funded body.

We will need to explore in some detail how broad the definition of this publicly funded body will be, and which bodies would be prevented also from circulating information about a Government Bill or an underlying policy. If, for example, the Chamber of Commerce had received some funding from the Government to manage a service or a scheme, yet 95 per cent of its funding is from its own sources, is it to be defined as a publicly funded body and, if so, would it be prevented from actually spending its own money in an advertising campaign on a Government Bill, such as the budget, the electricity Bill, Wilpena, Roxby Downs or something like that?

An honourable member interjecting:

The Hon. R.I. LUCAS: I am a suspicious person, and I wonder whether the Hon. Mr Xenophon is being very clever in his drafting of this to try to prevent a whole range of independent bodies from being able to express a view on Government legislation through this particular cleverly drafted clause in his definition. We will need to explore that with the honourable member.

The final point I want to make refers to the matter to which I object most strenuously. I have made the point publicly and have discussed it with the honourable member, but I am disappointed in his response. This Bill seeks to prevent the Government from spending taxpayers' money on a Bill or policy, yet it is specifically drafted to allow each of the 20 or so Labor Party members in the Lower House to receive a global allowance of over $20 000, which means they have almost $500 000 of expenditure. This clause has been cleverly drafted to allow the Labor Party to do what it has been doing in relation to the budget.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It has. I have copies of the newsletters where it attacks the Appropriation Bill, or the budget, prior to the passage of the budget, using the global allowance, and this provision has been drafted so as to allow those particular—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, this provision will allow taxpayers' funds to be used by the Labor Party, and all of the $100 000 or $200 000 or whatever Mike Rann gets in his office could be used to attack in an advertising campaign, through printed leaflets, brochures and paid advertising in the *Advertiser* and the Messenger if they so chose a Government Bill or legislation when the Government's hands would be tied at the same time.

An honourable member interjecting:

The Hon. R.I. LUCAS: Mr Michael Atkinson is indeed exactly that example, where the global allowance has been used to attack a particular issue. The same point can be made about the Australian Democrats who are provided with relatively generous funding by this Government which they are able to use for photocopies. I will give one example before I conclude, and I will take up this issue in the Committee stage of the debate.

For the ETSA campaign this Bill would have stopped the Government from producing printed materials to put out its side of the message, yet the Australian Democrats were able to print using taxpayer funded photocopiers and taxpayer funded stationary and other materials to produce leaflets and materials which they then distributed not only to the media but to a large newspaper of other groups and individuals to highlight their opposition, in an advertising sense, to the ETSA Bill currently before the Parliament. It is grossly unfair for this Bill to be directed solely at the Government, yet at the same time—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: If the principle is that taxpayers' money should not be used to support this Bill—and that is the principle—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: But that is not the principle. The principle that the Hon. Mr Xenophon is pushing and you are supporting is that you should not use taxpayers' money prior to a Bill's being passed to support that Bill. If the principle says that you should not be able to use it to support it, the principle should be the same in the alternate way.

I will wrap up on that basis and indicate that the Government will support the second reading of this Bill. Generally we support the opportunity of getting into Committee to explore that stage of a Bill. I understand that the Hon. Mr Xenophon, being the reasonable legislator that he is generally, will consider amendments to his legislation, and I will be happy to engage in what I hope will be fruitful and productive discussion between now and October to see whether it can be marginally improved. I suspect that the Government's position, unless there are significant amendments, will remain as opposing the third reading because it strikes at one of the fundamentals of our democracy, namely,

the ability of Governments to be able to get a message to the constituents in South Australia about important developments, Bills and pieces of legislation.

The Hon. NICK XENOPHON: I thank the Treasurer for concluding. I take on board some of the remarks made by the Treasurer, some of which may well have some merit but others that appear to be entirely factious. Given that it is 2.23 a.m., I do not propose to unnecessarily restate my position. I do not resile from matters raised in the second reading. I thank the Hon. Mike Elliott and the Opposition for their support for this Bill. I understand they are interested in supporting the third reading. In the circumstances and given the hour, I propose to deal with the matters raised by the Treasurer in Committee in due course. I seek an undertaking from the Treasurer to enter into constructive discussions with me over the next few weeks.

The Hon. R.I. Lucas: As always.

The Hon. NICK XENOPHON: I note that the Treasurer said that 'as always' he will enter constructive discussions with me in relation to this Bill and I will hold him to that over the next few weeks. I commend the Bill.

Bill read a second time.

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the alternative amendment made by the Legislative Council without any amendment.

POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the Bill without any amendment.

PASTORAL LAND MANAGEMENT AND CONSERVATION (BOARD PROCEDURES, RENT, ETC.) AMENDMENT BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

EMERGENCY SERVICES FUNDING BILL

The House of Assembly agreed to the suggested amendments made by Legislative Council without any amendment.

ADJOURNMENT

At 2.43 a.m. the Council adjourned until Wednesday 2 September at 2.15 p.m.