LEGISLATIVE COUNCIL

Thursday 18 July 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

TEEN CHALLENGE SA INC.

A petition signed by 49 residents of South Australia concerning Teen Challenge SA Inc. and praying that this council will:

1. Amend the Retail and Commercial Leases Act 1995 so as to limit the circumstances in which landlords may claim additional rent, not previously claimed, where to do so is unfair or unreasonable in all the circumstances of the particular case, if the demand is not made within 12 months.

2. Alternatively, urge the state government to provide financial support to Teen Challenge SA Inc. in relation to the claim made by the landlord,

was presented by the Hon. A.L. Evans

Petition received.

RECONCILIATION FERRY

A petition signed by 15 residents of South Australia concerning a proposal for a reconciliation ferry and praying that this council will provide its full support to the ferry relocation proposal; prioritise the ferry service on its merits as a transport, tourism, reconciliation, regional development and employment project; and call for the urgent support of the Premier requesting that he engage, as soon as possible, in discussions with the Ngarrindjeri community to see this exciting and creative initiative become reality, was presented by the Hon. Sandra Kanck.

Petition received.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Agriculture, Food and Fisheries (Hon. P. Holloway)—

South Australian Superannuation Scheme—Actuarial Report 30 June 2001.

INDUSTRIAL MANSLAUGHTER

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to industrial manslaughter made by the Attorney-General, the Hon. Mr Atkinson, in another place.

PARLIAMENTARY PRIVILEGE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to parliamentary privilege made by the Attorney-General, the Hon. Mr Atkinson, in another place.

ADELAIDE AIRPORT

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a ministerial statement made by the Premier in another place on Adelaide Airport redevelopment.

QUESTION TIME

REGIONAL CRIME PREVENTION

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about regional crime prevention.

Leave granted.

The Hon. R.D. LAWSON: In a news release issued by the Hon. Terry Roberts as Minister for Regional Affairs and the Premier on 11 July under the heading 'State budget will build positive futures for regional South Australia' there appeared a list of regional highlights, including the following:

> New or expanded regional initiatives designed to promote economic growth and encourage more positive futures for all communities.

Amongst the many measures was one described in this manner:

> $500 000 to support Crime Prevention Committees in six regional service centres to focus on problem-solving approaches to local crime issues. Committees will be funded in Port Lincoln, Whyalla, Mount Gambier, Port Augusta, Port Pirie and Murray Bridge.

Subsequently, on 15 July the Treasurer issued a media release entitled 'Correction to Regional Statement', which refers to the $500 000 to be allocated to those six regional centres, and the Treasurer said:

> This money has not been allocated.

He goes on to say:

> However, $600 000 has been allocated across the whole state for the local crime prevention program.

What he did not say was that not only was the $500 000 not allocated but also $800 000 previously allocated to this program had been cut and the existing local crime prevention committees in Port Lincoln, Whyalla, Mount Gambier, Port Augusta, Port Pirie and Murray Bridge are to be cancelled—axed!

This crime prevention initiative resulted from an agreement entered into last year between the state government and local government and was to run for a period of three years, $1.4 million being allocated each year. The program has been established in a large number of municipalities and country regions across South Australia. It has been highly successful in addressing local community needs and in galvanising support from local volunteer communities as well as local government, local police, service clubs and traders. In each of the places where the program has been established, a regional coordinator has been appointed. There were 18 regional coordinators appointed. They have all been told that their services will no longer be required, only one year into a three year program.

Many of these programs have received national awards; the one in Murray Bridge in particular received a national award for its coordination with local volunteers. The Junction Express youth hospitality training restaurant in Port Pirie, which restaurant no doubt you have visited, Mr President, and the Peterborough Horticulture Centre are other developments run by the local crime prevention committee in the Port Pirie region. Indeed, in Port Pirie alone they have not only the crime coordinator but also 24 or 25 people on their payroll. For instance, there are three graffiti removalists and there are other positions. The results of this decision of the govern-

ment, quite contrary to its budget announcement, will in the end impact upon 25 people in Port Pirie alone. My questions to the Minister for Regional Affairs are as follows:

1. Was any regional impact statement undertaken before this decision was made?

2. Was any consultation undertaken with any local community in relation to this matter?

3. Will the minister ascertain from the Attorney-General why on Friday of last week, when he was in Port Lincoln at the launch of a victim support service at which many of the people involved in the local crime prevention committee were present, he failed to mention the fact that their program in Port Lincoln was to be axed?

4. What steps will the Minister for Regional Affairs take to ensure that if decisions of this kind are made in the future they will be taken only after consultation with local communities?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I accept the very important questions from the honourable member in relation to crime prevention in regional areas, regional impact statements and consultation. I have to pass on to the Attorney-General in another place the bulk of the specific questions in relation to his budget responsibilities. In relation to consultation and crime prevention strategies generally within communities, even though the budget allocation for the crime prevention programs has been removed, work is still being done within communities to put together crime prevention projects. I will refer those questions to the Attorney-General in another place. No regional impact statement has been done on the impact of the removal of that funding, but consultations will be carried out in relation to how to soften the impact of that budget measure.

The Hon. DIANA LAIDLAW: As a supplementary question: I ask the minister also to advise or gain advice on whether a crime impact statement or assessment was made in relation to this budget decision.

The Hon. T.G. ROBERTS: I will refer that question to the minister in another place and bring back a reply.

HOTELS, TAXATION

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government in the council, representing the Treasurer, a question about broken promises.

Leave granted.

The Hon. R.I. LUCAS: As members would be aware, on 26 January this year the now Treasurer, the member for Port Adelaide, wrote a letter to the Australian Hotels Association making specific commitments in relation to not increasing taxation levels on gaming machines, should the Labor Party be elected to government. That was some two weeks or so prior to the state election. I have been provided with some information from within senior sections of the Labor Party as to the background of that letter being written. I understand that Mr Ian Hunter had discussions with the member for Port Adelaide, Mr Foley, indicating that fundraising from the AHA and its members was being inhibited by the lack of a clear indication of a Labor Party commitment in relation to gaming machine taxation. I am advised that Mr Hunter informed Mr Foley that the AHA required a letter and a specific commitment one way or another from Mr Foley, Mr Rann and the Labor Party in relation to gaming machine taxation. I am also informed that Mr Hunter advised Mr Foley that, if such a promise could be made, the ALP and its candidates would receive significant donations from the Australian Hotels Association and its members for the election campaign.

When the letter was received I understand that it was discussed at AHA council meetings and that a number of members asked for a further meeting. I am advised that the member for Port Adelaide, Mr Foley, was not happy that his letter was not sufficient for the AHA and that such a face-to-face meeting was required. I am advised that Mr Hunter impressed upon Mr Foley the importance of having such a meeting with the AHA.

The Hon. A.J. Redford: Do you have one, two or three sources for this?

The Hon. R.I. LUCAS: A number of sources.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas has already had enough help.

The Hon. R.I. LUCAS: I understand that Mr Foley then met with representatives of the AHA at South Terrace and I also understand, although I have not been able to confirm with a second source, that Mr Hunter was present at that meeting and that Mr Foley provided confirmation to the Australian Hotels Association representatives of the commitment that he had made in writing.

I have also been advised that the total contributions from the Australian Hotels Association and its constituent members—individual hoteliers—to individual candidates was greater than $100 000 and they were significantly impacted on by the promise that the Australian Labor Party, Mr Foley in particular, made to the Australian Hotels Association. I understand that those contributions came in a number of forms: direct donation; individual donations from hoteliers to marginal seat Labor Party candidates; and occasions where Mr Foley, on one occasion, and other shadow ministers had small fundraising lunches and dinners which members of the AHA were asked to attend and made contributions to those occasions. My questions to the Leader of the Government, for the Treasurer, are:

1. Did the Treasurer involve himself in the raising of funds by attending such small fundraising functions with AHA members and, in particular, did he repeat the commitment that he made in his letter and in the face-to-face meeting with AHA representatives?

The Hon. T.G. Cameron: Were there any $500 a plate dinners?

The Hon. R.I. LUCAS: The Hon. Mr Cameron has some knowledge of these matters. My questions continue:

2. Given that the AHA and its members donated more than $100 000 and that those donations to the Labor Party and its candidates were significantly influenced by Mr Foley's promise not to increase taxation, does the Treasurer accept that the ALP has received money under false pretences?

3. Given that the Treasurer has now broken this promise, will he request the State Secretary of the Labor Party to return the money to the AHA and its members?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The Leader of the Opposition has made a series of allegations about a matter that I have no knowledge of. I will, however, make one comment in relation to his latter allegations. Supposing those allegations were true, is he then suggesting that money was allocated under false pretences? If that is true, it shows that the policies of the Australian Labor Party are not for sale.

The Hon. A.J. REDFORD: As a supplementary question: in the light of the minister's last answer, were policies for sale during the course of the election campaign?

The PRESIDENT: I do not think there is any change in status.

REGIONAL IMPACT STATEMENTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about regional impact statements.

Leave granted.

The Hon. CAROLINE SCHAEFER: I quote from a ministerial statement issued by the minister on 28 May, which says:

> The Hon. Caroline Schaefer asked me a question about regional impact statements. Regional impact statements were introduced by this government to ensure that cabinet process has regard to the impact of government decisions on country communities. Regional impact statements are not made public as they are a formal part of cabinet submissions. There is, however, a commitment to a consultation process which will ensure that there is necessary public input.

Yesterday, I asked the minister whether a regional impact statement was prepared prior to the horrendous rises in crown lease payments in this budget. He said that there had not been. I have now asked three times on three separate subjects whether a regional impact statement had been prepared. Each time the answer has been no. I know that other members on this side have asked similar questions. Given his commitment to consultation, it would appear that no regional impact statements have been prepared. My questions are:

1. Have any regional impact statements been prepared for cabinet?

2. If so, on what subject?

3. If not, has cabinet broken another promise to regional South Australia?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for her question—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —because the matter needs to be clarified. As I have previously explained in this council, regional impact statements on government spending cuts are matters for cabinet to discuss and to determine as to how those impact statements are approached and the way negotiations and consultation are approached.

The government does have some control over the timing of those statements and the way they are presented to communities and some control over the way the funding is spent, allocated or withdrawn as a budget strategy. In those cases, we can be condemned if we do not follow through on the consultation process and a regional impact statement on how it impacts on those communities.

The Hon. Caroline Schaefer: You are condemned.

The Hon. T.G. ROBERTS: We can be condemned if we do not carry out our responsibilities in relation to that. If cabinet decides that a regional impact statement is necessary, in conjunction with policy development or a financial program, and it does not happen, we stand condemned. If there is a situation where the private sector is involved and changes to legislation impact on regional communities, that decision will be made on a case by case basis by the cabinet as to how that will be—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I suspect that that may be how the opposition sees it. In relation to the budget papers, budget statements will be presented as a way of explaining how the budget spending programs will be applied. Therein lies the confusion. There is no one single principle for a protocol to measure the impact on regional communities. It will be a decision for government and cabinet. Hopefully, the matter will be made a little clearer, and the commitment that the government has made to regional communities will be maintained.

It appears that there is panic in the opposition's ranks in relation to the good work that this government has done for regional communities in the short time that it has been in power. A fight-back strategy is being prepared by the opposition in relation to what it views as its natural constituency. Just as the Labor Party lost a lot of blue-collar support in the 1980s and 1990s through restructuring, through commonwealth government decisions, it appears that rural people in South Australia are starting to embrace the new Labor government and the way in which it has presented its strategies. The negatives that have been highlighted by way of questioning in this council since the budget, in particular, have been circulated widely. I note that—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —talkback radio is full of shadow ministers trying to get their message across about the negatives associated with the budget cuts, and this is, in part, testing the government's political will. The government has set up a whole range of initiatives to engage regional communities around regional development, and it has had some successes, some of which can be measured. In relation to the budget, some new investment strategies have been put in place and have been confirmed since we set up our new consultation processes for regional development via the Treasurer and the Premier's department.

The government's commitment of $2.2 million over four years to create an Office of Regional Affairs, combining the resources of the Office of Regional Development and the former Regional Business Services Unit, has been welcomed, as has the $5.5 million for the Regional Development Infrastructure Fund. For those who know about that fund, more money had been allocated but had not been spent by the previous government, and that will be made available for the Regional Development Infrastructure Fund during the life of this government. An amount of $25 million has been allocated for the third stage of the state's $150 million contribution to the construction of the Adelaide-Darwin Railway link.

Members interjecting:

The Hon. T.G. ROBERTS: They have to be initiatives carried on—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I am not sure whether the opposition knows this, but when a government changes—

The PRESIDENT: Order! Members of the opposition will cease to be amused.

An honourable member interjecting:

The PRESIDENT: Order! There is too much of it.

The Hon. T.G. ROBERTS: The new government has to pick up many of the—

Members interjecting:

The PRESIDENT: Order! There is too much noise coming out of the incorrigible corner over there.

The Hon. A.J. Redford: Go on, blame Roxby Downs!

The PRESIDENT: Order, the Hon. Mr Redford!

The Hon. T.G. ROBERTS: Just as a government makes a decision to pick up those initiatives, how could it stop or block the changes that have been made to the Adelaide-Darwin railway line? They have to be picked up. It is commonsense. Just as the new government has picked up many of the policies the former government had put in place, its initiatives can change direction in relation to some of the policy development, and that is the government's prerogative—it has the prerogative to change, and it has done so.

There are a number of other policy developments in the area of regional networking that this government has put together, and the proof will be in the pudding. If the opposition wants to go out into the regional areas and construct stories about how badly we are doing in the conduct of regional affairs, and aggregating the cuts occurring within some sections of the budget, they have to look at the sections of the budget providing funding programs for regional areas and also look at the new structures the government is putting together to make sure there is contact and consultation with communities at an important level, that is, government regional development, and with local communities programming being put together so that those consultation processes can be integrated.

If in six months the criticism coming from the regional areas is that we are neglecting them and are coming to a point where the regions are not able to thrive, then I will expect some criticism from the opposition. However, in the early stages of the budget strategy and the changed nature of our policies as opposed to what was happening before, there are no major revolutionary changes—we all know that. State governments do not have a lot of tools at their disposal or a wide tax base from which to get new tax funding initiatives. Oppositions know that and I know the role you have to play to try to undermine any initiatives we might put in place to embrace regional people. We will be setting up those consultation processes and engaging people, hopefully in the next period, and we will have the confidence of regional people that this government will be governing in the interests of all South Australians.

The Hon. CAROLINE SCHAEFER: By way of supplementary question, does that mean that this government will consult with the regional people after it has brought in savage budgetary cuts?

The Hon. T.G. ROBERTS: I hardly think the budget cuts in relation to my own portfolio reflect the savagery of cuts that could have been made to overcome some of the difficulties we found with the budget framing as a result of circumstances left by the previous government. There have been no savage budget cuts but rather increases in a wide range of areas in relation to regional affairs—

The Hon. Caroline Schaefer: In crown leases, too.

The Hon. T.G. ROBERTS: The honourable member points out that there have been changes in the formation and the way in which those leases are being looked at, but that will be subject to the scrutiny of a standing committee, which hopefully will provide an impact statement, look at it on a case by case basis and take evidence from the people with anomalous situations that may need to be dealt with.The government is wide open to suggestions on that.

ADELAIDE WOMEN'S PRISON

The Hon. G.E. GAGO: I seek leave to make a brief statement before asking the Minister for Correctional services a question about the Adelaide Women's Prison.

Leave granted.

The Hon. G.E. GAGO: Reference has been made to psychological services provided to the women's prison. This is a matter of concern to me. Will the minister outline whether funding for two psychologists for the Adelaide Women's Prison has been cut in this budget?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for her question. I know the interest that the Hon. Gail Gago has taken not only in government but also as a member of the party: she is interested in psychiatric services in the women's prison area. The circumstances that face women in the women's prison in relation to psychological services have not impacted adversely on the service provisioning there. As I said earlier this week, I will check with the department in relation to questions asked by the shadow minister. I have asked for a report on how the budget has impacted on the women's prison in particular. My department has been informed that all existing services provided at the women's prison are planned for and budgeted to continue at existing levels, including the provision of two part-time psychologists. It is true that we have had to make some hard decisions in relation to correctional services. As I have said previously, after eight years of the previous government, the correctional services system was left in a perilous state—

The Hon. A.J. Redford: So, what did you do? You cut it.

The Hon. T.G. ROBERTS: The previous government ignored years of advice from the department to increase—

Members interjecting:

The PRESIDENT: Order! This is not talkback radio.

Members interjecting:

The PRESIDENT: Order! The minister has the floor.

The Hon. A.J. Redford interjecting:

The PRESIDENT: The Hon. Mr Redford will come to order!

The Hon. T.G. ROBERTS: The statement said that there was no change to the psychological services of the women's prison. The previous government ignored the situation in relation to prisons. In fact, when I took over the prison system, the first report I was given was that we had fewer than 50 spare beds in the whole prison system due to the fact that there had been no allocations of funding for any increased bed capacity within the system. Now that presents problems in itself. Add to that the fact that service provisioning was under pressure in relation to a whole range of areas—pre-entry assessments and any treatment programs and exiting programs in prisons were all under pressure. Over time, governments, of all persuasions, have always had trouble finding extra funds for prison servicing, because the philosophical arguments about recidivism rates and the way in which you go about targeting your spending programs within and exiting prisons has always been a vexed question.

We have tried, as best as we can, to ensure that the current services are continued to ensure that there is no dangerous run-down of any of the service provisioning within the prison system, as well as putting together the provisioning for an extra 50 beds within the prison system—and I have said that on a number of occasions in this place. Money has been spent within the system and programs have been trimmed. We

regret having to do that, but to balance the books and the budget and, for me to have an increase in my allocation for revenue for bricks and mortar, the general budget allocation was for $4 million for capital works and $850 000 for the new medium security prison beds. It is a juggling act that we as a government had to do on finding what the situation was when we came to government.

The Hon. R.D. LAWSON: I have a supplementary question. Will the minister indicate to the council—on notice, of course—what number of psychological services were delivered to the Adelaide Women's Prison over the past 12 months and what number are budgeted for in the coming 12 months?

The Hon. T.G. ROBERTS: As the shadow minister indicates, I will have to take those questions on notice and bring back a reply.

AUSTRALIAN SOUTHERN RAIL

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Regional Affairs, representing the Minister for Transport, a question about the South-East rail network.

Leave granted.

The Hon. SANDRA KANCK: Members would be aware of the Democrats' strong support for the revitalisation of rail freight in the South-East, but recent developments have—

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: I am sure that is the case. Recent developments leave me very concerned. First, a little history. When Australian National was privatised Australian Southern Rail (ASR) took control of most rail freight services in Australia. However, there was a maximum two year lease agreement for the broad gauge lines in the South-East which had been isolated as a consequence of the standardisation of the Adelaide to Melbourne line. At the end of that two years, because ASR failed to develop the network, it had to hand it back to the state government, which announced a tender process to find a new operator. Having sat on the lines for two years without doing anything to rejuvenate them, lo and behold ASR tendered and won. There is considerable community support for reopening the railways in the South-East, but concerns have been raised by local government, business and the community over the choice of ASR as the preferred tenderer.

Auspine mill manager, Andrew Jakab, is quoted in the *Border Watch* of 21 June as saying that an essential requirement for rail access for their business was the construction of a spur to Tarpeena. But ASR's plans do not encompass this. Grant District Council chairman, Don Pegler, points out in the *Border Watch* that ASR's apparent plan to run just one train per week will attract minimal business to rail. It has also been revealed that the state government alone is footing the $10 million bill for track standardisation. Yet, on the basis of its business plan and conditional contracts from major regional industries, another tenderer was prepared to invest in excess of $12 million up front, with a further $24 million over the life of the project.

The ASR business plan apparently is based on reopening the intermodal terminal in Mount Gambier. When this facility was being operated by AN and K&S up to 1995 it generated insufficient traffic to cover train operating costs and certainly could not justify investment in track. ASR will be granted a seven-year moratorium on open access which means that no other rail operator will be permitted to invest in the region and develop the business. Mr President, that is the explanation and I am sorry but the questions will be longer than the explanation, so I beg your forbearance. My questions are:

1. Is the minister aware that objections being raised in the South-East media about the project are directed primarily at the choice of preferred tenderer and not the project itself?

2. Is the minister aware that the Grant District Council Chairman, Don Pegler, was quoted in the *Border Watch* as saying that he had 'no confidence whatsoever' in ASR's ability to provide a competitive service that will actually attract freight from road to rail?

3. Is the minister aware that Auspine General Manager, Adrian de Bruin, is also quoted in the *Border Watch* as being very critical of the fact that the preferred tenderer has no business strategy that will permit Auspine to commit any of its business to rail?

4. How does the minister respond to the Auspine mill manager's comment that, 'What Auspine is curious about is that other contenders for the rail proposal were prepared to put a spur line in to Tarpeena in order to facilitate the development of an industrial hub in this area'?

5. Is it correct that ASR will be making no up-front investment and that it will be the government which will provide all of the funding for the track standardisation and upgrade? If so, has the minister asked ASR executives why they have so little confidence in their own business plan that they are not prepared to commit any significant up-front funding?

6. With the government providing the full $10 million for the trackwork, and given the seven-year moratorium, what provisions are in place to ensure that ASR keeps its part of the bargain? If ASR walks away from the project before the time is up, what penalties will be exacted and how will they be enforced?

7. Given that another tenderer was prepared to put money in up-front, why was the opportunity to secure this private sector funding of $36 million rejected in favour of the taxpayer footing the bill?

8. Given that the report prepared for the Public Works Committee gave the go-ahead for the project on the basis of business projections of over 170 000 tonnes per year of intermodal and general freight, of which 145 000 tonnes was for Melbourne, Sydney and Brisbane markets, to what extent does the ASR business plan comply? To what extent does the ASR business plan propose to service any markets other than Adelaide?

9. Given that there will be no spur line to Tarpeena, and Auspine will therefore be prevented from being part of the freight load on this network, can the minister guarantee that the ASR business plan will generate the volume of rail traffic and provide the economic benefits that were anticipated in the Public Works Committee report and on which approval for government funding was secured?

10. Given the suggestion that the ASR proposal is for a once a week service, is the minister aware that another tenderer had secured support from local business and Pacific National to provide a five day per week service to all capital city destinations? If so, why was ASR the preferred tender?

11. Does the minister acknowledge that any business plan based on reopening the intermodal terminal is simplistic and that a much more sophisticated strategy to attract business to rail is required?

12. Given ASR's apparently flawed business plan and failure to commit money up-front to the project, does the

minister acknowledge that the seven year moratorium on competitors could be a particularly ill-advised course of action?

13. In view of the growing concerns being expressed over the choice of preferred tenderer, will the minister review the tender selection process, including consulting with representatives from local government, local business and the South-East community?

The PRESIDENT: Order! Before the minister answers that, I know you asked for my forbearance, which is legendary; but it is limited. I advise that the Democrats are off the question list for the rest of the day.

Members interjecting:

The Hon. M.J. Elliott: You can't do that. You cannot hold one member responsible for another member's actions, Mr President.

The PRESIDENT: Order! You are responsible for yours. I asked you to adjust them.

The Hon. Sandra Kanck: We start timing everybody else now, do we?

The Hon. Diana Laidlaw: We have been for some time.

The PRESIDENT: Order! My forbearance is being tortured.

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I will take those questions to the Minister for Transport and bring back a reply. However, as Minister for Regional Affairs I am aware of the article that was written in the *Border Watch*—there was quite a detailed argument put up for reconsideration, or at least joint consideration, of some of the programs being put together. It certainly appears to me that the suggestions have come too late, but I have not been part of the negotiating process.

There is also some criticism about not taking the spur line to Snuggery and Millicent. My understanding is that a lot of the additions to the principal contract are negotiations for future outcomes, as they were under the previous government. I think there were undertakings given and I know that you have some misgivings about the penalties for not being able to maintain those undertakings. I suspect that there will be further negotiations over a period of time and that there may be better outcomes than perhaps some people have speculated.

SELF-FUNDED RETIREES

The Hon. T.G. CAMERON: Thank you, Mr President. I wonder whether your ruling in regard to the Democrats also applies to the length of answers of some government ministers. However, I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Treasurer, questions about self-funded retirees.

Leave granted.

The Hon. T.G. CAMERON: South Australia's self-funding retirees are incensed that the Rann government has failed to honour an election promise to grant self-funded retirees a concession package currently available to holders of the commonwealth Seniors Card. Under an agreement with the former state Liberal government negotiated with the commonwealth, about 18 000 South Australian self-funded retirees who held a commonwealth Seniors Card were to receive a range of concessions which could have saved them up to $400 or $500 per year. Concessions included: electricity $70; water and sewerage rates $185; council rates $190; and motor vehicle registration $56. Pensioners would also have received a $20 increase in electricity concessions.

The federal government has already agreed that it will grant these concessions and that it will find 60 per cent of the money. I am informed that the package would have cost the state government about $1.5 million a year over four years, that is, $6 million in total. The Treasurer, Kevin Foley, is on the record in the *Advertiser* dated 16 July as saying that 'the package was a Liberal Party promise at the last election and we are under no obligation to support it, and we haven't.'

During the February state election the Labor Party told a different story when it gave unequivocal support for the measures. The Australian Independent Self-Funded Retirees Association wrote to every Labor candidate and Labor member asking them whether, if elected, 'you and your party support the extension of pensioner concession benefits to self-funded retirees'.

More than 25 of the Labor members and candidates replied that they would. On 29 January the then shadow treasurer stated, 'All government spending set out in the budget will be honoured by Labor.' This theme was repeated thereafter by Labor Party candidates and members throughout the election campaign. The Western Australian state Labor government recently honoured its agreement with regard to this matter, as has the ACT government. Not only has the Rann government dumped concessions without prior notice of intention or discussion with the self-funded retirees but they have also turned down the federal government's willingness to fund 60 per cent of the cost—a good deal, and one which I would have thought was attractive to a state treasurer. I am now informed that the independent self-funded retirees are currently taking legal advice as to whether they should launch a class action against the Rann government for induced breach of contract.

The Hon. A.J. Redford: They might win, with Mick Atkinson acting for the government.

The Hon. T.G. CAMERON: The Hon. Angus Redford, a lawyer of some note around town, indicates that they might win the case. I am sure that the self-funded retirees association will be fortified by that free legal opinion. My questions to the Treasurer are:

1. Why did the Rann government not consult with the independent self-funded retirees over its decision to break its pre-election promise before the decision was made?

2. Considering the promises made by the Labor Party before the state election and confirmed by more than 25 of the candidates in its questionnaire, will the government now honour its pre-election commitment to grant the concession package to the self-funded retirees?

3. How much will the government save over the next four years by breaking this promise?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): In fact, there was no broken promise. I think the Hon. Terry Cameron made quite clear that the new government said it would honour all benefits set out in the budget. I will refer the detail of the question to the Treasurer, and I am sure he will give a full reply.

The Hon. A.J. Redford: 'All government spending set out in the budget will be honoured by Labor.'

The Hon. P. HOLLOWAY: Yes, that is right; 'set out in the budget'. Obviously, these are matters for the Treasurer, and I will get him to give a full reply to this matter, but my understanding is that some additional promises were made by the former government over and above what had originally been provided.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, we know what is meant by 'put in the budget'. The previous Liberal government was very good at making promises with money it did not have; it had done it in a whole range of areas. It promised tens of hundreds of millions of dollars of money that it quite clearly did not have and was never likely to have. Some original promises were made in the budget 12 months ago. As I understand it, the Treasurer's commitment was that those promises would be honoured but that there was no commitment to new promises made by the former government with money that we did not have prior to the election. I will get the—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: What I do think is stupid is the Hon. Angus Redford, because he thinks the public is stupid.

The PRESIDENT: Order! Members are reminded to maintain the standards of the council, and there will be no more unparliamentary language. I do not think we need any further interjections on this answer.

The Hon. P. HOLLOWAY: I will refer the matter to the Treasurer and bring back his reply.

The Hon. T.G. CAMERON: As a supplementary question: did any of the more than 25 Labor members of parliament who replied that if elected they would support the extension of pensioner concession benefits to self-funded retirees raise this matter with the Treasurer in the Labor Party caucus?

The Hon. P. HOLLOWAY: I will not discuss what is raised in caucus and party meetings, and I think the honourable member would understand that. Again I make the point that it was my understanding of the situation that there was a quite clear distinction between what was promised and allowed for in the previous budget and what was promised by the former government prior to the election. I believe that candidates would have been aware of that distinction. I think that the words used by the new Treasurer make it quite clear that there was a distinction in that regard. However, I will get him to provide a full explanation, and I am sure that he will be pleased to do that.

The Hon. R.D. LAWSON: I have a supplementary question. Will the Treasurer indicate whether local crime prevention programs also fall within the description of programs in the budget?

The Hon. P. HOLLOWAY: I would ask that you rule that out of order, Mr President, because it is not supplementary in any way to the question about self-funded retirees.

The PRESIDENT: I ask the honourable member to repeat the question.

The Hon. R.D. LAWSON: The question was: will the Treasurer confirm that funding for local crime committees is in the budget, within the meaning in the minister's response? I have rephrased the question somewhat in my repeating of it, but you will recall, Mr President, that in the answer—

The PRESIDENT: A very short explanation.

The Hon. R.D. LAWSON: In the answer given by the minister, he drew the distinction between funded programs and programs that were 'in the budget'. I am simply asking in relation to this additional matter whether the same principle applies.

The Hon. P. HOLLOWAY: It is not supplementary to the original question.

The PRESIDENT: The principles involved are the same but, if the minister chooses not to field the question, he is entitled to do that.

CEDUNA KEYS AND CEDUNA COASTAL CENTRE

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about the Ceduna Keys and Ceduna Coastal Centre.

Leave granted.

The Hon. T.J. STEPHENS: The Ceduna Keys and Ceduna Coastal Centre is a concept that incorporates a marina, waterfront real estate and a coastal centre that highlights the unique local marine environment, an Aboriginal cultural centre, convention facilities and major fishing servicing facilities. The project will focus on the tourism potential, commercial and recreational fishing, whale watching, aquaculture, natural marine assets and unique Aboriginal culture and heritage of the area.

It is envisaged that this development will attract a large proportion of the currently untapped tourist market to Ceduna and the region. The South Australian Centre for Economic Studies last year estimated that over 240 000 tourists a year pass through the town. This would provide significant economic benefits and flow-ons to the region and would act as a catalyst for a much broader range of commercial and community activity. This is a large and significant project not only for Ceduna but for South Australia generally. The initial cost estimate of the infrastructure and the staging implications of the project is $36 million. My question to the minister is: has the government given the Ceduna Keys and Ceduna Coastal Centre major project status and, if not, why not?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I will refer that question to the relevant minister and bring back a reply, but I will say that as an opposition member I was briefed on the project and that, as described, the project will bring a lot of benefits to the region. If the questions concerning the environmental impact statement and the consultation processes between the Aboriginal people of the area, local government and the financiers are all pulled together and overcome, I am sure that the project will be a good one for the area. I suspect that the only problem will be the number of people who would avail themselves of the service provisioning that will be offered, and the marketplace will be the test for that. I will take the question to the Minister for Economic Development and bring back a reply.

SNAPPER FISHERY

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the snapper fishery.

Leave granted

The Hon. R.K. SNEATH: Since the year 2000 there has been a two-week closure of the snapper fishery in August and November each year. I am advised that this closure was introduced to protect fishing stocks following a dramatic decline in fish numbers that was identified by SARDI stock assessment reports in 1997 and 1999. Can the minister advise the council what steps the government has taken to protect the state's snapper fishery?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the Hon. Bob Sneath for his question. There has been a vigorous debate in the industry on

whether the biannual closure of the snapper fishery continues to be necessary, with arguments being raised about the current viability of the fishery and the reliability of the available data. However, following consultation with the Marine Scale Fish Fisheries Management Committee, I have decided that there will again be closures in August and November this year. This continues the initial decision of the fisheries management committee to support three years of closures from the year 2000.

I am sure all honourable members would appreciate the importance of snapper as a target fish not just for the commercial sector but also for the recreational sector. The reduction in fishing effort that will come about as a result of the closure will reduce the potential for over-fishing of snapper and build on the positive results of last year's closure to ensure the future sustainability of snapper stocks. Maximum protection can be given to the snapper by protecting the spawning fish in November, and an August closure further reduces pressure on the fishery and also enhances the equity of the closure for fishers who target snapper at a different time of the year.

It is important to note that the closures will have an equal impact on both commercial fishers and the recreational sector, and both are represented on the fisheries management committee. It is important that both groups that target this particularly important species of fish should be represented. There will now be a complete review of the effectiveness of the closures on the sustainability of the fishery. This review will be conducted by the fisheries management committee, and it will be submitted to me before I decide on whether to implement any closures for 2003 and, if so, in what form.

As I have said, the government will continue with the closures for this year. We will be reviewing the position so that we can ensure these important fish stocks that are vital not only for the marine scale commercial fishery but also for the recreational sector. There are many people who fish out of Whyalla and other ports on the West Coast who target snapper. So, it is clearly an important fishery for not only the economy of the towns in the region but also for the commercial sector. We will be reviewing the situation after the closures this year, and future action in relation to closures for this species will be determined as a result of that review.

SPEEDING OFFENCES

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, a question about excessive speeding.

Leave granted.

The Hon. DIANA LAIDLAW: I refer to the minister's road safety reforms released yesterday, in particular, the advice that it is part of a further package of reforms the government will consider introducing, such as:

- Severe increases in the penalties for speeding offences more than 35 km/h above the posted speed limit, including possible mandatory loss of licence.

For the benefit of the minister and all other honourable members, I highlight that last September the Labor Party supported amendments in this place to the Statutes Amendment (Road Safety Initiatives) Act 2001, introduced by the former Liberal government to create a new offence of excessive speeding. It provided that any speeding offence detected at 45 km/h above the speed limit would be deemed to be excessive, with the penalty set at a minimum of three months' licence disqualification.

The Liberal proposal took into account that in South Australia, unlike all other states, a 25 km/h limit applies at school crossings and zones and/or when vehicles pass roadworkers or emergency service workers. In all such instances a 45 km/h excessive speed represented a 70 km/h speed with the penalty being mandatory loss of licence. By contrast, Labor's new 35 km/h proposal would see all drivers automatically lose their licence if and when caught travelling at 60 km/h through a 25 km/h speed zone or crossing at schools when children are present, or past roadworkers or emergency service workers. I highlight that that 60 km/h speed is the normal speed limit, and not every motorist will see the signs, as honourable members from time to time have always reminded me.

So, Labor is proposing that if a motorist is driving at 60 km/h past a road worker and does not see the sign, or a school crossing and does not see the child, the motorist would incur an automatic loss of licence for a minimum of three months. I note that New South Wales, Victoria and the Northern Territory already apply—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Well, it is minimum sentencing. I note that New South Wales, Victoria and the Northern Territory already apply compulsory loss of licence for excessive speed. They have defined that excessive speed at 30 km/h above the above the posted limit. In all three instances, their speed limit at school zones is 45 km/h and, therefore, a driver would have to be travelling at 75 km/h through a speed zone to automatically lose their licence, not 60 km/h, as Labor is now proposing in South Australia.

My questions arise because Labor's 35 km/h excessive speed proposal appears to be excessive in its own right. In addition, Labor did not release a transport policy prior to the last election which would have given advance notice of its new zeal for road safety reform. My questions to the minister are:

1. Why has Labor now abandoned the definition of excessive speed being at 45 km/h above the posted speed limit with a mandatory loss of licence penalty, a measure which Labor supported in this place in September last year?

2. Why does the government now favour a lower limit of 35 km/h as the excessive speeding offence with loss of licence?

3. In proposing this new excessive speed limit of 35 km/h, is Labor also proposing to abandon its earlier support for a maximum speed limit at school crossings and zones and at sites where roadworkers and emergency workers are at work, proposals that on three separate occasions Labor supported in this place with the speed limit which it then accepted as suitable, that being 25 km/h maximum speed?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those important questions back to the Minister for Transport in another place and bring back a reply.

REPLIES TO QUESTIONS

LEGAL COSTS

In reply to **Hon. R.D. LAWSON** (14 May).

The Hon. T.G. ROBERTS: The Attorney-General has provided the following information:

It is my understanding that the Hon. R.D. Lawson has received correspondence dated 22 May, 2002 from His Honour Chief Justice Doyle with respect to providing a response to the question without notice asked on 14 May, 2002. As this information is of a statistical nature it is difficult for it to be incorporated into *Hansard*. If any member wishes to be furnished with a copy of the correspondence, I will be delighted to provide it.

CONSTITUTIONAL CONVENTION

In reply to **Hon. R.D. LAWSON:** (8 July).

The Hon. T.G. ROBERTS: The Attorney-General has provided the following information:

1. *Have any persons been appointed to the above positions?*

No one has been appointed to any of the positions.

2. *At what salary and other conditions?*

Whilst an overall budget has been allocated by cabinet, the salary and conditions for each position will be negotiated with successful applicants depending upon their skills and experience. All staff will be engaged pursuant to the Public Sector Management Act 1995.

3. *Who was responsible for the selection and what was the selection process for these appointments?*

Selection panels either have been or are currently being established for each of the positions. The selection panels include the speaker and other appropriate officers from within government. Interviews will be held for each of the positions. Selection of applicants will be based upon merit.

4. *Given that the successful applicants are to be employees of the justice portfolio, what executive or management oversight will the Minister for Justice exercise in relation to these employees?*

Minsters of the crown are not responsible for the management of PSM Act employees. Staff management is a statutory responsibility of the chief executive and authorised delegate. The staff will be employees of the Attorney-General's Department. They will be responsible to the director of Human Resources in the Attorney General's Department. They will be directed to work with the speaker on constitutional and parliamentary reform matters.

5. *From what budget line are these officers to be paid?*

A special deposit account, which is an administered item in the Justice Portfolio budget.

6. *As the brief description of the duties of each of the officers only provides that the legal officer will be strictly concerned with constitutional and parliamentary reform, will the minister assure the parliament that the media liaison officer, the senior project officer and the administrative officer will not be available to the Speaker for purposes other than those related to the Constitutional Convention?*

The state government has entered into 'a compact for good government' with the honourable Peter Lewis. The aim of the compact is to provide for stable, open and accountable government. As part of the compact, we have agreed to facilitate constitutional and parliamentary reform in South Australia. The purpose of engaging these 4 staff is to assist the speaker and the government in the reform process.

However the speaker performs a range of other functions that are integral to our system of government. In most other jurisdictions the speaker has a specialist staff allocated to assist in the performance of these functions. It will be perfectly proper if an incidental part of the work of the staff members relates to other functions of the speaker and his office provided that their primary focus remains on the process of constitutional and parliamentary reform.

UNIT PRICING

In reply to **Hon. IAN GILFILLAN** (30 May).

The Hon. T.G. ROBERTS: The Minister for Consumer Affairs has been advised by the Office of Consumer and Business Affairs of the following information:

Unit pricing is the process of displaying prices per unit of weight or volume for pre-packaged goods, as opposed to or in conjunction with a price for the entire packaged product.

Unit pricing is governed by the Uniform Trade Measurement Legislation, to which South Australia and the majority of states and territories are signatories. The benefit of uniform trade measurement laws is the consistency it provides to traders and consumers alike across jurisdictions.

Under the Uniform Trade Measurement Legislation, there are unit pricing requirements in place in South Australia for certain prescribed foods such as fruit and vegetables, cheese, dressed poultry, meat, fish and smallgoods. However unit pricing is not required by the regulations where the items are packed to specified weights, in rigid containers or if the total price or the price per kilogram is adequately displayed in accordance with the regulations. These requirements ensure that the prices for these types of products, which are often sold as pieces broken or cut from bulk, are clearly ascertainable by consumers.

Trade measurement issues are continuously considered and reviewed by the Trade Measurement Advisory Committee, which reports through the Standing Committee of Officials of Consumer Affairs to the Ministerial Council on Consumer Affairs. The Trade Measurement Advisory Committee, comprising trade measurement officials from each jurisdiction, meets regularly throughout the year and makes proposals for legislative amendment of the Uniform Trade Measurement Legislation to the Ministerial Council where such amendment is considered in the public interest.

The issue of broadening unit pricing requirements has been considered on numerous occasions by the Advisory Committee over the last decade. It was last considered in late 1999 but the consensus of the Committee was that broadening the existing unit pricing arrangements was not warranted.

HINDMARSH SOCCER STADIUM

In reply to **Hon. J.F. STEFANI** (8 July).

The Hon. T.G. ROBERTS: The Minister for Recreation, Sport and Racing has advised the following:

As the honourable member would be aware the management of the Hindmarsh Stadium came under the control of the Office for Recreation and Sport on 1 July 2002. The honourable member refers to an agreement with Weslo Holdings Pty Ltd, which was entered into in 1994. I can confirm that this agreement was extended for a further 12 month period to 31 August 2002. The extension of the agreement does not include any monthly payment by the NSL clubs for the turnstile purchase. As such, the NSL club has no current requirement to meet the previous conditions relating to monthly payments for the turnstiles.

1. The Office for Recreation and Sport is presently reviewing all contracts and agreements in place at Hindmarsh Stadium. Stadium management is aware of the expiry date of the current agreement and will ensure that a new agreement is entered into for these services, following Government procurement guidelines.

2. Negotiations on the terms and conditions of use and hire of the stadium have commenced with the NSL club in question. I can advise that the club has been contacted and has been requested to provide a proposal to the stadium management for the use of the facility for the upcoming national league competition. This is the start of a process that we trust will identify any concerns the club may have and we are confident that both parties will be able to reach a mutually satisfactory arrangement for the future use of the stadium.

3. As is the case with sport in general, this government is supportive of any team representing this state in national competitions. We are very pleased and proud to have so many of our sporting teams competing at this level, not only in soccer but in basketball, netball, Australian rules football and numerous other sports. Each of these teams are supported by their respective sporting associations and it is important that Soccer SA continues to have a productive relationship with Adelaide City Force.

My government does not financially contribute directly to the Adelaide City Force, nor does it do so for any of the other national teams. Our support is provided in a range of other ways including financial support to Soccer SA to manage and develop the sport.

Whilst money is scarce, the government's priorities for sport will be developing grass roots participation, encouraging physical activity and supporting the peak sport and recreation organisations to develop their sport and increase participation rates.

COMPUTERS, SECURITY

In reply to **Hon T.G. CAMERON** (3 June).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has advised that:

1. In considering security implications the Parliamentary Network Support Group (PNSG) employs a comprehensive range of measures, consistent with industry standards, that protect the network from unauthorised access. This includes in part, up to date intruder detection capability; hardware and software firewall systems; and a comprehensive virus protection strategy that quarantines such viruses and 'Trojans', including the examples given by the honourable member. The rollout of new monitors within the

parliamentary network is part of a technical refresh program that ensures the users of the network are provided with up-to-date tools. In particular the provision of multimedia monitors will complement any future project to provide streaming audio capability on the network.

2. PNSG subscribe to a range of services that provide early detection and warnings of emerging security threats. PNSG regularly posts to the parliamentary intranet information regarding these potential security threats to ensure that all members and staff are informed of such threats.

3. Whilst it is technically feasible to switch on a PC's microphone and then send the information it gathers to a loudspeaker, PC file or other destination (such as another PC), this potential breach of security needs to be considered in the context of all network and other security issues. In a poorly secured environment, hackers are able to remotely obtain control of a PC's microphone through a number of mechanisms, including Remote PC control software and Trojan horse viruses such as those identified by the honourable member. The virus management system employed by PNSG addresses these threats. This protection is complemented by fire wall technologies which does not allow the initiation of communication from outside the parliamentary network. The VLAN technologies which manage the access controls within the network restrict traffic movement between the separate political organisations and the administrative units. Independent advice suggests that in a professionally maintained network environment such as the parliamentary network the risk of this type of intrusion is minimal.

4. Upon request from the users of the parliamentary network the PNSG will remove the cabling required to activate the microphone.

GENETICALLY MODIFIED FOOD

In reply to **Hon IAN GILFILLAN** (9 July).

The Hon. P. HOLLOWAY: The point the honourable member is raising in reference to the earlier statement made by Hon. Nick Xenophon is recognised, but needs to be put into an appropriate context. There are several pertinent points that should be considered:

- In the case of one company, I am advised that over 90 per cent of the aggregate trial area over the years was spring-sown and irrigated, so that should any pollen have spread beyond the buffer zone in those instances would have had no effect, as there would have been no flowering canola in the vicinity.
- A significant number of trials also involved covered plots, as well as pollen-free plots involved in the hybrid strains.
- It is not common practice for canola farmers to save seed over the years. Instead, they repurchase quality seed on a regular basis to take advantage of new varietal development. This is in contrast to Mr Schmeiser's practice of breeding up his own seed, which, according to the findings of the Canadian court, he knew or ought to have known contained genetic material that was not his to make profit from.
- Recent world class research by SA based scientists from the CRC for weed management has increased our understanding of canola pollen movement, which is less invasive than was previously thought.

I have confidence in the national regulatory framework, which is more stringent and transparent than any other in the world, and the gene technology regulator to capably assess what risks may be attached to dealings with GMOs.

I also take this opportunity to correct a reply I made to a supplementary question asked by the Hon. J.F. Stefani on 10 July on a similar matter. The Perre case involved a disease quarantine breakdown in seed potatoes, and not a case of toxicity as I suggested in my response. The general remarks that I made in relation to this case remain standing.

MINISTERIAL DOCUMENTS

In reply to **Hon R.I. LUCAS** (5 June).

The Hon. P. HOLLOWAY: The Premier advises that when he left office as Minister for Business and Regional Development in 1993, he took with him personal papers and copies of press releases and speeches he had made as a minister. This action was quite appropriate.

The Treasurer advises that as far as he recalls, the only documents or copies of documents that he took from ministerial offices in which he worked were personal and working papers that he believes he was entitled to take.

Amongst those personal and working papers were photocopies of documents relating to Marineland.

As the honourable member will remember, on 20 February 1990, the honourable Lynn Arnold made a ministerial statement to the House of Assembly.

Whilst making that statement, Mr Arnold tabled close to 1 000 pages of documents relating to the Tribond and Zhen Yun proposals for the redevelopment of the former Marineland site.

Mr Arnold also publicly released complete sets of these documents widely on the same day.

Further relevant documents were tabled shortly thereafter in the Legislative Council by the honourable Anne Levy as was flagged in the ministerial statement.

The Treasurer has a set of these public documents.

He also advises that as a result of a check of the records of the Department of Industry, Investment and Trade on Marineland files the department has advised:

> Our records show that all Department files relating to the matter have been accounted for ie, our file record system does not indicate any unaccounted for files, nor any files that are not in our possession (either in storage or at DIT).

CONSTITUTIONAL CONVENTION

In reply to **Hon. T.G. CAMERON** (5 June).

The Hon. P. HOLLOWAY: The Attorney-General has advised that the dates for the convention have yet to be determined.

CRIME POLICY

In reply to **Hon. A.J. REDFORD** (16 July).

The Hon. P. HOLLOWAY: An answer to this question was prepared by the Minister for Police and unfortunately, the answer provided to *Hansard* on 4 June 2002 was recorded as being asked by the Hon Terry Cameron MLC.

I note the Hon. A.J. Redford MLC raised this question again on 16 July 2002 and I wish to advise that a response to his question has now been provided to *Hansard* and I apologise that the earlier response had been incorrectly recorded in *Hansard* as being attributed to a question raised by the Hon. T.G. Cameron MLC.

In reply to **Hon. A.J. REDFORD** (8 May and 16 July).

The Hon. P. HOLLOWAY: The Minister for Police, has provided the following information:

The 'right to silence' is not a simple right or privilege of certain description—rather it is a bundle of related rights, immunities and consequences. This bundle is encapsulated in the traditional maxim 'nemo tenetur prodere seipsum' which may be translated liberally as 'no one is obliged to accuse himself'. In the most general of terms, the 'right to silence' or 'privilege against self-incrimination' consists of two parts, which are commonly considered separately; the right to refuse to provide information without attracting a criminal penalty for so doing, and the right not to have adverse inferences drawn from silence. Of course, the right to be silent does not necessarily imply a right not to be questioned.

More precise analysis is necessary to draw apart the components of this central core of meaning. In R v Director of Serious Fraud Office ex parte Smith, [1993] AC 1 at 31, Lord Mustill stated that the right to silence actually referred to a set of immunities, which differ in nature, origin, incidence and importance and include:

(1) A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions posed by other persons or bodies.

(2) A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions the answers to which may incriminate them.

(3) A specific immunity, possessed by all persons under suspicion of criminal responsibility whilst being interviewed by police officers or other persons in similar positions of authority, from being compelled on pain of punishment to answer questions of any kind.

(4) A specific immunity, possessed by accused persons undergoing trial, from being compelled to give evidence, and from being compelled to answer questions put to them in the dock.

(5) A specific immunity, possessed by persons who have been charged with a criminal offence, from having questions material to the offence addressed to them by police officers or other persons in a similar position of authority.

(6) A specific immunity (at least in certain circumstances, which it is unnecessary to explore), possessed by accused persons undergoing trial, from having adverse comment made on any failure (a) to answer questions before trial (b) to give evidence at the trial.'

This bundle of rights and privileges has never been absolute. Nor should it be. There are some very obvious examples of that. For example, the compulsory examination on oath in bankruptcy has been in existence for very many years. Equally obviously, a number of statutes confer coercive powers on a kind of inspectorate in the context of the regulation of an industry. For example, s 28 of the South Australian Fisheries Act, 1982 gives sweeping powers to a fisheries officer including the power to demand full name and address and to require information about boat, crew and any person on board the boat. Other quite obvious examples of interference with one or more of the principles involved can be found in companies and securities legislation, trade practices, immigration, taxation and customs legislation. Another simple example is section 74A of the South Australian Summary Offences Act, which allows a police officer to demand name, address and, if necessary, proof of identity of any citizen where the police officer has reasonable cause to suspect that a person has committed, is committing or is about to commit any offence or that a person may be able to assist in the investigation of an offence or suspected offence.

It is therefore obvious that there is no such thing as a general right to silence and, where it does exist, it cannot be and should not be absolute. After that, it is all a question of degree and defensible social policy.

MEMBER'S REMARKS

The Hon. A.J. REDFORD: I seek leave to make a brief personal explanation.

Leave granted.

The Hon. A.J. REDFORD: During the course of question time, I made a rather flippant interjection during the course of the Hon. Terry Cameron's question, to the effect that the self-funded retirees would win a mooted court case because the Attorney-General (Hon. Mick Atkinson) was acting against them. Just to make it clear: I was only joking and certainly did not intend to reflect adversely on the Attorney or his capacity.

The PRESIDENT: One can only commend the member for his attention to the protocols of the council. I call on the business of the day.

NATIONAL WINE CENTRE (RESTRUCTURING AND LEASING ARRANGEMENTS) BILL

Adjourned debate on second reading.

(Continued from 17 July. Page 576.)

The Hon. R.K. SNEATH: I am delighted to support this bill which demonstrates the professional leadership of this government. The Hons Mike Rann and Kevin Foley have managed to turn the Wine Centre, which was regularly described as a lemon under the previous government, into an exciting venture and opportunity for the new owners to promote the wonderful South Australian wines and the industry. We have heard in the other house contributions made by those in opposition and I take this opportunity to quote some of them. The Hon. Rob Kerin, Leader of the Opposition, said:

The opposition supports this bill and, in doing so, supports the actions of both the government and the wine industry in reaching this agreement.

He continued:

I well and truly welcome this initiative. This is a way ahead and a way of ensuring the Wine Centre operates well into the future and creates opportunities. . . for South Australia.

He went on to say:

I thank the Treasurer and the government for agreeing to the deal that has been put forward. There has been a lot of hustle on the way there, and at the end of the day this is a good deal.

The Hon. Malcolm Buckby said:

. . . I think the government has ensured that the lease arrangements that are set down in the bill are very adequate in terms of protection for the government. This is one bill that certainly should be supported.

The member for Schubert, Mr Venning, said:

I rise to support this bill and to congratulate the government.

He went on to say:

I'm not just saying that; I mean that. I also invite the Treasurer to come to the Barossa, and the wines will be on me.

Ms Chapman rose to support the bill also and said:

. . . this is the third bill on which I have spoken in this house and which I have supported. . . support for this third bill is complete and absolute. Before I go on to make some comments favourable to others in this house—including the Treasurer—

She went on to say:

I again congratulate the government, and the Treasurer in particular. I would expect that one could find no better partnership to enter into than with the Winemakers' Federation. . .

The Hon. Mr Hamilton-Smith said:

I rise to support the bill and to commend the government for resolving this vexed issue successfully.

It was interesting yesterday that along came doom and gloom, a contribution by the whingeing, moaning, fault-finding, knocking, nitpicking Hon. Mr Lucas.

The PRESIDENT: Order! That came very close to being a reflection.

The Hon. R.K. SNEATH: That was not too bad, coming from an opposition that is whingeing about the Wine Centre being turned into a profitable entity that will be good for the state—not bad coming from a former government that sold off profitable taxpayers' businesses like the TAB, ETSA and water—not bad coming from a party that did all that. If the shadow treasurer had thought of this wonderful idea to save taxpayers' money before the election, I think his colleagues are thinking that they might still be in government. I understand, though, that that would take foresight—something the previous government certainly lacked.

I understand that this has caused a bad split in the opposition and there are rumours that the shadow treasurer, the Hon. Mr Lucas, is battling to hold his position as shadow treasurer. This has been one of the many successful stories and successful outcomes that the Rann government has negotiated or implemented in its short period in office. We have taken the Wine Centre from vinegar to chardonnay and South Australia continues to roll into a better future. I wrap up by wishing the Wine Centre and its new owners all the best for the future.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank all members who have contributed to this debate, and I share the enthusiasm of the Hon. Bob Sneath in relation to his comments for the future of this centre. As has been indicated, the government would like to get the bill through this week, if possible. I think all of us understand that, given the considerable uncertainty that has been hanging over the centre for some time, it is import-

ant that we provide the new managers with the optimum opportunity to get on with it. However, a number of questions were asked and I will seek to answer those as best I can during this response, and we can deal with any further questions during committee.

The Hon. Terry Cameron raised a number of questions. He asked: 'Exactly how many staff does the WFA intend to re-employ?' The information I am provided with is that the government understands that 22 contract, four full-time and one part-time employees are transferring to the new operator. He asked: 'What will the cost to the government be from transferring non-continuing staff members?' I can report that the government has been advised that three employees will not be transferring to the new operator and their termination cost will total some $42 000. The Hon. Terry Cameron also asked: 'Are there any proposals for the land to be transferred to the Botanic Gardens and the State Herbarium?' The act has the effect of transferring 1.66 hectares to the Botanic Gardens and the State Herbarium through redefining the boundaries of the National Wine Centre.

The Leader of the Opposition asked a number of questions. He asked for an estimate of the stamp duty that otherwise would be payable. I am advised that the prima facie advice is that, based on an annual rental of $1, this transaction will be exempt from any stamp duty under existing legislation. The leader also asked about the support that would be available in respect of tourism. I am advised that the government has indicated to the WFA that the South Australian Tourism Commission will be pleased to explore with the federation how the two bodies can collaborate on the promotion of the centre. Specifically, the commission stands ready to apply the resources of a wine tourism project officer to spending a suggested two weeks full-time at the centre to help develop a joint tourism commission/National Wine Centre tourism marketing plan, and then work (as suggested) two days per week for the next 12 months at the Wine Centre to help see the plan through to fruition.

The leader asked: 'Will the minister responsible for the National Wine Centre provide an annual report on ongoing support through the tourism commission, or any other government department or agency?' I believe the answer will be yes, although with the appropriate level and form of the report to be considered. It is currently being considered how that might be achieved. The leader asked questions in relation to the $250 000 loan repayment: 'Will it be on an earnings before interest and tax (EBIT) basis?' I am advised that repayment of the $250 000 will be out of earnings before interest and tax profits.

The leader asked: 'Will it be subject to audit by a private auditor or a government auditor, or both?' I am advised that, to date, the agreed terms provide for the minister to be provided with audited annual financial accounts within 90 days of the end of the financial year. The leader then asked, 'Will repayment be triggered in part by any earnings before interest and tax, or only when the EBIT reaches $250 000?' I am advised that the intention is that the $250 000 loan is repayable in full or in part out of the first accumulated EBIT up to $250 000.

The leader asked about the latest estimate of costs to finalise the National Wine Centre operations to 30 June of this year. I am advised that the National Wine Centre is in the process of producing year-end financial statements. Until the process has been completed and the financial statements audited the National Wine Centre is not able to provide a definitive total of net cost to finalise the National Wine Centre operations.

With regard to the nature of unfinished capital works and possible savings from the $270 000, I am advised that the government has agreed to provide up to $270 000 for capital works as specifically agreed by the Treasurer. Until this process is complete it will not be possible to determine any savings.

Finally, the leader raised some issues about clarification of advice from the Treasury, or elsewhere, on the claim that the government has avoided losses of $17 million over the next four years. I am advised that there have been various scenarios that have been modelled over time—and the exact amount of that loss depends on how pessimistic the assumptions are—but if one takes the most pessimistic assumptions those suggested losses could be considerable. The Hon. Ian Gilfillan raised a number of issues. He asked, 'Would the National Wine Centre be financially viable if the WFA paid commercial rents?' I am advised that given the limit of purposes specified for the centre under the act, and the operational obligations on the lessee, the government and the WFA consider that one dollar per annum does constitute an appropriate and commercial rental.

The honourable member asked about the rose garden. I am advised that the rose garden is not included in the lease. The Hon. Ian Gilfillan also asked about building repairs. I am advised that the government is not aware of any existing building problems. The capping of any future repair works at $250 000 per annum (accumulating) is targeted at containing any future costs if major problems eventuate.

Finally, the Hon. Ian Gilfillan asked some questions in relation to office leases. The WFA and other related industry bodies are already leasing offices in the existing office block on site. The building of any new office accommodation or conversion of other areas into offices is not envisaged, and, in any event, would require the minister's approval.

The Hon. Ian Gilfillan asked about alternative use of the building. I am advised that if the centre were to be closed as a wine centre, the agreement of parliament would be required for any alternative use. I trust that those answers address the matters that have been raised by other members—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, I think that was a fairly flippant question by the honourable member.

The PRESIDENT: I am sure that the honourable member will have a chance to raise it in the committee stage.

The Hon. P. HOLLOWAY: I trust that I have answered the questions raised by honourable members. I know that there are a number of bills that members in this council are keen to get through this afternoon so I will not delay debate any further. We can address other matters during the committee stage. I again thank honourable members for their support and I trust that, as a result of the passage of this bill, the National Wine Centre will have a rosy future.

The council divided on the second reading:

AYES (16)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Laidlaw, D. V.	Lawson, R. D.
Redford, A. J.	Ridgway, D. W.
Roberts, T. G.	Schaefer, C. V.
Sneath, R. K.	Stephens, T. J.
Xenophon, N.	Zollo, C.

NOES (3)

Elliott, M. J. Gilfillan, I. (teller)
Kanck, S. M.

Majority of 13 for the ayes.

Second reading thus carried.

In committee.

Clause 1.

The Hon. NICK XENOPHON: Because I was absent from the chamber yesterday, I did not have an opportunity to make a contribution. While I supported the second reading, I have a general practice in relation to most bills, even though I may take a different view at the third reading stage. I want to put on the record that four years ago the Hon. Ian Gilfillan warned this chamber and the public at large that the wine centre, for a number of reasons, was not a good deal, both in a commercial sense and in an environmental sense. To my shame, I did not heed the Hon. Ian Gilfillan's warnings and I think that much of what was said by the Hon. Ian Gilfillan at that time has been shown to be accurate.

An honourable member interjecting:

The Hon. NICK XENOPHON: No, I have already made that clear. I am critical of this particular deal. I believe that the present government is in a difficult position with respect to the nature of the commercial arrangement. It was left with Hobson's choice. The wine centre, which was supported in a bipartisan sense four years ago, has proved not to be the iconic development it was meant to be in a commercial sense and it has certainly not been a success in terms of its impact on parklands. So perhaps more of us should have heeded the warnings of the Hon. Ian Gilfillan four years ago.

Clause passed.

Remaining clauses (2 to 10) passed.

Schedule 1.

The CHAIRMAN: I indicate that a clerical amendment is required. The map, underneath the letter A, should read '2.166 hectares'. This clerical amendment will be made to the bill when it is returned to the House of Assembly.

Schedule passed.

Schedule 2 and title passed.

Bill taken through committee without amendment; committee's report adopted.

Bill read a third time and passed.

GAMING MACHINES (LIMITATION ON EXCEPTION TO FREEZE) AMENDMENT BILL

Second reading.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

It is virtually identical to a bill that I introduced in this chamber two months ago. A similar bill was introduced in the lower house by the member for Mount Gambier, Rory McEwen MP. The only difference between this bill and the bill that I introduced is that, where it makes reference to a transfer taking place within 1 kilometre, as was the case in the bill that I introduced some two months ago, it refers to 'within the locality', and I do not have any difficulty with that.

In a sense, I have previously debated this bill, because the previous bill was almost identical. The purpose of this bill is essentially to close an unintended consequence of the freeze legislation that was passed some time ago whereby, in good faith, members of both houses accepted that there ought to be an amendment to allow transferability in certain exceptional circumstances. The explanation given at the time in relation to the issue of transferability was that, for instance, if a hotel burnt down, it had to be rebuilt and there had to be a transfer of a licence across the road or within the same community, a transferability clause would allow for that. That was done in good faith, it was based on appropriate advice, it was the subject of discussion between various parties and it was understood that was what the amendment was all about.

However, we now have a situation where in at least one case—and I believe there may well be other cases pending—the transferability clause is being used in a manner that was unintended by parliament, that is, to transfer a licence from one part of the state to another. There is a case currently before the Liquor and Gambling Commissioner, in which I am acting for a number of residents pro bono, that relates to the transfer of a poker machine licence from the Whyalla Hotel to a proposed hotel at Angle Vale, 400 kilometres away. Clearly, that was not intended by the freeze legislation when it was passed.

Essentially, this bill has been introduced to close a loophole. Its purpose is to close an unintended consequence in the context of the freeze legislation that was passed at the end of 2000 and subsequently amended in May 2001. The member for Mount Gambier made very clear in his second reading speech that it was clearly an unintended consequence, and I thoroughly endorse that. For those honourable members who do not support a freeze and who are concerned, I urge them to support this clause, because an inquiry dealing with the issue of a freeze generally will be conducted by the Independent Gambling Authority, which will report back to the Minister for Gambling and to the parliament, as I understand it.

We can have that debate in the next few months before the current freeze legislation expires on 31 May 2003. So, whether or not members support the freeze philosophically or for any other reason, they will have the opportunity to deal with that issue at that time, including the issue of transferability. This piece of legislation deals with an anomaly—an unintended consequence—and for that reason I urge members to support it. In his contribution to my bill in this place the Hon. Angas Redford set out a very thorough exposition of the history of this matter.

I note that the Australian Hotels Association has not objected to this clause, in the sense that, as I understand it, in its submission of May this year in letters that I believe were circulated to members in both chambers it supported limited transferability but it was concerned that the current act allows an unintended benefit to be obtained in relation to transferability. So, even the Hotels Association seems to be, if not supportive, at the very least ambivalent about this clause. It is not opposing this amendment because, as I understand it, it is saying, 'Let's have the debate about transferability in the course of the next few months; let's thrash that out, but let's not have an unintended consequence in terms of what has proven to be a loophole.'

This would affect the Whyalla Hotel to the Angle Vale Hotel transfer. If this does not go through, I understand that the owner of the Whyalla Hotel licences will still have his licences in Whyalla and will not lose his licences. Whatever happens with this freeze legislation is something that will be determined in the next few months in the course of an ongoing debate and the Independent Gambling Authority's inquiry. On that basis I urge members to support this legislation to clear up this loophole and not have an unintend-

ed consequence that even the Australian Hotels Association acknowledges in this instance.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I indicate that the bill we have before us closes a loophole in the legislation, as mentioned by the Hon. Nick Xenophon. It is an unintended consequence of the freeze that was introduced in December 2000. The issue was brought to us by the actions of a licensee who wanted to shift his poker machines into another geographic region. I think there is agreement amongst most members that the bill itself is a mechanical device for closing the loophole. The principles have already been set in relation to the freeze and, as the Hon. Nick Xenophon says, they will be subject to further discussion, negotiation and possible legislation later on. There are reasons for further discussion or at least clarification. The only issue that I think needs clarifying is the permit to allow clubs and gaming machines to relocate to new venues within the locality from where they have been moved. That seems to be a reasonable request by most members in relation to the closure of premises.

The issue of locality can be taken up by the current definition of locality, which is a reasonable distance from the place in which the original licence or, in this case poker machines, will be moved. That can be discussed by the local community itself when those issues are being tackled. It would be a game licensee who would not discuss those sorts of issues with local people in the area before proceeding, to make sure that the changed nature and function and the problems or benefits of a hotel or premises moving from one place to another are discussed at a level where it needs that support amongst local people. I support the bill put forward by the member for Mount Gambier in another place and congratulate him on tidying up a situation that needed addressing.

The Hon. J.S.L. DAWKINS: I rise to indicate that Liberal members will be speaking on this as a conscience issue, and I indicate my opposition to this legislation. I have some considerable sympathy with what the member for Mount Gambier in the other place and the Hon. Nick Xenophon are trying to do with the measure that they have brought forward. I understand that the emphasis is on locality or close proximity, and I think the Hon. Mr Xenophon was initially talking about 1 kilometre. Rather than just talking about localities, I think it is important to consider the particular communities involved in any proposal for transfer.

In the case on which members of parliament have had representations over some period of time and which would be affected if this legislation passes, we are dealing with a proposal to shift a licence from Whyalla to Angle Vale. Certainly people would be quite accurate in saying that there is not a lot in common between the two communities. However, I might spend a moment or two talking about the two communities.

Whyalla is a city that once had a population of 36 000 people and it now has about 22 000 so, whereas it was once the second largest city in South Australia, it has now dropped below the size of the city of Mount Gambier, which is represented by the honourable member in another place. It has the same number of hotels now as it had when it had 36 000 people, so there is probably not the need for that number of hotels in that city as there once was. I now come to Angle Vale, which is a community that is much closer to where I live and where I grew up than is Whyalla.

Angle Vale is a rapidly growing community. It is within the boundaries of metropolitan Adelaide, but it is probably unique within metropolitan Adelaide in the distance that residents of Angle Vale have to travel to access the facilities of a hotel. The nearest facility is at Smithfield, which would be a distance of at least 6 to 7 kilometres, and in other directions they would need to go to the hotel formerly known as the Kariwara Hotel at Davoren Park, now known as the Playford Tavern. They would alternatively have to travel into Gawler, Virginia or Two Wells.

Angle Vale is a growing community, and only in the past month or so I walked around a large proportion of that community collecting for the Red Shield Appeal. Any community in a country area which had been of that size for some time would probably have a couple of hotels rather than just one. There has been a desire among members of the community to have a hotel at Angle Vale for probably the past 20 years that I can remember. There have been some proposals, and members would be aware from the literature that has come to them from lawyers representing the proponent for the transfer that this case has been going on for nearly 10 years. In my memory, I am sure there were efforts to establish a hotel at Angle Vale at least two decades ago and those efforts were stymied for a number of reasons, which I will not go into here.

As I said earlier, I have sympathy with what the member for Mount Gambier and his colleague the Hon. Mr Xenophon are attempting to do, but I emphasise that I am not sure how we should define locality because, if it is geographical locality, something can be put over the road because it is in a different locality. As I said earlier, it is important to consider the communities involved, and the communities that will be immediately affected are those in Whyalla and Angle Vale, and I have attempted to demonstrate the needs and current situation of those communities. I oppose the legislation.

The Hon. R.I. LUCAS (Leader of the Opposition): It will not surprise members to know that I oppose the legislation, as well. My position on gaming, particularly the caps legislation that we have focused on over the years, is probably well known so I will not repeat in detail my views. I am not a supporter of the caps provision in the legislation. I think that those who have supported the caps legislation in the hope that it would reduce the number of problem gamblers in South Australia will by now have come to realise that their hopes were forlorn, as many of those who opposed the legislation warned some time ago. If those members, the Hon. Mr Xenophon in particular, in closing the debate can bring information or evidence to the committee stage that indicates that the caps in South Australia have had the effect that he and others who supported it intended, I am sure all members would be delighted to receive that evidence to help guide our decisions on this legislation. As I said, I will not repeat my views and arguments against the use of caps as a mechanism supposedly to help reduce the number of problem gamblers or to control the extent of problem gambling in South Australia.

The Hon. John Dawkins, with his local knowledge, is better placed than any of us to be able to talk about the circumstances in the Angle Vale area. Judge Kelly indicated in his judgment:

> In 1992 (see my judgment dated 22 January 1992) I found there was a need for hotel facilities at this very site. Since then no hotel has been built and yet the population in the locality has increased

markedly and continues to increase. The need witnesses in this case have confirmed all that I believed in the original case, namely, that a need for a licence to permit hotel facilities was proven. That need is currently unmet and there are no relevant licensed premises anywhere within the locality to require consideration.

I also saw reference to a 20-kilometre round trip to the nearest facilities. Judge Kelly's comments substantially and significantly back the comments that my colleague the Hon. Mr Dawkins has made.

The argument has been put by some that it is okay for the hotel to go ahead and that all we are talking about here is the gaming licence. While I can understand the sophistry of that argument, the brutal reality is that it is not going to happen, and Judge Kelly's comments have been made. Anyone who speaks to developers and operators of hotel businesses in the industry would know that what underpins the financial viability of a significant hotel development is not only the food and alcohol cash flow but the cash flow that is generated through gaming machines.

This is an important part of the debate because I know that some members who support the legislation will say that it does not stop the hotel going ahead because the liquor licence has been issued and the hotel can be developed if anyone wants to do so, that all they are talking about is the gaming licence. If that argument is going to be put, my very strong advice to members of this chamber is that it has no substance. We are talking about a hotel establishment that is looking for both a liquor licence and a gaming licence, and it is not correct for anyone to say that it can go ahead without the gaming licence and that the people of Angle Vale can have their needs met in terms of a having a local hotel established in their community.

That is not going to happen and the evidence for that is not only what I say but, much more importantly, what Judge Kelly said when he gave his recommendation in 1992, and nothing has occurred since then, even though there is now an even more pressing argument for a local establishment in the Angle Vale area.

There are also differing views as to whether or not this bill is retrospective. Whilst I can understand those who support the legislation wanting to argue that it is not retrospective, and given that I understand that government members have not been allowed a conscience vote on this issue, that it is a party vote, I will quote what the Minister for Gambling, the Hon. Mr Hill, said in another place: 'This bill is retrospective.' He then went on to explain how it is retrospective. I do not think we ought to have the argument as to whether or not this bill is retrospective. Even the key supporters of the legislation from within the government have conceded that the legislation is retrospective in terms of its impact.

The bill's supporters have put the argument that this was an unintended consequence, that this was a loophole in the legislation. Whether or not that is the case, there does not appear to be any doubt that for some time the law has allowed proponents to spend their money, to spend their time and to work their way through various legal processes to transfer a licence from, in this case, Whyalla to Angle Vale.

My colleague the Hon. Mr Redford, who has a different point of view on this issue from me, made his views clear in relation to transferability when he spoke on the legislation, and I accept that. I think that the Hon. Mr Elliott also made his views clear on transferability. However, in the end, the Hon. Mr Redford can speak for himself and the Hon. Mr Elliott can speak for himself because, from recollection, that was a conscience vote for all members, including members of the government. So each member needs to speak on their own behalf as to what guided them in making a decision on the legislation.

Whilst I cannot and will not try to dispute the reasoning behind the Hon. Mr Redford's decision, and the Hon. Mr Xenophon referred to the Hon. Mr Redford's reasoning, I do not believe that, on a conscience issue, any member can purport to put on the record the reasons why the parliament as a whole on a conscience issue has supported the particular drafting of legislation.

If we were to go down that path, it would be a very interesting debate in the future for the courts to try to interpret and for future parliaments to try to interpret what were the intentions of the parliament as a whole on conscience vote issues. Frankly, if it is not in the legislation it is difficult enough to work out—even on party vote issues—what the intentions of the parliament might have been.

There have been various court decisions as to whether or not what was said by ministers and shadow ministers in second reading debates and committee stages about the intentions of the legislation that can be taken into account. All three learned legal counsel in this chamber probably would potentially have differing views on various cases that have been precedents about whether you can take into account what is said by members in the second reading and committee stages, as this was, in terms of the legislation. The bottom line is that the parliament passed legislation in the form that existed. On that basis, people in the community have operated in accordance with that legislation. They have spent money—in some cases, a lot of money—consistent with the legislation.

As I understand it, no-one is arguing that what the proponents in this case have done is wrong at law. What they are arguing is, 'Okay, the law says that you can do it, but we don't think that is what was intended. Therefore, we are going to now retrospectively stop you from proceeding with your case.' As a former treasurer, I know that many have argued unintended consequences of stamp duty legislation. Believe me, that is much more complicated and convoluted, as the lawyers may again indicate, than the gaming machine legislation.

On many occasions I have heard people arguing about an unintended consequence, that it was not intended in the legislation. On some occasions, governments have had to come back to the parliament to try to seek to correct it, and I think there was an example last year. Again, a huge part of the debate that we had within government and then within our government party and then in parliament was where you draw the line in relation to, in that case, the fact that people in the past have operated on their understanding of the law and now there has been a recommendation for change. It is not a perfect analogy, but we have debated many others in this council in relation to what some argue are unintended consequences.

This was a relatively simple piece of legislation, and it is clear what the legislation intended. As I have said, a number of members are arguing that that was not intended and not the intention of some members who supported the cap legislation. My position is that, whilst I understand members may well argue the intention was going to be that we would not allow transferability, in this case the legislation has been passed, people have spent money and a good deal of effort in fighting their way through the various courts and tribunals and other forums they have to work their way through to get to a certain stage in accordance with the law, and what we are being

asked to do by the Hon. Mr Xenophon and the member for Mount Gambier is to retrospectively take away their rights on that issue.

If those members were coming to me and saying, 'Okay, as from this date or such and such a date, if someone hasn't reached a certain stage and has not expended a lot of money, we are going to try to relatively prospectively confirm what we thought we were doing last year', without indicating wholehearted support, I would at least be prepared to contemplate that. On that basis, the proponents would argue—

The Hon. T.G. Cameron: Only contemplate?

The Hon. R.I. LUCAS: Contemplate it. One would never like to give a blank cheque to anyone on the other side of the chamber. I am sure you would understand that thinking.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Absolutely. On that basis, if, in this circumstance, people have spent a lot of money, a lot of time and a lot of effort in accordance with the law as passed by this parliament—and no-one is disputing that—that would be treated as a one-off and we would try, relatively prospectively, to draw the line again. That would have been a fairer set of circumstances to bring to the parliament. Had we been debating the Hon. Mr Xenophon's bill, I would have put that proposition to him, because that was being done each Wednesday.

We accept that he has been unwell this week. He has come off his deathbed to try to shepherd this legislation through on behalf of the member for Mount Gambier today. It was only late yesterday afternoon that we were told that the government and the member for Mount Gambier wanted to ram this legislation through the council this afternoon. As always, the opposition is willing to offer its best endeavours to try to facilitate consideration of legislation in parliament. Never let it be said that we are anything like the previous opposition—a whingeing, whining, carping, negative lot.

The difficulty is, now that the government and the member for Mount Gambier and others have decided that they want this legislation passed, to try to reframe the legislation in a much more acceptable fashion—so that a group of people who has spent a lot of its money, time and effort in accordance with the law are not retrospectively punished by legislators in this chamber and in another place—would appear now to be beyond us. If that is the case, I am disappointed.

I put the question to the proponent of the legislation (Hon. Mr Xenophon), in his reply on the second reading, as to whether is he prepared to at least contemplate amending legislation along the lines that I put forward. I realise he will need to take advice from the member for Mount Gambier as to what he and the government—who are going to vote en bloc and not allow a conscience vote on this important issue—are prepared to agree to. It is easy enough to say to an individual group of people, 'You're wealthy pokie barons,' or 'robber barons of the 21st century,' as they have been referred to collectively.

The Hon. Caroline Schaefer: By Labor.

The Hon. R.I. LUCAS: By Labor: not by me, I can assure you. It is easy enough to say: 'We are going to rip into you with a super tax. You're a forgotten class of person, the new untouchables of South Australia in the 21st century,' (as seen by the extremists who oppose gaming and gaming machines, gambling legislation and gambling opportunities in the state). Members of the government are locked in on a party vote, unable to vote according to their conscience on this issue.

It is easy to say to this new group of untouchables that it is only one particular company, one particular group of people, and, 'Too bad. We'll forget about you.' Of course it is possible for a majority in the parliament to trample on the rights of individuals in that way. It may well be that, by a majority, this parliament will trample on the rights of those individuals and that company during this afternoon's debate.

If a section of the parliament takes that course, it will not count me as one of its number. During the committee stage of the legislation, the opposition will require the Hon. Mr Xenophon to answer questions in relation not only to that proposition but also others to defend the position that he, on behalf of the government and on behalf of the member for Mount Gambier, is putting on this issue.

In the interests of fairness, and to at least highlight to the Hon. Nick Xenophon some of the areas I hope to raise in the debate, I note that the Hon. Mr Xenophon's legislation puts a limit of 1 kilometre on the movement of a licence from the original premises. This legislation, of course, has removed the limit of 1 kilometre and has now provided 'within the locality', or words to that effect.

I would like to know from the Hon. Mr Xenophon: in the case of the North Adelaide Football Club and the Woodville-West Torrens Football Club, regarding their proposals to move their licensed premises and their gaming machines from their current premises to the new premises—in one case on Port Road and in the other case on Prospect Road—has the Hon. Mr Xenophon had discussions with anybody on behalf of those football clubs, or has anybody put a point of view to the Hon. Mr Xenophon that his legislation would prevent the Woodville-West Torrens Football Club from moving its premises to Port Road, or for the North Adelaide Football Club to move its premises to Prospect Road?

It is important that we understand why, having put a 1 kilometre limit, he has moved his position. Has he done so on the basis of any representation about the impact of his legislation on the West Torrens, Woodville and North Adelaide football clubs? I understand his position is that he does not want gaming machine licences in what he might call low use areas like Whyalla being moved to an area like Angle Vale where perhaps more people might gamble, to paraphrase in part the honourable member's position. I would be interested to know whether the Hon. Mr Xenophon concedes that the reason the North Adelaide and West Torrens Football Clubs are moving their premises is to put them into high profile locations so there can be high gaming and gambling throughput for those particular football clubs and licensed establishments.

It is important that the committee is advised when it meets as to the reasons why the Hon. Mr Xenophon has changed his position and whether he has taken any representation from anybody in relation to those two establishments. I will raise one or two other minor issues in committee, but in fairness to the Hon. Mr Xenophon, given that he is handling the bill, I give some forewarning of the general questions I and others might be putting to him to at least assist him in committee. I conclude by again putting firmly on the record my absolute trenchant and consistent opposition to caps in South Australia. Consistent with that, I do not support this legislation in the form in which it has been presented to the house.

The Hon. J.S.L. DAWKINS: I seek leave to make a personal explanation.

Leave granted.

The Hon. J.S.L. DAWKINS: In the speech I made earlier this afternoon on the legislation currently being debated, I omitted to indicate that my wife and I own a property at Angle Vale. I thought it important that I put that on the record. This household property is not situated close to the proposed hotel site and would not be expected to be affected by or gain any benefit from the existence of such a hotel.

The Hon. CARMEL ZOLLO: My contribution will be brief. Given my support for the previous legislation, I rise to express my support for this amendment bill. I believe it will restore the intent or spirit of the legislation passed in December 2002 to freeze the number of gaming machines in our community. Current legislation allows for rural and regional licenses to be bought and relocated to high density population areas. This bill will have the effect of stopping licences being moved across regions or, more importantly, across communities. As has already been pointed out, this amendment bill will not preclude the relocation to a new venue within the same locality, which can occur with the rebuilding of premises.

We should be concerned about communities. It was the belief that we would protect communities from the further proliferation of gaming machines that saw us pass the freeze legislation. For us to now say to some of these communities that may well believe they have more than their fair share of gaming machines that in their case the freeze was not necessarily a freeze would be against the integrity of the legislation we passed earlier. I am pleased to support this bill.

The Hon. T.G. CAMERON: I support the second reading of this bill, although I have some reservations and am in somewhat of a quandary. This bill seeks to remedy a loophole in the gaming machines freeze legislation that allows the transfer of a licence under opportune circumstances. This was raised because of the concerns the Whyalla Hotel may intend to transfer its gaming machine licence to a proposed hotel to be built in Angle Vale. It will clarify the intent of the legislation that the maximum distance of transferral of a gaming machine licence will be 1 kilometre. Perhaps it would be better if the legislation was to specify that the gaming commissioner could reject an application for transfer if done purely on opportunistic grounds with no extenuating circumstances, as there may well be cases where it could be or would be unjust to restrict the transfer of licences to places one kilometre away, for example, where a licensed premise burned down and it is impractical or non-viable to rebuild and the owners take over or want to build a hotel over one kilometre away—maybe 1.5 kilometres—in a country town. I can see circumstances where it may be unjust. We have to be careful that in addressing some of the injustices caused by poker machines that we do not react so that other injustices are imposed on those with a gaming licence.

I listened very carefully to the contribution made by the Hon. Robert Lucas, as I always do. Whilst I believe he made out the best possible case in opposing this bill, there are some flaws or loopholes in the argument put forward by him. First, this bill seeks to remedy a loophole left in the original gaming machines freeze legislation. As I understand it, the applicant—the Whyalla hotel—is seeking to exploit that loophole. It is my understanding (and if I am incorrect on this I would appreciate someone pointing it out to me, as it is possible that it could influence my final decision) that it was quite clearly the intent of the gaming machines freeze legislation to ensure that licences could not be transferred under similar conditions to that which the Whyalla Hotel is intending to transfer its gaming machine licences.

As a legislative councillor I have usually adopted a position of refusing to support retrospectivity, but I do not think this case is quite as simple as the Leader of the Opposition set out in his contribution. I take on board what he said in relation to the fact that the applicants, that is, the people seeking to transfer the gaming machine licence from Whyalla to Angle Vale, were in fact exploiting a loophole in the then existing legislation, contrary to what I understand to be the intent of that legislation.

I take on board the fact that Mr Ralph Cufone and his company Anport Pty Ltd (which holds the hotel licences for premises proposed to be built at Heaslip Road Angle Vale) are proceeding with this application on the basis of finding a loophole in legislation which clearly intended, as I understand it, that transfers under circumstances such as this should not take place. If this chamber takes a decision to support the Rory McEwen bill and, in this instance, support retrospectivity, whilst people could argue that that is inequitable and unfair and has not afforded natural justice to Mr Ralph Cufone and his company, I think there is another side to this argument, if you like.

I would submit that to allow the application by Mr Ralph Cufone and Anport Pty Ltd to proceed could (and perhaps would) be used as a strong argument by other hoteliers who could say, 'Look, why should only one hotelier be allowed to exploit this loophole?' I used to listen to Trevor Griffin go on ostensibly about retrospectivity and he, too, as I am, was a strong opponent of retrospectivity, but I can recall occasions when even Trevor Griffin was prepared to support retrospectivity.

Whilst I am very supportive of the intent of the bill and I am very supportive that the bill should be amended to reflect parliament's original intention, we are caught between the devil and the deep blue sea. If we oppose this application on the grounds that it is being unjust, unfair and unreasonable to Ralph Cufone and his company, one has to ask the question: how fair are we being to other hoteliers who may want to transfer their licence in similar conditions to Mr Ralph Cufone?

Is this council to adopt a position where we say, 'Look, we buggered it up when we originally passed the legislation. We left a loophole in the act.' Mr Ralph Cufone and his lawyers from Wallmans have discovered the loophole and are effectively using it. On the one hand, we could make a decision which Mr Ralph Cufone and Anport Pty Ltd would be very pleased with; but, at the same time, we could be make a decision which would be very unfair and unjust to other hoteliers who perhaps were not as quick to get on their bike as Mr Ralph Cufone, or did not approach solicitors with the obvious ability to find loopholes in acts of parliament as Wallmans have.

It seems to me, no matter what we do, we will disadvantage someone, whether it be Anport Pty Ltd or some other hotel. I believe that another hotelier does have a valid point and a valid argument to pursue. They could say, 'Look, your original intention was that licences could not be transferred under this proposition. However, now that you have discovered the loophole because someone has been able to find a way through the act, you will close it and close it in such a way where they will gain all the advantages from your having left a loophole there and no-one else will.' It appears to me

that we may be rewarding a particular individual and his company because they were able to discover a loophole that this parliament left in the act. I cannot see a way around this particular issue. I do believe that—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. CAMERON: Yes, I thought I had canvassed that but, unless someone can convince me to the contrary, my understanding of that approach is that that allows Mr Ralph Cufone and his application to proceed but that no-one else's application could proceed. The question I raise is how fair is that to the rest of the industry, which perhaps explains why the AHA—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Yes, it is legal, but why? It is legal because we did not pick up an error in the drafting of the legislation—

The Hon. Diana Laidlaw: It was not an error. You have assumed that it was an error.

The Hon. T.G. CAMERON: If it is not an error, then someone has found a loophole. I thought when lawyers found loopholes in acts of parliament it was due to the fact that the legislators at the time did not see the loophole. If that is not a mistake, then it is not a mistake.

The Hon. Diana Laidlaw: You know the Road Traffic Act; we do not make it retrospective in terms of fines when we find loopholes. You are an expert on the Road Traffic Act.

The Hon. T.G. CAMERON: Yes, I do recall the debate on that, but my concern here is that, having exploited a loophole in the act, contrary to what the intentions of the act were, one individual and his company will reap the rewards. I am not certain whether that is a very good message to be sending the community; that is, irrespective of what our intention was—

The Hon. R.I. Lucas: Won't you keep an open mind on it?

The Hon. T.G. CAMERON: I said I am in a bit of a quandary about it.

The Hon. R.I. Lucas: There might be an amendment being drafted.

The PRESIDENT: Order!

The Hon. T.G. CAMERON: My concern is: what type of message do we send to the community? Is it that, despite the intention of parliament, the clearly intended—

The Hon. R.D. Lawson interjecting:

The Hon. T.G. CAMERON: That is my understanding. I will be quite happy to listen to the honourable member when he speaks and he can attempt to disabuse me of that notion. I just caution him—not too much legal gobbledegook when he does, otherwise he will lose me. It seems to me that no matter what decision we take, we will be unfair to someone. I have received correspondence from Wallmans and I do concede the point that the Hon. Robert Lucas made; that is, that Mr Ralph Cufone and his company have expended a considerable amount of money, time and effort to secure this licence. In addition, Judge Kelly has awarded the hotel licence and, according to his decision—and I will not read it out, but I will paraphrase it—he has found that there is a real need for a new hotel at Angle Vale.

We have a situation where residents at Angle Vale have demonstrated the need for a hotel and a hotel licence, but according to the submissions made by Wallmans on behalf of Anport Pty Ltd—and we have heard these arguments widely said throughout the industry—it does not add up economically; in other words, without poker machine licences, the facility is not economically viable; and, according to Wallmans, if the hotel is not able to get a licence, then the project almost certainly will not go ahead. It does not matter what decision we make, we will peeve Mr Ralph Cufone and Wallmans no end if the bill is passed with retrospectivity. If the bill is passed without retrospectivity Mr Cufone is okay. But if it operates as and from today then I wonder where that leaves any other applicants.

It is my intention at this stage to support this piece of legislation and at this stage—unless someone is capable of proposing some other alternative—that will include the retrospective nature of the application. That would mean that this hotel premises will not go ahead and the residents at Angle Vale will have been the losers in the whole exercise. Whilst I do intend to support this bill—Rory McEwen's bill—I indicate that I am still open, but the door is nearly closed as to this question of retrospectivity. I support the second reading.

The Hon. R.D. LAWSON: I have heard the debate on this matter. I was originally in two minds about it for some of the reasons that the Hon. Terry Cameron mentioned. However, on examining the question somewhat more closely, and recalling my own position in relation to the freeze, I will not be supporting this legislation: I could not support it based on principles of fair legislation; nor could I support it on the basis of the arguments that have been advanced for it.

Like other members, I have received a communication from Wallmans, who are the solicitors for applicants for a hotel licence at Angle Vale, to which the Hon. John Dawkins referred. I am not particularly concerned about the particular issues raised in that application although it is, of course, relevant. This is retrospective legislation: there is no doubt about it. It will undoubtedly affect the Angle Vale application but it may well affect other applications that are in the pipeline.

The reason that I oppose the legislation is that I do not accept that this legislation represents an unintended consequence. Nor do I accept for a moment that a loophole was created and that somehow, someone is seeking to close a loophole which sharp lawyers are getting their clients through.

There was no ambiguity in the legislation that this parliament passed. There was no uncertainty. The legislation was perfectly clear. Its intent, language and spirit all allowed the transferability of gaming machines. I was the only member of my party who supported the Hon. Nick Xenophon's original freeze. I did so because I believe we should limit the number of poker machines. I supported the legislation which subsequently passed. I accepted the logic of the position of the Social Development Committee, and I make no apology for supporting the freeze.

However, I do not support, and did not support, any geographic limitations on the freeze. I was interested in a general overall freeze; a pause in the number of machines. I still support a freeze, and will support one into the future. But the member for Mount Gambier, Mr McEwen, said when he moved the second reading:

> During that debate, we talked about reducing the number, and geographic distribution, of machines.

Well, he might have talked about it; he might have thought about it. I certainly did not have regard to that matter when I voted on the legislation, which did not talk about the geographic distribution of machines at all. It said absolutely nothing about geographic distribution of machines. If there

was some intention by the proponents of the legislation to limit geographic distribution of machines they could clearly have said so: they chose not to. I do not know that I would have supported limitations on the geographic distribution of machines.

The point is that there was a certain number of machines, the freeze was actually to fix the number and that is what I supported and continue to support. I do not believe in artificial restrictions on the geographical distribution of machines. Mr McEwen goes on to say:

> . . . we were trying to say that if somebody rebuilt down the block. . . We knew what we meant but, unfortunately, someone is trying to read more into this than we intended.

That might have been Mr McEwen's intention—I certainly do not doubt his word on that—it might have been somebody else's intention. It certainly was not my intention and it certainly was not the intention expressed by the parliament.

Saying that this is closing a loophole is to suggest that there is some smart chicanery used to work around the act. No chicanery is required here. The act simply does not cover the situation which the opponents of gaming machines seek to have it cover.

The Hon. Nick Xenophon has been perfectly up-front with the council. He is presently before the Liquor and Gaming Commission for some group trying to oppose a particular application. That is fair enough, but I do not believe that he can come along to this parliament, given that he was not doing too well before the Licensing Court—where his arguments were apparently not accepted—and now being before the gaming commissioner, and say, 'We want you to pass a law which will actually bolster the argument of my client so that we can win,' and somebody else, a perfectly law-abiding business, is unsuccessful in making an application.

I think it is worth referring to what Judge Kelly said. Judge Kelly's reasons do not contain any suggestion that there is something underhand, some loophole or some devious design on the part of those people who seek to transfer a licence from Whyalla to Angle Vale. What he says is:

> It is unusual in the sense that the distance between Whyalla and Angle Vale is great and without any apparent logical connection between the two areas but the attempt to remove the licence from one place to another is '. . . perfectly permissible under the legislation.

His honour went on to talk about the concerns that were expressed by the local residents and he was, of course, required to have regard to them. He says:

> I certainly reject the notion that somehow this applicant has been involved in an abuse of process. It is perfectly permissible under the licensing act.

In my experience it is perfectly permissible. There is nothing underhand about it. There is no loophole to be jumped through. It is something that is allowed: it might be unusual but it is perfectly legal and allowed. The fact that some members of the House of Assembly, and some others, might have been thinking about something else is really not the point. This parliament passed legislation which is clear, not uncertain and has no ambiguity about it and, therefore, it is entirely appropriate that anybody who has made an application under it should not be frustrated by those who oppose gaming machines coming along at the last minute to deprive them of a legitimate application. Mr McEwen said on the same page:

> So there is nothing retrospective about what I am now saying.

Further he said:

> I am attempting today simply to reaffirm what were our original intentions. That is what we intended. That was the wish of the parliament at the time. Unfortunately, we did not capture that explicitly in amending the act.

I do not for a moment accept that that is a true statement of the position. It might well have been Mr McEwen's position and it might have been the position of some other people, but it was certainly not my intention. It was not the expressed intention of parliament. We cannot interpret legislation by reference to the individual intentions, aspirations and desires of members. We have to examine the legislation. I think this illustrates the danger of legislators saying that it was their intention that such and such occurred, and I certainly disavow that approach to the matter.

In these circumstances, notwithstanding the fact that I believe that a freeze is important, I cannot support legislation which is retrospective in its operation. It has been drawn to the attention of us all that it will have an adverse affect on one particular application and, for all I know, there may be others—although there might have been some indication from the commissioner that there were no others, but one does not necessarily know in relation to the effect of legislation of this kind. I will certainly support the legislation if an amendment is moved, and I gather it is intended that one will be moved, to remove the element of retrospectivity from this legislation.

The Hon. CAROLINE SCHAEFER: My contribution will be brief but, since this is a conscious vote, I indicate that I will not support this legislation, for many of the reasons that have already been expressed in this place. I happen to believe that poker machines are legitimate, tradeable business property in the same way as many other business properties to which licences are attached. As well, however, I am very concerned by the retrospectivity of this piece of legislation. We as legislators pass laws and the public then acts on them. Mr Ralph Cufhone and the proprietors of his company Anport Pty Ltd acted in good faith within the law, and if we change this now it will cost them a great deal of money. But it will also transgress a principle, I believe. I am always uneasy about retrospectivity. In this case, I see no need for retrospectivity, particularly when we have before us Judge Kelly's findings on this matter in which he clearly says that there is a need for a hotel in Angle Vale. There is some distance between the region which is discussed and the site of the proposed hotel. As we all know, the facilities of a hotel in this day and age, unless it is the expressed desire of the hotelier not to have gaming machines, include gaming machines.

I would consider an amendment that would outlaw transferability from now on but, should there be other applications in the pipeline at this stage, I believe that they should be treated as lawful applications, within the law as it is at this time, Therefore, I do not support this retrospective legislation.

The Hon. DIANA LAIDLAW: I, too, do not support the bill before us. I indicate at the outset that I supported the introduction of poker machines in this state—I was one of the few Liberals to do so. I also supported the subsequent legislation to place a freeze on gaming machines. My support in that instance was given with considerable misgiving and only at the urging of my then leader, the Hon. John Olsen, and on condition that there was a time limit of 31 May 2003.

I speak today with the benefit of my experience as the former minister for transport in terms of the freeze that has

been imposed over many years by parties of all political persuasions on the number of taxi licences and the distortions that that has delivered to South Australia in terms of marketplace and service. While it remains my party's policy to freeze the number of taxi licences, there are some very grave practices that arise from that in terms of a service industry and, I think, some disastrous attitudinal repercussions in terms of service when other factors, such as monetary return alone, become the chief focus of those who operate a licence rather than the service in which that company or individual is engaged as part of a greater industry.

Therefore, today I indicate that I do not support this measure, and I do so mainly from my perspective as a former planning minister. This matter involves a longstanding legal practice in planning. The current proposal for a hotel at Angle Vale has planning approval, which was granted by the Gawler council on the basis that it would be licensed premises with poker machines, subject to the application for poker machines. That was the basis of the application before the council and that was the basis of the council agreeing to that application. Planning law in this state, and everywhere else, does not, at the whim of a parliament or an individual, simply change because you do not like poker machines. What is going to be the next example? If you start a practice of retrospectively changing the planning law because of personal preference, what will come next? Will it be the sex shop, will it be the TAB, or will it be something that you decide that you personally do not like and, therefore, retrospectively apply it, or apply it in general, to planning law?

Planning law is very much about a clear process where people know the boundaries. Those boundaries apply at the time that people make the application and the council or DAC or some other legal body or court authority makes its decision. Once we start changing the rules retrospectively in terms of planning and making exemptions, I think this state will be in real trouble. I make that point very clearly.

With respect to planning law, I should also indicate that I was asked to override decisions from time to time, because people did not like the fact that some nearby heritage item might have been directly affected by a project. Councils and others, and this parliament too, have to be clear about what they intend, and to launch into a process of planning by protest or by personal preference is something that has very dangerous repercussions: I do not want to be party to it. I highlight that fact in relation to a particular comment made by the Hon. Terry Cameron—and it was a well meant comment.

He asked what message we would be sending if we did not pass the current bill in its present form. What message would we be sending to say that it is suitable for one operator to change the locality of the poker machines but it would not be acceptable in future? My reply to the Hon. Mr Cameron is that there is a bigger issue at stake. What message would we be sending in terms of retrospectively changing planning law and indicating that, notwithstanding the law at the time and a person's justifiably progressing on the basis of that law and having won the planning approval of a council, we in this place were then prepared to override that planning approval?

I think that is a very dangerous precedent in any event. It is a particularly dangerous precedent on the basis of the debate I have heard so far today, and that is that the legislation before us contained a loophole. I indicate very strongly that, if there had ever been a proposition in the bill or by amendment to limit the number of poker machines to certain premises in a certain locality, I would never have supported it, and I would have made that very clear at the time. I would not have supported it then and I do not support it now and, if an amendment is moved to limit all current licence holders under the Liquor Licensing Act in terms of machines and insist that those machines stay in that locality for all time, I do not want part of that amendment today or at any time.

What such an amendment would provide relates to the point that the Hon. Terry Cameron raised in his contribution. It would provide that only those hotels that got in early with poker machines in only those localities could continue to have poker machines. There may be other localities that do not have poker machines now, not only in Angle Vale but also in other places and, with the combination of a freeze and then prohibition on movement among localities, it would seem that 'first served, best served and only served' would be the precedent that we would be setting here. I do not think that is healthy in terms of community development in this state or of planning principles.

Finally, I indicate that I have been strident in my responsibility as former planning minister not to succumb to planning by protest and to try to encourage councillors—and I now extend that to members of parliament and the like—to be as clear as possible with their intentions regarding planning provisions. Today I therefore cannot in principle or practice or professionally have any part of this measure, which I regard as planning by protest. I therefore—

The Hon. T.G. Cameron: But it's only the retrospectivity you're opposed to, isn't it?

The Hon. DIANA LAIDLAW: No: I indicated that, if there is any amendment to freeze the localities to the current locations, I will not support that amendment either. I may be the only person in this place who holds that view, but I feel very strongly that we would effectively be saying that those hotels that have them now will be the only hotels or localities that will be able to have them in future, even though a community may be without poker machines. They might want it that way, but that same community in the future might not want it, and it would mean that poker machines could not be installed in Angle Vale or other places. I am not interested in supporting such a notion.

The Hon. T.J. STEPHENS: I indicate my opposition to this legislation. When the gaming machine freeze legislation was passed under the previous government, an amendment was carried in the lower house to allow for the transfer of a licence in the case of the surrender or the removal of a licence to new premises. In accordance with that amendment, the Whyalla Hotel took action to transfer its dormant hotel and gaming machine licence to a hotel proposed to be built in Adelaide at Angle Vale. Some may say it is opportunistic to move a hotel licence and the attached poker machine licence so many kilometres away and that this was a loophole in our legislation. Whatever the loophole, the hoteliers concerned made the business decision to transfer a surplus hotel licence in Whyalla, where there are seven hotels, to Angle Vale, because this amendment provided for that action. This limitation on exception to freeze bill proposes to close this loophole, and the effect of its passing would be to prevent the Whyalla licensee from relocating the hotel and gaming machine licences to Angle Vale, where they are clearly needed.

I am really speaking on behalf of the many residents in Angle Vale who would very much like to be able to enjoy entertainment at a recreational outlet that is similar to the

entertainment that thousands of their fellow South Australians enjoy in their own locality. This bill makes clear that the intent of the legislation is to allow transferability of hotel licences to a site within one kilometre of the original hotel. It has come about as a consequence of the application to remove the hotel licence from Whyalla to Angle Vale, 300 kilometres away. The passage of this bill subsequently overturns the decision that the Licensing Court made only last week, that is, to grant the application to transfer the hotel licence and presumably the attached poker machine quota from Whyalla to Angle Vale. Judge Kelly in the Licensing Court based his decision on an earlier decision made in January 1992 that there was a need for a hotel licence at Angle Vale, a decision made more than two years prior to the introduction of poker machines.

In the judgment handed down on Friday, His Honour endorsed his decision made in 1992, saying that, as no hotel has been built whereas the population in the locality has increased markedly and continues to increase, the need for a licence for hotel facilities is proved. His Honour pointed out that there is no actual proprietary right in relation to poker machines automatically coming with a hotel licence.

I have heard that the passage of this bill will have a retrospective effect in that the parliament has every right to change the basis upon which an application to have poker machines might be made. This may have the effect of removing the poker machine quota attached to the hotel licence and leaving the actual hotel licence intact. Whatever is retrospectively overturned, the fact is that a new hotel without any gaming machines will not be built; a hotel would not economically survive. Gaming machine transferability allows the hotel industry to reflect the changing population patterns in this state.

Transferability might not have been intended for one publican to transfer his existing hotel gaming machine entitlement to another venue, which ensures that there would be no increase in the number of gaming machines in existence. Despite a ruling in 1992 that Angle Vale should have a hotel, no-one has transferred their licence or built a new hotel. Angle Vale residents, as a rule, welcome the initiative to transfer a dormant hotel licence and the associated gaming licence which has never operated from Whyalla to a locality where it is warranted. If this bill is applied retrospectively to this application, my concern is for the residents of Angle Vale, who have been waiting for a decade now to have a local hotel and who would have to continue to make a round trip of 20 kilometres to get to the nearest hotels.

I appreciate that, in putting forward this bill, the Hon. Mr Xenophon is acting on behalf of residents who oppose the hotel licence. He is also acting on behalf of those people who have gambling problems, and he does not feel that Angle Vale residents should be exposed to the potential excesses of gambling. I very much recognise that there are excesses within the hotel industry and moderation or regulation and assistance should be provided for the minority that do have problems, be it alcohol or gambling related. However, to me, hotels and gambling venues are places of social interaction in which to enjoy life and meet people and they also play an important role in providing employment, especially in South Australia's tourism industry. On behalf of the residents of Angle Vale who want to have their own local, I will not be supporting this legislation.

The Hon. M.J. ELLIOTT: I indicated previously that I am not a great fan of a freeze other than it being a breathing space during which we consider where to go. I do not think that long term a freeze is satisfactory. Either we make a decision to abolish gaming machines or we make a decision to significantly modify the way they operate, in terms of major changes to the games and the rules in such a way that they become genuine entertainment and not just easy ways of making money for the people who happen to get hold of a licence, which is what they are at the moment. That is a starting point.

There is no doubt in my mind that I had a very lively expectation that there were not to be transfers of gaming machines from one locale to another. In fact, in discussions I had with people involved in the lower house debate, initially there was an intention to draft an amendment that would have clearly stopped it, but the question was put as to what would happen if the place burned down and the answer was that it has to be rebuilt on the same site. As I understand it, the final form of the legislation largely tried to tackle that issue and never intended that gaming machines would move from one site to another.

I would like to see as rapid a movement as possible to a final position as to what we are going to do with gaming machines. At the moment it is nothing more or less than procrastination and the government is now further hooked on gaming machine revenue than the previous government. The problem is that governments have got themselves so deeply dependent upon gaming machines that unstitching the whole mess is becoming increasingly difficult. I expect the only way out now is a gradual movement, although not too gradual. There could be a gradual phasing out of numbers, and that could be done in the way that the pot buy-back scheme worked, where everybody who has machines loses 5 or 10 per cent and the percentage is wound back over time. We might allow transferability to happen within that scheme as long as no-one exceeds 20 machines rather than 40.

We could do a number of things like that so there could be a phase-out of machines over time but not so much that it would seriously disrupt business or the government income stream, but eventually it would put us in a far healthier position. The other point is that we must progressively start modifying the games in terms of the size of bets and payouts of any win over a certain size—in terms of a whole range of things that we have discussed in this place before—and that can be commenced straightaway. It is not acceptable to continue to procrastinate, and I will be watching with much interest to see whether the present government procrastinates on the issue as much as the previous one did.

The freeze was nothing more than a stunt. Basically, the number of machines in the state was probably approaching saturation point, although I am not sure that is the right term, but in terms of meeting the demand of people who wanted to use them, we were getting pretty close to the mark at the time the freeze came in. I indicate at this stage that I am prepared to support this bill. Some of the reservations that have been raised by individuals are reasonable, but this is one of those on-balance decisions and, on balance, I am prepared to support the bill.

The Hon. A.J. REDFORD: I rise in support of the bill, which is similar to one introduced by the Hon. Nick Xenophon on 5 May. In relation to that bill, I made a detailed contribution to this place on Wednesday 5 June, and my views have not changed. My principal reason for supporting this bill is that the freeze came about as a consequence of an historic agreement involving the AHA, clubs, church

representatives and charity groups following the pokies task force chaired by the Hon. Graham Ingerson, of which I had the honour to be a member.

As I said before, all parties engaged in that process in a spirit of compromise and, at the end of that, a package was arrived at which was internally consistent and, as a consequence, legislation was introduced into this parliament and that legislation went through with very little demur or criticism at the time. The principal result of that legislation, which was an initiative first promulgated by the Hon. Michael Elliott, was to establish an independent gambling authority to enable that body to look at issues associated with the poker machine freeze and other associated issues, including the issue of transferability. If such a freeze is to be continued indefinitely into the future, it would report back to parliament in a non-partisan, non-emotional way, enable us to consider its measures and then as a parliament to make long-term decisions.

This freeze automatically expires on 31 May next year and, for the freeze to continue, it would need the approval of both houses of parliament. If I were a betting person, I would say that I am not sure that is likely to be the case. The matter that the Hon. Nick Xenophon referred to in his second reading speech, and the matter that has caused some correspondence to be sent to us, involves an application by a company known as Anport Pty Ltd for the removal of a hotel licence from Darling Terrace, Whyalla to Heaslip Road, Angle Vale and known as the Whyalla Hotel.

The Hon. M.J. Elliott: It has been shut for years.

The Hon. A.J. REDFORD: I am not aware of that circumstance, but I accept what the honourable member says. An application was made for a hotel licence in 1991, and that application was granted in January 1992. The process that was adopted under the liquor licensing legislation pre 1994, when poker machine legislation came in (and little has changed in that respect since then) is that someone who wants to build a new hotel applies for a certificate, and that certificate then in the hands of the applicant enables them to go out and build their structure with a degree of confidence. Having completed the construction of their hotel, they take it back to the Licensing Court, the Licensing Court inspects the premises and, if it is built in accordance with the conditions set out on the certificate, which has the plans annexed to it, the licence is automatically granted. In this case, a certificate was issued. The certificate lapsed. However, in the granting of the certificate, the judge found that there was a need way back then in 1992, that is, a need for a hotel licence without any poker machines, without any gambling.

For reasons best known to the hotelier, they decided not to proceed to act on that certificate. Some 10 years later, the matter returned to the court, and on 31 May 2002 His Honour, Judge Kelly, found that there was a need for a hotel licence. He made it very clear that he was not making any decisions about a poker machine licence. Indeed, there was no application for the removal of poker machines or anything to do with poker machine before His Honour when he made his decision on 31 May 2002. In that respect, I will read into *Hansard* (although I have done so before) what His Honour said on that occasion, as follows:

> I have dealt with certain preliminary points and the transcript will evidence that. I simply reiterate that I am not here to grant poker machine licences.

Nothing could be clearer than that: he is not there to grant poker machine licences. There was no application before His Honour for the granting of a hotel licence. There was no right, in terms of that particular applicant, for a poker machine licence at that point in time. He went on to say:

> If there is a need for hotel facilities (which these days often embrace a desire to gamble in the case of many) and such is not being met by other licensed facilities in the locality, and all things being otherwise equal, then a hotel licence would be granted.

For those who have not made themselves all that familiar with how this system operates, His Honour actually came out and said this very clearly. I will be dealing with this furphy of retrospectivity in detail. His Honour went on:

> This does not mean that I endorse the proposition that poker machines ought to be granted.

What we have here is (a) no application, and (b) a statement from a judge saying that his decision in relation to the granting of a hotel licence in Angle Vale has no relevance in relation to whatever decision might be made in the future if there should be an application for those poker machine licences. Nothing could be clearer. Notwithstanding that, I point out that His Honour also said:

> I have only looked at the need in relation to a hotel licence. I found in 1992, in the absence of any poker machines, there is a need for a hotel licence.

In 2002, he said:

> I have come to the same conclusion. I haven't even looked at poker machine licences.

So, in that sense, the owner of the certificate (and I know a certificate has been issued) has been granted a right, subsequent to the introduction of this legislation. As I have said, the bill was introduced before any application for a poker machine licence. How can it then be said that this bill retrospectively takes a licence or property away from anyone? There is no poker machine licence; there is no property. There is simply an application for a licence initiated well after the introduction of this bill.

Every member in this chamber has voted for measures that take effect from the introduction of a bill. It is not uncommon for governments to stand up, make announcements at the time of the introduction of a bill, say that it will take effect from the introduction of the bill and no-one demures from that process. It is a process that has been going on for well over 30 years. Indeed, the current Prime Minister, the Hon. John Howard, made an art form of it when he was treasurer in the Fraser government.

The Hon. R.D. Lawson: The bottom of the harbour scheme is hardly a good example.

The Hon. A.J. REDFORD: No, he stood up and made announcements in parliament and said that it would take effect from that moment, and it was supported by all sides of parliament. There might have been criticism that he did not do it earlier, but he certainly stood up and made announcements and said that it would take effect from that moment. Governments of all persuasions, including the government of which the honourable member was a member, did the same thing.

The Hon. R.D. Lawson: This process had already started.

The Hon. A.J. REDFORD: The honourable member interjects. If his argument is taken to the logical extreme, for argument's sake he is saying that a tax increase is a retrospective measure because a hotel was bought based on a certain tax regime, and the taxes go up. It simply does not wash.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: The honourable member has had his opportunity. Those who argue that this is retrospective fundamentally misunderstand how the liquor licensing

system and the poker machine system interact. The application for poker machines was made well after the introduction of bills in both houses of parliament. For that reason, I do not accept that this measure is in any way retrospective.

The passage of this bill will not overturn any decision made by any court on this point. His Honour's decision in granting the liquor licence still stands, and these people—the applicants—can make a commercial decision based on the circumstances at the time, just as the owners of poker machine premises, who are currently facing a massive hike in taxes, will make a commercial decision.

In relation to the effect of not passing this bill, first, there is a question mark as to whether or not the application may or may not be granted. Section 24 of the gaming machines legislation provides:

> The commissioner has an unqualified discretion to grant or refuse an application.

Albeit in the past, the commissioner has looked at only the basis upon which applications can be made, which is very narrow, and I outlined that in some detail in my contribution on 5 June. Notwithstanding that, he still has an unqualified discretion to grant or refuse an application. I accept that there may be some who may argue that we should not be interfering with that process; that we should be allowing the commissioner to exercise his unqualified discretion and hope that, in the sense of the Hon. Nick Xenophon and myself, the commissioner might refuse the application.

If parliament can clarify the law, and I know people are often looking to parliament to clarify the law, we should take the opportunity to do so. Secondly, and I will talk about the applicant in this case, the applicant had from 1994 until 2000, through numerous attempts to get a freeze in place, to make this application.

An honourable member interjecting:

The Hon. A.J. REDFORD: No, I said he has had numerous opportunities. So, for a period of two years, this parliament has said it wants to freeze just for two years until 31 May 2003.

The Hon. R.D. Lawson: 12 000 machines.

The Hon. A.J. REDFORD: Whatever the number, that is what parliament has said, and you cannot disagree. Parliament has said that there will be a freeze for that two-year period. This applicant has had a lot of time to either obtain a certificate or build a hotel prior to May 2002. He will have a lot of time, I suspect, following 31 March 2003, to make his application. I am not sure that this particular applicant is all that far out if he has to wait just a little longer to get his poker machine licence, albeit dependent upon the decision of parliament next year.

I think that there ought to be a level of confidence when the AHA and various other groups engage in a process involving the government, whether it be the former government or the current government. When an agreement is entered into and parliament endorses that agreement, there ought to be an element of confidence in that process and in those arrangements, otherwise people will lose confidence and it will be difficult for governments, and indeed the parliament, to function in those circumstances. Having been intrinsically involved in that—

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: There was also Clubs SA. Having been intrinsically involved in that, there was a spirit of give and take. Thirdly, I am concerned about the effect in the marketplace. We politicians are often laughed at—and the Hon. Robert Lawson has had a snipe at me in the past few minutes about the fact that, notwithstanding there was a freeze, we have had an increase in the number of poker machines. It is a little bit rich for the honourable member to start interjecting on me about that process—although I understand the point he makes—and then turn around and say to members who want to stop the shifting of poker machines some 400 kilometres from Whyalla to Angle Vale that that is wrong and then make those sorts of comments.

I refer to the Hon. John Dawkins' contribution—and I accept the sincerity of it, but there are two sides to the argument. A number of people at Angle Vale do not want this facility. They have already exercised their rights once in relation to the application for the hotel licence. I suspect they have also exercised their right to visit the Hon. Nick Xenophon. I know that, according to the Hon. Terry Stephens, they have waited 10 years. I have to say to the Hon. Terry Stephens: why not wait 11 years and allow the authority to do its business as this parliament asked it to do? I also point out to members that this legislation went through the lower house unopposed, and I can only assume that the local member, the Hon. Malcolm Buckby, supported that legislation. I can only assume that there are some in that electorate who are in support of this.

The Hon. R.I. Lucas interjecting:

The Hon. A.J. REDFORD: I can only assume that, with the support of the Hon. Malcolm Buckby, there is some division within the community and it is not as simple as the honourable member might think it is. My leader has pointed out that one member demurred in the lower house, and I apologise to the member for Morphett, who I understand opposed the bill. In any event, the Gambling Impact Authority process ought to be allowed to proceed. We have all been distributed with a letter of today's date from a solicitor at Wallman's. He raises the issue of planning, which the Hon. Di Laidlaw referred to. My understanding of the planning process is that you do not need any separate planning approval, whether it be a hotel with or without poker machines. It makes absolutely no difference, because the planning process is for a hotel—

The Hon. Diana Laidlaw interjecting:

The Hon. A.J. REDFORD: They applied for planning at the time there was a poker machine freeze. That is what happened and they take their chances. The planning notification form says that you can build a hotel—it does not say anything about whether you can build a hotel with or without poker machines.

The Hon. Diana Laidlaw: I'm glad you were not planning minister.

The Hon. A.J. REDFORD: That is what it says. There is no intrinsic right, otherwise you would not need an act—all you would need is a planning process. There is actually gaming machine legislation, and simply because a planning process, a planning minister or a planning authority says that something will happen in this area does not necessarily mean that it will happen automatically. I am not sure that I quite agree with the former minister's assessment on that issue. I indicate to members that I will not support the amendment.

The Hon. J.F. STEFANI: Members would be well aware that I have been a strong opponent of poker machines. I can never forget the process that led to the introduction of poker machines when, in the early hours one morning, my then colleague in this place the Hon. Mario Feleppa was torn between the conscience he wanted to exercise and perhaps the

pressures that he had to endure in the introduction of that measure. I say at the outset that the legislation that the parliament considered and passed in relation to the freeze on poker machines was obviously understood by everyone—that no further licences would be issued. I am equally aware that there are provisions to transfer poker machine licences within a location from one entity to another.

The parliament, in the process of establishing the legislation, unfortunately created a loophole. In the process of creating this loophole we now, through circumstances, realise that this loophole exists because an applicant from Whyalla is endeavouring to transfer the poker machine licence at that venue to another venue. The applicant has made an appropriate application to the Liquor Licensing Commission for the transfer of the liquor licence. That transfer has been granted. The next step was the application to transfer the gaming licence. I understand that there are no other applications before the commissioner for consideration in relation to the transfer of similar gaming licences.

So, we have the circumstance that parliament in the first instance made an error or at least allowed the passing of legislation that was not accurate in defining the purpose of that legislation. So the applicant—and I guess the law as it stood—was able to make application within that law to transfer not only his liquor licence that he applied for and obtained but now the gaming licence for his premises. I have very strong sympathy for people who, within their rights, legally exercise their rights as the law stands at a particular time and apply to the appropriate authorities to exercise those rights. I have no sympathy for parliament, having realised its error, flagging its intention to correct that error and then endeavouring to exercise its intention in a retrospective manner.

I have a strong view in relation to those errors, namely, if you make an error you wear it. In those circumstances I have particularly taken notice of the comments made by the Hon. Terry Cameron in relation to the circumstances of those people who legitimately go about their business of applying for a particular purpose or licence within the law—whether the law is weak or otherwise is not their fault—and endeavour to obtain a particular outcome for their operation.

I am very sympathetic to the measure that has been introduced in this place, after being passed by the lower house, to endeavour to correct the error that parliament itself has made in the first instance. However, to correct it in a retrospective manner is unacceptable to me. In considering my position I have instructed parliamentary counsel to draw up an amendment that will make the law effective as of today. If the council passes the legislation, and my amendment is successful, the law will apply as of today.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I seek leave to make a personal explanation.

Leave granted.

The Hon. T.G. ROBERTS: During the debate, the Hon. John Dawkins indicated that the collection area for the proposed Angle Vale hotel has within it the Kariwara or the Playford Hotel. I indicate to this chamber that my brother has a financial interest in the hotel.

The Hon. NICK XENOPHON: I will be brief as I am aware of the hour and I am aware that the government wants to deal with another bill. I thank members for their contribution. I will deal with some of the matters raised by members. The Hon. John Dawkins expressed concern in relation to Angle Vale and the local residents. I will repeat what the member for Light (Hon. Malcolm Buckby)—the local member—said in relation to the sentiments of the community. I understand he has done a considerable amount of door-knocking and spoken to many members of the community. He said:

> Let me assure members that the people of Angle Vale do not want poker machines there by any stretch of the imagination. Furthermore, they do not want the liquor licence to be given to the Angle Vale location either.

He goes on to speak about the location of the hotel and its impact.

A distinction needs to be made by members in relation to the granting of a liquor licence, which has occurred, and the granting of a gaming machine licence which is still pending and about which there will be a hearing before the Liquor and Gaming Commissioner next week. In relation to the comments made by the Leader of the Opposition, the Productivity Commission did make it clear that accessibility, the number of machines and the number of venues are issues driving levels of problem gambling.

There may be an argument as to whether it is reduced levels of gambling, but it has certainly put a halt on one argument in terms of the level of problem gambling in the community. It was always understood, as I have read the debates in this chamber and the other chamber, that the whole intention of the freeze was to have a pause in which to look at this in a considered fashion to see what measures could be introduced which, ultimately, could reduce levels of problem gambling. I acknowledge that it is an interim measure, given that parliament says that this freeze will expire on 31 May.

In relation to the Whyalla Hotel, it ought to be acknowledged by members that the Liquor and Gambling Commissioner intervened in this matter. That is, as I understand it, relatively unusual. As I understand it, the Liquor and Gambling Commissioner intervened—

The PRESIDENT: Order! Members should be aware that they are not to stand in the passageways, especially in between the speaker and the chair.

The Hon. NICK XENOPHON: As I understand it, the commissioner intervened to test the law as to whether it was in the public interest to move a licence 300 kilometres. It was something unusual; it was something that obviously warranted enough concern on the part of the commissioner to seek an intervention. The Leader of the Opposition made some reference to the Roosters Club and the West Torrens club and their removals. I was not aware of the West Torrens club's removal and I thank the Leader of the Opposition for bringing that to my attention. I have not had any representations from them and I have not spoken to them.

I am certainly aware of the application for the North Adelaide Roosters Club to be shifted from their current clubrooms to a Main North Road location at the North Park Shopping Centre. The No Pokies campaign has lodged an application to object to that. The matter was argued by way of appeal only yesterday before Judge Kelly of the Licensing Court. That application was opposed. Representing the hotels was the very capable firm of Wallmans Solicitors and Mr Hoban, and their counsel, Brian Hayes QC. That decision will be handed down, as I understand it, on Friday week. The grounds for appeal were based on its being located in a shopping centre.

However, I am grateful to the Leader of the Opposition for bringing the West Torrens case to my attention. I will be

looking into that and, if there is an objection—or if it is not too late to object—I will be doing my bit to assist. In relation to the issue of locality and the one-kilometre distance, my preference has always been to have one kilometre but the member for Mount Gambier (Mr McEwen) wanted to refer to locality. I understand that was the position of the government and the Minister for Gambling (Hon. John Hill), so I defer to them. It was a compromise, if you like. I preferred a much stricter interpretation. Locality (as defined by precedent in the liquor licensing jurisdiction) takes into account a number of factors and it is dependent, as I understand it, on similarities between the community of one locality compared with the other.

In relation to some of the other points made, and I will be very brief, the Hon. Terry Cameron—I hope I am paraphrasing him correctly—made a good point about having a level playing field and not giving someone a free kick. That is what we will be doing in relation to the Whyalla Hotel application. Members should analyse what has occurred in relation to the Whyalla Hotel application. The Whyalla Hotel had a licence for a number of years, the licence was not used, and then there was an application to move it from one location to some 300 kilometres away. I ask members to take that into account when they are determining their position in relation to this bill.

In any event, the issue of what we do with transferability of licences is something that is being dealt with by the Independent Gambling Authority and it will be dealt with by this parliament in coming months. It is important not to give a free kick to this particular application, or indeed any other application down the track. In relation to the Hon. Diana Laidlaw's analogy with planning laws, in this particular case the poker machine application has not yet been granted: it has been applied for but not granted. With respect to the arguments put by the Hon. Angus Redford about retrospectivity, I simply endorse them. I do not propose to restate them unnecessarily.

I am aware of the hour, I urge members to support this bill. I know the Hon. Julian Stefani has an amendment, but I will not be supporting it. It is my strong position to maintain the position adopted in this bill. I hope we can deal with this expeditiously.

Bill read a second time.

In committee.

Clause 1.

The CHAIRMAN: Does anyone wish to speak to clause 1?

The Hon. R.I. LUCAS: Yes.

Progress reported; committee to sit again.

CHILD PROTECTION REVIEW (POWERS AND IMMUNITIES) BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

The Hon. T.G. ROBERTS: I must apologise to the council for the short introduction time that we have to discuss this.

The Hon. A.J. Redford: It's a record; 30 seconds. I haven't even seen it.

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: It is a mechanical process. It is a machinery bill.

Members interjecting:

The Hon. T.G. ROBERTS: I understand that briefings have been given to those people who are leading the discussions within the major parties. It is a three-page explanation.

The Hon. Diana Laidlaw: Do you know what it says?

The Hon. T.G. ROBERTS: Yes. I've had a briefing. Mr President, I will read an explanation to the council, if that is required. The government has established a Child Protection Review to examine the state's child protection laws and to develop strategies to improve the way in which government responds to the needs and welfare of children. The review will look at child protection policy and practice within government departments and government-funded services as well as criminal processes and legislative frameworks.

The review has made a public call for submissions and has received 380 registrations of interest in making a submission. A large number of registrations of interest have come from private individuals.

The purpose of this bill is to facilitate the conduct of the review by ensuring that people are not prevented from providing information to the review by confidentiality provisions in legislation. The Children's Protection Act 1993 has a number of confidentiality provisions that could prevent people from providing information that is relevant to the review. For the review to be effective, it is important that people can provide relevant information to it.

The bill also provides that certain personal information provided to the review will be confidential, in line with the Children's Protection Act 1993. The bill provides an ability for the reviewer, Ms Robyn Layton QC, to determine that other information should be kept confidential if she considers it appropriate to do so in the interests of justice or to prevent hardship or embarrassment to any person. There are exceptions to provide when such information can be divulged.

Finally, the bill provides people involved in the conduct of the review with the same protections, privileges and immunities as those applying to a judge of the Supreme Court. It also provides the same protection to people who provide information to the review as they would have if they were a witness in proceedings before the Supreme Court. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Interpretation

This clause sets out the definitions of terms used in the Act.

Clause 3: Procedure

This clause sets out procedural powers that may be exercised by the person appointed to conduct the Review.

Clause 4: Provision of false information

This clause makes it an offence to provide false information to the Review and imposes a maximum penalty of $10 000 for doing so.

Clause 5: Confidentiality and disclosure of information

This clause sets out the confidentiality and disclosure provisions that are intended to safeguard the interests of children whilst allowing for as free a flow of information as possible for a proper Review to be conducted. Subclause (1) permits a person to provide information to the Review where such disclosure may otherwise be prohibited (for example under section 58 of the *Children's Protection Act 1993*). However, under subclause (2), the information obtained must not be further disclosed or published if—

- it relates to a child, its guardian or other family members or a person alleged to have abused, neglected or threatened a child; or

- it identifies a person who has notified the Department of child abuse or neglect; or
- the person appointed to conduct the Review considers it necessary in the interests of justice or to prevent hardship or embarrassment to any person.

Subclause (3) sets out the situations in which information may be further disclosed or published, namely—

- for the purposes of the Review or a report to the Minister; or
- if the person to whom the information relates (not being a child) has given consent to its disclosure or publication; or
- to a person engaged in the administration of the *Children's Protection Act 1993* or a similar Act of a State or Territory or of the Commonwealth; or
- to the police; or
- if the information has evidentiary value in a court (subject to restrictions set out at subclause (4)); or
- if the information has been made public.

Subclause (4) requires evidence of information referred to in subsection (2) that is to be used in proceedings before a court to be adduced only with leave of the court. Unless leave is granted, such information cannot be sought, or if sought, cannot be required to be produced in answer.

Subclauses (5) and (6) impose further restrictions on the use in court of evidence of information referred to in subsection (2), namely, the court may not grant leave for such information to be adduced unless the court is satisfied of its significance to the proceedings and to the proper administration of justice or the person (not being a child) to whom the information relates consents to the evidence being admitted. Subclause (6) provides for further restrictions relating to applications for leave to adduce such evidence.

Subclause (7) makes it an offence for a person to contravene subsection (2), the maximum penalty for which is $10 000.

Subclause (8) imposes a requirement on authorised persons to take all reasonable steps not to identify particular children in any report to the Minister.

Subclause (9) enables the Minister or the Chief Executive, if of the view that it would be in the public interest, to publish a report containing information otherwise restricted by the provisions of the section, unless such publication would be contrary to a law other than the Act.

Subclause (10) provides that terms used in the Act, if defined in the *Children's Protection Act 1993*, will have the same meaning as in that Act.

Clause 6: Privileges and immunities

This clause provides that authorised persons, persons providing information to authorised persons, and legal practitioners representing persons in connection with the Review have the same protections, privileges and immunities as their respective counterparts in the Supreme Court.

SCHEDULE

Terms of Reference for Review of Child Protection in South Australia

The Schedule sets out the terms of reference for the Review and is referred to in the definition of 'Review' in clause 2.

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

That Standing Orders be so far suspended as to enable the bill to pass through the remaining stages without delay.

Motion carried.

The Hon. R.D. LAWSON: The opposition has no reservations about Miss Layton conducting an inquiry on behalf of the government in accordance with the terms of reference that are set out in the schedule to the bill; nor would the opposition have any objection to Miss Layton being given appropriate powers and protections; and nor does it have any objection to allowing persons to give evidence to that inquiry. Of course, because under the Children's Protection Act as it stands there are certain prohibitions against divulging information about notifications of abuse or neglect and the like and there are also certain protections from liability for voluntary or mandatory notifications, it is important that Miss Layton receives information—and full information—about our system of child protection. Accordingly, if there are barriers to people providing that information, those barriers should be removed so that the review can be comprehensive and that all relevant information will be provided.

There are, however, some provisions of this bill which give rise to some disquiet, certainly from my point of view, and I have not had the benefit of a briefing from any government officers on the matter; and nor, so far as I am aware, has the opposition spokesman Dean Brown, who has been absent with an illness for most of this week, had any such briefing.

We are, of course, concerned to ensure that the review of child protection in South Australia is comprehensive and relevant to South Australian circumstances for children. There has been some speculation that this review will be used as a vehicle to extend a political debate about children in immigration centres, about which some concern has been expressed in the media in recent times. From our point of view, we do not believe that a review of this kind should be corrupted for any ulterior political purposes and we would be very reluctant to support anything which enabled this review to be used, as I say, as a vehicle to publicise claims about those who are opposed to the federal government's border protection policies.

I will pursue in committee with the minister a number of the powers which are sought to be conferred on the reviewer, but first I will indicate those parts of the measure with which I do not have a concern. Clause 3 of the bill will ensure that Miss Layton is not required to hold formal hearings for the purpose of this review and she can obtain information from such persons and in such manner as she thinks fit and can determine how information is gathered. I think that is entirely appropriate in a case of this kind. We do not want to turn this review into a royal commission with all of the expense and panoply that that involves. The government has not sought to give to Miss Layton the powers of a royal commission, and we think that is wise.

Clause 4 provides that false information should not be given to the review, and a penalty is provided for that. There is no particular concern about that: it is entirely appropriate that people should not be able to go to a review of this kind and provide information that is misleading.

Clause 5 deals with the confidentiality and disclosure of information, and provides that any law which requires a person to keep particular information confidential or otherwise restricts the disclosure or publication of information does not prevent a person from providing information in the course of and for the purpose of this review.

As I mentioned earlier, the Children's Protection Act does provide—certainly in relation to notifications of abuse or neglect—that a person who receives such information must keep it confidential. I certainly have no objection in principle with that if any child protection officer or other officers of the department become aware of information as a result of notifications which are required under the Children's Protection Act to be kept confidential. There is a measure of protection in clause 5(2) which provides that information obtained in the course of or for the purposes of the review must not be further disclosed or published if the information is personal information relating to a child, a child's guardians or other family members concerning the abuse. So, personal information relating to a child who has been abused or neglected must not be further disclosed or published. It is also provided that there can be no further disclosure or publication of information disclosing the identity of a person who has

notified that he or she suspects that a child has been or is being abused or neglected.

The PRESIDENT: Order! There is far too much audible conversation in the council and within the precincts of the chamber. I will have to insist that, if members want to talk in a loud fashion, they use the lobbies for the purposes for which they were intended. I do not want to restrict members from facilitating the passage of the bill, but it is most disconcerting when I cannot hear the speaker from my position. I ask all members to cooperate, because it is quite essential that we get these matters dealt with. If we all cooperate, we will get there much more quickly.

The Hon. R.D. LAWSON: Clause 5 then goes on to provide that there is a prohibition of disclosure or a prohibition of information which the person conducted to appoint the review (and I should say that the review does not specify the fact that Ms Layton is the reviewer; it simply refers to the person appointed to conduct the review, although that fact is well known), having formed the view that it is necessary to do so in the interests of justice or to prevent hardship or embarrassment to any person, makes a declaration forbidding further disclosure or publication of the information. So, the reviewer will be given a power similar to that enjoyed by the courts in relation to prohibiting disclosure or publication of information.

The most difficult clause in the whole bill is subclause (3), which provides that the prohibitions in subclause (2) do not apply to and do not prevent the further disclosure or publication of certain information.

The first exception for the disclosure of this information is where, for the purpose of the review, the information is disclosed. That would mean that a report by the reviewer to the minister or a report generally will be freed of the restrictions on disclosure of publication. It is further provided that a person can consent to the release of information. There is an exemption for those engaged in the administration of the children's protection act, that is, those people within the Department of Human Services in South Australia and perhaps within the courts system who are charged with responsibilities under the children's protection act.

Next, the prohibitions do not prevent the disclosure or publication of information to members of the Police Force of the commonwealth or any other state. There is also an exemption for those who provide information by way of evidence adduced in accordance with subsections (4) and (5), which I do not think will be relevant in ordinary circumstances. Also, if the information has already been made public, it would be possible for the reviewer to ignore the strictures. I regret that I am going through this in rather more detail because members have not had the opportunity to have a briefing on this matter, and it raises—

The Hon. T.G. Cameron: I'm sorry I won't have the opportunity of reading your submission before I have to vote on it. I sometimes find you a bit hard to follow. I'm not even going to get an opportunity to read the debate on this.

The Hon. R.D. LAWSON: The obvious intent of subclauses (4) and (5) is that, if evidence is given to the review which might reveal some criminal offence, that evidence cannot be used in the proceedings without leave of the court, and the court is prohibited from giving leave unless it is satisfied that the evidence is of critical importance in proceedings and that failure to admit it would prejudice the proper administration of justice. That is an important protection. Finally (and perhaps we should pursue this in committee), clause 6 provides that the reviewer is entitled to the same protections as a judge of the Supreme Court in its hearing; a witness before the review or a person who provides information to it is entitled to the same protections, privileges and immunities as a witness in the Supreme Court; and a legal practitioner appearing before the review is entitled to the same protections, privileges and immunities.

I must say that, as I read the legislation briefly this afternoon, I had some difficulties coming to immediate terms with the intended effect and any limitations on that effect of both subclauses (4) and (5) of clause 5. I will pursue those matters in committee. With that statement, I can indicate that the opposition is prepared to support this bill.

The Hon. R.I. LUCAS (Leader of the Opposition): I want to make a couple of general comments, without delaying further consideration of this matter. Without wanting to put too fine a point on it, I think the Legislative Council's processing of this matter and the government's handling of it has been a stuff-up (I do not want to be too unkind about the description of what has occurred). As I understand it, Independent members of the Legislative Council have not been briefed on this bill.

I accept that it is the early stages of a new government and that, clearly, problems have ensued during the consideration of this matter. I know that, in the past, there have been occasions when legislation has had to be hurried through, but I would say that, almost invariably, 24 hours' notice or 48 hours' notice has been given to members so that at least they had the opportunity for a briefing. On this occasion, the bill has only just been circulated to members as we speak, at 6 o'clock. The shadow minister who is handling the bill in this house has indicated that he has not been briefed by government officers. I am told that not only have Independent members of the Legislative Council not been briefed but also that, in at least one case, the member did not even know that the bill was to be progressed today and was not aware of the detail of the legislation.

I hope that the Leader of the Government will take on board the uneasiness (which I think is an understatement, as I said) of members in this chamber about the government's handling of the legislation. I have heard interjection from the backbench to the effect, 'The opposition in the other place has supported the legislation,' or whatever. I remind the Leader of the Government and his backbenchers that the Legislative Council is a separate and distinct house of parliament. Its members deserve the respect of being able to consider legislation and make their own contribution.

As we have seen demonstrated in the gaming machine legislation, the views of members in the Legislative Council do not always reflect and replicate the views of those in the lower house—particularly, obviously, regarding matters of conscience. But even with respect to other occasions, certainly, members of the Liberal Party have the capacity—and they have done so in the past—to express a different point of view, according to their own individual conscience, on what might even be designated as a party issue. Independent members, of course, always vote in accordance with their conscience on particular issues.

I do not seek to delay the committee proceedings. The shadow attorney has highlighted a number of his concerns about the drafting, which he will be raising during the committee stage. I hope the Leader of the Government will take on board the concerns of the opposition (and I imagine that I am also speaking on behalf of Independent members) about the handling of this bill. I have to say that, in my 20

years in this place, I think this is unprecedented in terms of the way in which the Legislative Council has been treated with respect to consideration of a government bill.

The PRESIDENT: I ask the minister also to convey the concerns of the President of the Legislative Council. It is most disruptive, and it demeans the proper protocol of the council. Things will happen from time to time, but I would rather see them happen less often than more often.

The Hon. A.J. REDFORD: Sir, I echo your comments and those of my leader. In fact, I think that the Independent members and the Democrats ought to have a serious think about the systemic way in which this government is seeking to undermine the role and the traditions of this place, from the way in which the Constitutional Convention has been set up, to the comments made by the Hon. Paul Holloway yesterday that, if we have a hard question, we should go and ask our colleagues in the lower house to ask questions, and the fact that they have only two ministers in this place. There is a general contempt of this place, and I think that you (and I am sure the opposition will cooperate in that respect) ought to seriously rethink how you relate with this government.

I will make one comment about this bill—and I have had it for only about two or three minutes. I am not sure that this bill will not be counterproductive. Perhaps I can draw the attention of the Leader of the Government to this viewpoint—although I suspect that, given the nature of this bill, we will not have an opportunity to explore it in any detail and the government will be stuck with whatever it has delivered.

This bill is designed to enable people to give information to this inquiry with some degree of confidence that that information will be kept confidential. I am sure that every member would understand that, in the nature of this sort of legislation and this sort of inquiry, there will be people who have kept things secret for many years, things that are very close, very personal and very important to them, and they may well come forward to give evidence to Robyn Layton QC to advance their cause. If they do so, they need to carefully read the clauses of this bill because, in my view, it does not give as much protection as might have been suggested in the second reading explanation, given that I read it only two minutes ago.

I draw members' attention to clause 5(3)(e). As I understand it, clause 5 provides that everything shall be kept confidential. Clause 5(3) provides that there are certain circumstances in which it does not have to be kept confidential and there are conditions about consent. It allows disclosure to the police force and various other people and it can also lead to other legal proceedings. A person who gives evidence to Robyn Layton QC, fully believing it will be kept confidential but necessary for the purpose of Robyn Layton's coming to a conclusion, should not take any comfort from this bill that that evidence will be kept confidential or not be disclosed in the future. That is the way I read the juxtaposition of clause 5, subclauses (3), (4) and (5), in relation to this bill.

It is a pity that we do not have more time to think about it and perhaps endeavour to ensure that the government's objectives are achieved but, unfortunately, given the manner in which the government has managed this bill, that is something that we are just going to have to live with.

The Hon. SANDRA KANCK: At the outset, I indicate that the Democrats welcome this review. Child abuse in any form is unacceptable in our society and the impact of it is that we turn children and, ultimately, adults into victims or perpetrators. We turn them into only partially functioning members of society and, as a consequence, we are all the worse for it. Having said that, I have to query whether or not the pendulum has swung too far.

Over the past 8½ years, I have had dealings with a lot of foster carers, and the group that was representing them until they more or less put themselves into abeyance earlier this year, SAFCARE, would give advice to foster carers about how they should not touch the child they were caring for. If the child got sick in the middle of the night, while they could bring their natural child into bed with them, the advice was, 'Whatever you do, don't do that with your foster child.' They were told to put a sleeping bag on the floor in the lounge room, put a mattress down, let the kid sleep on the mattress and for them to sleep in the sleeping bag so they were next to the child. Whatever they did, they were not to touch them, or let the child get into bed with them, because they needed to protect themselves from allegations.

Those kids are very often already emotionally damaged, to say the least. These are children who need utmost support and yet we have gone so far with political correctness that these children cannot be given the support that they require, simply because of the fear of allegations of sexual abuse.

I recently viewed two documentaries about the child abuse hysteria that occurred in the 1990s in the US, particularly in Florida, with the child-care institution there. It was very clear that the health professionals who were interviewing those children were asking leading questions and it was no wonder that they got the results that they did. I sent the videotapes to the Minister for Social Justice and asked her to view them and to in turn send them on to Robyn Layton for this review, and the minister has done so.

What I have noted whilst having responsibility for this portfolio for quite a number of years indicates to me that in FAYS itself there is a level of abuse not directly by officers handling children but institutional abuse which I hope will be revealed under this legislation. I have received examples of allegations of sexual abuse which ought to have been investigated, but FAYS has failed to do this. On the other hand, examples have been cited to me of allegations being made and placed on somebody's record and, no matter what has been done thereafter, they stick. So, I hope that this review will be able to unravel some of this what I call institutional abuse in FAYS—FACS as it is now called.

I am very concerned about the way in which these issues, particularly issues of sexual abuse, are handled by the department. I wrote to the Attorney-General back in March asking whether South Australia has any protocols in place to verify that child sexual abuse has taken place when an allegation has been made. I am still waiting for a reply. I indicate, however, that the Minister for Social Justice has advised me in a letter that there is a document called 'The Inter-Agency Code of Practice—Interviewing Children and their Caregivers', and she also informed me that there are guidelines for interviewing children in the FAYS Manual of Practice.

I happen to be one of the fortunate people who appear to have had a briefing. I saw the minister's adviser diligently moving around the lower ground floor providing copies of information about this bill which invited us to seek a briefing. I can testify that the three Democrats received those letters, and I took advantage of that briefing.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That standing orders be so far suspended as to enable the sitting of the council to be extended beyond 6 p.m. to enable business of the day to be concluded.

Motion carried.

The Hon. SANDRA KANCK: As the minister said in her second reading explanation and as I was informed at the briefing, 380 registrations have been received from people interested in putting in a submission to this review. For some people it is fairly clear that they will not be able to put in a submission without the protection that this bill offers. In fact, it would appear that even Robyn Layton herself might not be able to read some of the submissions without the protection afforded by this bill.

Having said all that, I indicate concern about the process. The bill was introduced into the lower house on 10 July, but it was not dealt with in the House of Assembly until this afternoon—in fact, only about an hour ago. The bill that we have received, which has been circulated in this chamber, is in fact the bill as it was introduced, laid on the table and read a first time in the House of Assembly on 10 July.

A couple of amendments have been inserted that I believe were moved in the House of Assembly and are therefore incorporated in the bill. This has been so rushed that we do not have a complete copy of the bill. I listened to some of the debate in the House of Assembly while I was having my own interruptions in the office. Nevertheless, from what I heard, it appeared to be a fairly comfortable relationship that emerged between the government and the opposition about the amendments. Therefore, I assume—which is all I can do—that what is being moved will be appropriate and will further what we want to happen.

However, I really do question the government's handling of business. As I have said, it is a week since the introduction of the bill—in fact, it is eight days since its introduction in the House of Assembly. Surely the government in the lower house could have arranged its business a little better so that it was dealt with earlier in the week and so that it was in a reasonable form instead of this half-baked form we have here. We could have then looked at it to see how it hangs together.

One of the things about the Legislative Council is that we normally put things under the microscope, and we do have a capacity for finding errors and flaws that might stop something from functioning in the way it was intended. That is effectively being denied to us. I am also aware that we are not scheduled to sit again until 19 August—in other words, a month away. If we do not pass this bill today, it will be a full month before the government can say to people who want to put submissions to this review, 'Yes, it's okay; you will get the protection we said you would have.' So, although I am concerned about the process, and concerned that we may make some mistakes in allowing it through in this form, in the end, I am simply going to have to trust that members in the House of Assembly managed to get it right. It is not a position with which I am comfortable. Nevertheless, because of our prospective sitting dates and the importance of this review, the Democrats will be supporting this measure.

The Hon. T.G. CAMERON: I, like the Hon. Sandra Kanck, welcome the child protection review to examine the state's child protection laws to develop strategies to improve the way the government responds to the needs and welfare of children. In my opinion, this review is long overdue. In particular, I believe that it is very necessary to review the child protection policies and practices within government departments and government funded services. I say that because I have heard some terrible stories about government welfare workers seizing children, at times under terrible circumstances. Of course, on the reverse side of the coin, as a society and as a parliament we must do everything humanly possible to ensure that children are not abused.

I welcome the review, and I indicate my support for the bill. This bill covers a couple of very essential requirements in relation to confidentiality and witnesses being able to give evidence, etc., which the Hon. Sandra Kanck canvassed, although I take exception to being handed a report (which is the second reading explanation), an explanation of the clauses and the amendments that apparently were to be moved by the Hon. Stephanie Key in another place. I am not quite sure if they will be moved in this place.

I am advised that we have 10 minutes to consider this bill because it has to go through immediately. The conduct of business in this house, Mr President, is beginning to resemble a shambles. I have been advised that I was sent correspondence offering a briefing on this bill. But I, like others, have no recollection of having received any advice from the government offering a briefing. Sure, I can recall getting correspondence about the review, but for the government to introduce a bill and say that it has to go through in 10 or 15 minutes, without having provided any briefings to members, or offering briefings, is a disgraceful situation.

Many of these bills contain quite technical information and legal jargon. I am not a solicitor. I am one of those members who like to sit back and have a bit of a read on the explanation of the clauses and, as I indicated before, I often go back over the *Hansard* to make sure that I fully understand what the Hon. Robert Lawson and the Hon. Angus Redford are talking about, because they sometimes have a propensity to slip into legal jargon or terminology with which I am not familiar.

Maybe I am not as bright as other members, but I am one of those people who not only like to hear the debate but, if I cannot follow what is going on in the debate, I like to sit down and read it so that I can properly comprehend what is going on. I do not know what happened to the briefings that we were supposed to get, but I would like to send a message to the government that they ought to conduct their business in a more orderly and logical fashion than they are doing.

I appreciate the discussion I had with the minister, Stephanie Key, who impressed upon me the need for this bill to go through tonight because of problems, in relation to confidentiality and with witnesses, that the Hon. Sandra Kanck referred to. But I do want to place on the record to the government and the minister that by thrusting a bill in front of our faces and telling us that it has to be passed by this house in the next 15 minutes because the House of Assembly is coming back at 8.30 to approve it, is no way to get the support of the Independents or minor parties. That is not the way business should be conducted. I have been in this place for only seven years, but I cannot recall in the entire seven years being treated in this fashion.

However, having got that off my chest, I am not really in a position to debate the explanation of the clauses or to debate the bill, because I only have the benefit of what has been said here tonight. But the speech that was made by the Hon. Sandra Kanck has convinced me to put that aside, do the right thing and support the legislation—which I will be doing; but under protest.

The PRESIDENT: Before we continue the debate, during your contribution, the Hon. Mr Cameron, you made a

statement, and I did not pick you up at the time because I did not want to interrupt your flow, but you put on the *Hansard* record words to the effect that the conduct of the business within this council is becoming a farce. That could well be construed by an uninformed observer as being a reflection on me or my good offices. I would appreciate your personal explanation in respect of that matter.

The Hon. T.G. CAMERON: If I may respond to the President's request: in no way at all, Mr President, was I casting any aspersions against the chair. I think you know me better than that. I was referring to the way in which the government is conducting the business of this council. It is just a farce.

The PRESIDENT: I understand your frustration.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank members for their contributions and for their cooperation. I understand the frustrations, and they have been noted in *Hansard*. It was put to me that letters were sent out and that contacts were made in relation to briefings and the offering of briefings. When we look at a bill on the final day before a break, where we do have as long a break until we sit again, this probably would not have happened. If we were meeting, say, on Monday or Tuesday next week, then the urgency would not have arisen. If the bill is held up now, it will not be passed until late August. It is not an excuse: it is an explanation as to why there is some urgency.

Members have noted that it is a protection program and a review that needs to be put in place as soon as possible. So, I thank all members for their patience and belated goodwill, albeit begrudging in some cases. I hope that the bill is taken through all stages so that it can be sent to the lower house and passed this evening.

Bill read a second time.

In committee.

Clause 1.

The Hon. T.G. CAMERON: I am in receipt of amendments that are standing in the name of the Hon. Stephanie Key. Have they been provided because they will be moved later tonight in the lower house? I am a little confused.

The CHAIRMAN: My understanding is that those amendments have been incorporated into this bill in another place, so the amendments are actually included.

The Hon. T.G. CAMERON: So, the amendments are part of the bill that we are considering now?

The CHAIRMAN: But the bill has not been reprinted. There is a logistical problem in that the amendments have been included in the provisions of the bill, but it has been impossible, in the time available, to have the bill reprinted. It is unfortunate, but that is the situation, and I thank you for your cooperation.

The Hon. J.F. STEFANI: If the amendment to the bill was introduced in the lower house—

The CHAIRMAN: And agreed to.

The Hon. J.F. STEFANI: Yes—is it not the process that this council has the same reflected amendments moved by a member of the government to effect the amendments that have been passed in the lower house? I do not understand it, either.

The CHAIRMAN: Normally we would have a bill which would come up with the amendments included and which would be printed overnight. The bill would not be numbered 32. What I understand you have in front of you is a bill marked 32. You should also be in receipt of an amendment that was agreed to in the House of Assembly. What we are seeking to do here, and there has been general agreement with the cooperation of the council, is deal with this matter in its imperfect form to facilitate what is a desirable outcome, that is, to get this bill passed tonight. In fact, there is very little choice. Again, I can only ask for the cooperation of members in these unusual circumstances.

Clause passed.

Clause 2.

The Hon. R.D. LAWSON: The authorised person includes not only the person appointed to conduct the review but also any person appointed to assist in the conduct of the review. Very special protections, privileges and immunities are given not only to the reviewer, Ms Layton QC, but anyone who is appointed to assist her, and there may be one, more than one or several and different people. I ask the minister to indicate that there will be some process of public notification of the persons who are authorised.

The Hon. A.J. Redford: Who does the authorising?

The Hon. R.D. LAWSON: The person appointed to conduct the review, one assumes, who is Ms Layton. My concern is that, unless there is some form of public notification, these special immunities will apply to an unspecified class of people who might change from time to time. Ms Smith might be appointed to assist for a while and then she goes off on other duties. What I am seeking from the government is an undertaking that there will be public notification in the *Gazette* of the persons who are authorised under this legislation.

The Hon. T.G. ROBERTS: I understand that there is a secretariat that makes the appointment, opens the envelopes and clears the information. It is the chief executive of the department.

The Hon. R.D. LAWSON: That is the person who makes the appointment, as appears in the interpretation section, but what public notification is there of persons who are appointed? How does anyone know who has been appointed? This is a public process.

The Hon. T.G. ROBERTS: There are public servants who would be authorised to have access to the information, who work in childhood protection.

The Hon. R.D. LAWSON: I understand the point, but I am seeking a commitment from the government to make a public notification and indicate publicly who are the people who are authorised. We know how they are appointed.

The Hon. T.G. ROBERTS: I understand that we can gazette those names, if that is the requirement.

The Hon. R.D. LAWSON: I seek an undertaking from the government that the names will be gazetted publicly. I cannot see any problem with simply saying 'the authorised persons under the Child Protection Review (Powers and Immunities) Act are. . . '

The Hon. T.G. ROBERTS: The minister has no problem with the names being gazetted.

The Hon. A.J. Redford: Is that an undertaking?

The Hon. T.G. ROBERTS: It is an undertaking—guaranteed.

Clause passed.

Clause 3.

The Hon. R.D. LAWSON: Will the minister indicate how it is proposed that this review will be published? It is not like a royal commission where it is anticipated that there will be public reporting: this is a review for the government, which may or may not be a confidential review—it may never see the light of day. The government may not like the result

of what is said. Will the minister indicate whether it is proposed that the report of Ms Layton's review will be published?

The Hon. T.G. ROBERTS: My advice is that the process will be as open and transparent as possible. Where confidential information may identify people or cause harm, that would not be made public.

The Hon. NICK XENOPHON: Will the minister indicate how it is anticipated the review will take place? Will it be by way of Ms Layton or persons authorised by her to interview people, to go through a process of asking questions to test the allegations made? Can the minister give some idea of how this whole process will take place?

The Hon. T.G. ROBERTS: I understand the discussion paper covers the questions raised by the Hon. Nick Xenophon.

Clause passed.

Clause 4 passed.

Clause 5.

The Hon. A.J. REDFORD: Will the minister give a brief explanation on how clause 5, subclauses (4), (5) and (6) work? What do they do?

The Hon. T.G. ROBERTS: The clauses have been lifted from the Child Protection Act, section 13, and the process provides evidence that is of critical importance.

The Hon. A.J. REDFORD: That begs a series of further questions. What sort of evidence would be, as the minister describes, of critical importance?

The Hon. T.G. ROBERTS: I am advised that a judge would determine what evidence would be of critical importance to that process.

The Hon. A.J. REDFORD: I will not labour it, but the minister reminds me of that old song, 'There's a hole in the bucket, dear Liza, dear Liza.'

The Hon. R.D. LAWSON: Will the minister confirm that it is envisaged that this report, arising from this review, will be made to the minister and not to the parliament, the Governor or to any other public process?

The Hon. T.G. ROBERTS: The report will be provided to the minister. The minister will then determine how that information will be used: whether it will be published, made public or remain confidential.

The Hon. R.D. LAWSON: Bearing in mind that the clauses to which the Hon. Mr Redford referred have been taken from the Children's Protection Act, will the minister indicate whether those provisions have ever been applied in a court in South Australia?

The Hon. T.G. ROBERTS: I might have to take that question on notice, even though the act has been in place for eight years. I will provide that information to the honourable member at a later date.

The Hon. R.D. LAWSON: I turn now to clause 5(9), which overrides all of the preceding provisions relating to non-disclosure and which provides:

> Despite the preceding provisions, the minister or the Chief Executive Officer may, if of the view that it will be in the public interest to do so, publish a report containing information of a kind referred to in this section,

That is, information that discloses and reveals the identity of individuals; it is information relating to a child, its guardians and family members alleged to have abused, neglected or threatened the child. This is information that can be published if the minister or the Chief Executive Officer chooses to do so. I have examined the Children's Protection Act, and I find no provision in it, nor am I aware of any other provision of a similar kind that enables a minister or the Chief Executive Officer who, of course, may be directed by a minister, to publish information of this kind if the minister—and the minister alone has this decision—considers it to be in the public interest to do so. In what circumstances is it envisaged that the minister would exercise that power?

The Hon. T.G. ROBERTS: The explanation of subclause (9) provides that the chief executive or the minister may, if of the view that is in the public interest to do so, authorise the disclosure of information as she would think fit. This picks up—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: That is what I am explaining. This picks up the ability of the chief executive, as the employer, to authorise the divulgence of information that is protected by section 58(3) of the Children's Protection Act. It is appropriate for there to be an ability to divulge information where it is in the public interest.

The Hon. A.J. REDFORD: When is it in the public interest?

The Hon. T.G. ROBERTS: That will be determined by the minister. Once a finite review or inquiry has finished, there is sometimes a need or a public interest in information being able to be accessed later.

The Hon. A.J. REDFORD: Can the minister give an example of where it might be in the public interest?

The Hon. T.G. ROBERTS: My interpretation of 'public interest' is that it would be something that would assist in providing children with protection and using the information that you have to improve the circumstances in which that can happen.

The Hon. A.J. REDFORD: Subclause (8) provides that the reviewer has to take all reasonable steps to avoid the disclosure of information that may identify, or lead to the identification of, a particular child. The minister, I assume, would agree that that is an important principle in relation to this inquiry.

The Hon. T.G. ROBERTS: In most cases.

The Hon. A.J. REDFORD: Then subclause (9) provides that, despite the preceding provisions, the minister or the chief executive officer could release that information. When would it be in the public interest to release that information?

The Hon. T.G. ROBERTS: I am advised that under the current act there is no public interest protection, and this does provide some, but it is discretionary.

The Hon. A.J. REDFORD: With respect, that has not answered my question. I do not care about the present act. When is it in the public interest to release this information? Give me an example and not the gobbledegook that I have just heard.

The CHAIRMAN: The honourable member does not need to instruct the minister on how to answer.

The Hon. T.G. ROBERTS: My advice is that it may be in the public interest to divulge information about process, or about the way in which the act is administered or maladministered in relation to child protection, and it may have nothing to do with child identification or impact on an individual but it may be a process that information may be divulged publicly.

The Hon. A.J. REDFORD: Will the minister give an undertaking that pursuant to this clause the minister and the chief executive officer will not identify a particular child?

The Hon. T.G. ROBERTS: That is what the clause is about.

The Hon. A.J. REDFORD: The answer the minister is shouting at you—just say yes.

The Hon. T.G. ROBERTS: Yes.

The Hon. R.D. LAWSON: Does the minister agree that, by virtue of the provisions of subclause (9), the minister, after receiving the report of the reviewer, will be able to compile and publish a report which the minister deems to be in the public interest to release—in other words, to sanitise, change, alter and edit the report of the reviewer or add additional material which the reviewer herself could not include, and then publish it?

The Hon. T.G. ROBERTS: The bill will allow the minister to publish material, as she saw fit, to the public.

The Hon. R.D. LAWSON: Would the minister agree that, if Dr Cornwall had had the benefit of this provision when he directed the compiling of a report relating to the Christies Beach Women's Shelter, he would have escaped the opprobrium Justice Debelle has heaped upon him?

The Hon. T.G. ROBERTS: Members are calling on a metalworker to give legal advice here; I am not sure whether I am capable or able to do that. I do know Dr Cornwall; it is a hypothetical question to which I will not reply.

The CHAIRMAN: I do not think the minister should rise to the bait.

The Hon. R.I. LUCAS: If I understand the argument being put by the Hon. Mr Lawson it is that, in the circumstances where the reviewer has formed the view that it is necessary to do so in the interests of justice, or to prevent hardship or embarrassment to any person, even if the reviewer, Ms Layton, was to make a declaration forbidding the further disclosure or publication of the information, if the minister or the chief executive wants the power, if she believes it is in the public interest to publish the report contrary to the decision of the reviewer, that can happen.

If Ms Layton, having looked at all the information, has formed a view that it was necessary in her view, in the interests of justice or to prevent hardship or embarrassment to any person, to make a declaration forbidding the further disclosure or publication of the information, the government is wanting the minister to have the power to ignore that direction from Ms Layton and to publish information in those circumstances.

The Hon. T.G. ROBERTS: It does not change the relative section in the Child Protection Act. It mirrors section 58, which allows that to occur.

The Hon. R.I. LUCAS: But the minister can ignore that decision of the reviewer?

The Hon. T.G. ROBERTS: It would be a very brave minister who would do that.

The CHAIRMAN: Or a very silly one. The Hon. Mr Xenophon has the call.

The Hon. NICK XENOPHON: Further to the Hon. Rob Lucas's question, I have very grave reservations about this clause. Essentially, there is a whole series of safeguards in this act—in terms of the publication of information; to ensure people's rights are protected; and to prevent hardship or embarrassment—and, in one fell swoop with subclause (9), the minister can make a decision, whatever the minister wants to do.

An honourable member: Or the Chief Executive Officer.

The Hon. NICK XENOPHON: Or the Chief Executive Officer. Has the government considered that, in the exercise of this extremely wide clause and in the exercise of the very broad powers given in subclause (9), there ought to be some fetter to it in the terms of the reviewer having some say as to whether it is appropriate for the release of the information? So that way, it is done in conjunction. It makes a mockery of it. You may have the reviewer who hears the evidence, goes through the hearing and is cognisant of all the facts, and then makes a direction that someone is to be protected, that it will cause great hardship, but the minister just goes over it. I am not saying the minister will do that, but the power is there, and I just see it as a great concern.

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order! We don't want to get too excited at this late hour. Too much excitement makes me nervous.

The Hon. T.G. ROBERTS: If it is deemed to be in the public interest, it will be disclosed. The reviewer may have another view, but it is in the hands of the minister.

The Hon. R.I. LUCAS: I agree with the views that my colleagues—learned legal counsel and the Hon. Mr Xenophon—have just put, in particular as it relates to this issue of subclause 5(2)(c) where you actually do go through the process. It provides:

> The [reviewer], having formed the view that it is necessary to do so in the interests of justice or to prevent hardship or embarrassment—

very high standards—

> makes a declaration forbidding the further disclosure or publication of information. . .

Even in those circumstances, the minister—or the chief executive for that matter; it does not have to be the minister, as it could be the chief executive of the department—could make a decision to ignore the decision of the reviewer. I would hope that the Hon. Mr Xenophon or perhaps other members at least look at the possibility of being able to amend this provision. The Hon. Mr Xenophon has talked about maybe putting some sort of leg rope, and I think he used the word 'fetter'—

The Hon. A.J. Redford: They can't even say why they need it.

The Hon. R.I. LUCAS: The Hon. Mr Redford has asked questions and not got satisfactory answers in relation to specific examples as to why this is required. There are two options: one is to the delete the clause, but that may be too significant an action.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: That is one option. The other option may well be in some way to see whether there is some amendment that might be acceptable to the government and to the minister which would place some restriction on the power and the unlimited flexibility that the minister and/or her chief executive officer have under this provision to ignore every direction that the reviewer might have issued.

As the Hon. Mr Xenophon has indicated, the reviewer—having listened to all the evidence, gone through all that information—has made a judgment and the minister for some reason wants the power to be able to ignore all of that and then move to a position where she or her chief executive officer can issue a report. I know we are on the run, and I understand that the Hon. Mr Xenophon is having some discussions.

I will defer to the Hon. Mr Stefani who wants to add some views to this issue. It may well be that, even at this late hour, we will see some amendment that is acceptable to my colleague the shadow attorney-general and others to place some restriction on the unlimited power of the minister in these particular circumstances.

The Hon. J.F. STEFANI: I, too, endorse very strongly the expression and concerns that my colleagues, particularly the Hon. Robert Lawson, the Hon. Angus Redford and the Hon. Nick Xenophon, have expressed about this provision. We saw recently that, in the public interest, after 30 years, the government released a Duncan report that was highly sanitised. It was highly sanitised because it obviously contained the names and information of people that the government saw fit to exclude from the public arena. Here we have an unfettered measure that allows a minister and the chief executive officer to publish information that would be otherwise very sensitive and has been deemed to be so by the reviewer, a reviewer who has heard evidence and considered that—

The Hon. A.J. Redford interjecting:

The Hon. J.F. STEFANI: Exactly. The information that is being given under what should be determined to be a protected way becomes, at the will of a minister or his or her chief executive officer, public knowledge. I endorse very strongly the concerns that have been expressed.

The Hon. SANDRA KANCK: Having made some criticisms in my second reading speech about process I have become aware that at least part of the reason that we are having problems now is because of the fact that the shadow minister has been sick. That has delayed the bill's progress in the lower house and hence leaves us in this somewhat confused situation at the moment. Nevertheless, I do not have quite the concerns that others have about this particular clause because I think you need to read subclause (9) in conjunction with subclause (8), because subclause (8) provides that 'the authorisation person must'—and I think 'must' is the operative word in preparing the report—'take all reasonable steps to avoid the disclosure of information that may identify or lead to the identification of a particular child'. That being the case, when that report is handed to the minister, the minister or the chief executive officer could, for instance, publish that report in its entirety. Or they may do the *Reader's Digest*—

The Hon. A.J. Redford: It's not 'the' report; it's 'a' report.

Members interjecting:

The CHAIRMAN: Order! We will conduct the debate through the chair.

The Hon. SANDRA KANCK: Well, maybe then the problem is in changing 'a' to 'the': I am not sure. But I am reading 'a report' to mean 'the report'—

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order! The Hon. Mr Redford will not try to conduct the debate from there.

The Hon. SANDRA KANCK: The amendment that may need to be made then is to change 'a' to 'the'. I do believe that, if you read subclause (9) in conjunction with subclause (8), there is not the reason for concern that everybody is expressing.

The Hon. T.G. ROBERTS: One of the things that should be remembered is that this information is only being held for the time of the review. But, there are some discussions going on now to see whether an amendment can be made to take into account some of the arguments.

The Hon. A.J. REDFORD: Can I just make one comment? I cannot see the minister or the CEO under any circumstance wanting to utilise any prospective power that might be afforded to them pursuant to subclause (9), before the parliament gets back. I cannot see any reason why we cannot delete it and get this bill through, so that the inquiry can get under way. When the minister comes back, we can be properly briefed and given a justification of why this is in the bill. And then we can deal with it in good spirit on that occasion. That seems to me to be the simplest way of doing it.

The Hon. Sandra Kanck has identified yet another issue: whether 'a' and 'the' is going to fix up the problem. The Hon. Nick Xenophon is quickly drafting out another amendment; the Hon. Terry Cameron is looking at amendments. With the greatest of respect to the minister the constitution of the Kalangadoo Cricket Club has had more thought and care put into than this. It seems to me that that is simplest and easiest way. We are endeavouring to co-operate with the government, as we always do in a bipartisan fashion. That might be the quickest and easiest bipartisan fashion to achieve this.

The Hon. T.G. ROBERTS: The only problem we have is if we delay clause 9 now—

The Hon. A.J. Redford: No, just delete that clause, pass the bill and come back if there is a problem later.

The Hon. T.G. ROBERTS: If there is no agreement on an amendment, that may be the way to proceed.

The Hon. SANDRA KANCK: I am still trying to work out what the solution might be as, obviously, we all are. Perhaps one of the solutions is to report progress, go back to the gambling bill and allow a few heads to get together over the next 20 minutes or so to see if we can come up with something. Again, looking at the wording and where the problem is, maybe we need a definition of 'report' in clause 2. I am throwing that into the pot to see if part of the solution lies there.

The CHAIRMAN: In the absence of a clear path in the next few minutes, we will have to make a decision and that decision may well be that we have to put the clause to a vote.

The Hon. J.F. STEFANI: An alternative to the suggestion made by the Hon. Angus Redford is that a clear undertaking be given by the minister to this chamber that the clause be recommitted for consideration when parliament sits in August.

The CHAIRMAN: It may be a little difficult to recommit the bill at that stage: it would need another amendment bill. If we can fix it now it would be the best solution. I think we are close to a proposal.

The Hon. T.G. ROBERTS: I have been advised that the minister will give an undertaking not to do anything other than in connection with the advice given by the reviewer, Robyn Layton.

The Hon. R.D. LAWSON: In light of that undertaking, will the minister agree to an amendment which reflects exactly that position and some words at the end of clause 9 to make it perfectly clear? The Hon. Nick Xenophon has been looking at an amendment. I defer to him.

The Hon. NICK XENOPHON: So that there is no doubt on this issue—and I appreciate what the minister has said—I move:

Page 5, line 8—After 'other than this act' insert:
or contrary to a direction of the person appointed to conduct the review.

I would like to think that would satisfy the concerns of members in relation to this clause. If the government has a problem with it, it can always bring back this clause. The inquiry can proceed: we are not going to prejudice the inquiry. But at least we are satisfied that there is some level of protection.

The Hon. T.G. ROBERTS: The indication from the minister is that the amendment moved by the Hon. Nick

Xenophon is acceptable. If we can get the administrative processes right, hopefully we can accept it.

The Hon. A.J. REDFORD: Clause 5(2)(c) talks about a declaration, and the honourable member's amendment talks about a direction. I am not used to nit-picking about words in this august place, but they are very important because legal cases are founded upon them. One might think that in order for there to be consistency it ought to read 'or contrary to a declaration of a person appointed'. That is just one flaw that I have seen on the run. I have a real objection to legislating in this fashion. The courts are littered with cases where this sort of legislative process causes enormous problems.

The Hon. T.G. ROBERTS: It has been indicated that the honourable member's suggestion has been accepted.

The Hon. NICK XENOPHON: In relation to the very valid point made by the Hon. Angus Redford—and I am doing this on the run—my understanding is that the word 'direction' is much broader than the word 'declaration', because declaration refers to a certain set of circumstances under the subclause in terms of not publishing information if it will cause hardship or embarrassment to any person. A declaration is made. 'Direction' is broader than that. If there was a direction, it would prevent the publication. I do not know whether the Hon. Angus Redford is convinced by that.

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: The word 'direction' is broader because, if we confine it to 'declaration', there could be an argument that it was limited to those circumstances referred to in subclause (c); whereas 'direction' would cover declarations and a whole range of things.

Amendment carried.

The Hon. A.J. REDFORD: I am concerned that witnesses be fairly dealt with. Will witnesses be warned in some form of plain English of the effect of this provision so that they will walk into this inquiry knowing exactly what may or may not happen in terms of their evidence?

The Hon. T.G. ROBERTS: I am advised that anybody who registers an interest in making a submission will be advised of the problems associated with the way in which they make it.

The Hon. A.J. Redford: In plain English?

The Hon. T.G. ROBERTS: Yes.

Clause as amended passed.

Clause 6, schedule and title passed.

Bill reported with amendments; committee's report adopted.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a third time.

I thank honourable members for their cooperation in debating the bill and for dealing with its amendments. The time frames under which we have had to deal with the bill have made it a taxing process. I must say that the minister took what she thought was the best way to proceed in relation to moving it through all stages, and that includes the lower house. Briefings were given to the relevant shadow minister in the other place, and some assumptions were made that there are responsibilities on all of us to move it through our party rooms and back into the consultation stages. I understand that letters were sent out offering briefings to relevant people, although direct letters may not have been sent to some. I am not able to give those guarantees that they did hit people's desks, but we will make sure that the business of the council—and I understand the difficulty the desk clerks have in doing work on the run and making amendments as we have made like this—

The Hon. Carmel Zollo: Although it has happened before.

The Hon. T.G. ROBERTS: It has happened before, but we on our side will try to manage the business of the council as effectively and efficiently as we can, although from time to time there will be hiccups in the process. I notice that over the eight years we were in opposition we cooperated with the government over a long period of time and on a wide range of bills. I hope that we are able to get our coordination right in the future.

Bill read a third time and passed.

GAMING MACHINES (LIMITATION ON EXCEPTION TO FREEZE) AMENDMENT BILL

Adjourned debate in committee (resumed on motion).

(Continued from page 613.)

Clause 1.

The Hon. R.I. LUCAS: I am not sure whether the Hon. Mr Xenophon has placed it on the record or whether it was a private discussion, but I invite him to answer the questions I put to him about the nature of any discussions he had had in relation to the North Adelaide, West Torrens and Woodville football clubs and the reasons he is supporting the removal of the 1 kilometre limit to the member for Mount Gambier's locality limit.

The Hon. NICK XENOPHON: I thought I had dealt with those matters. I am happy to be grilled by the Leader of the Opposition, although the word 'grill' might trigger hunger pangs in some members. First, with respect to the 1 kilometre limit, that was my preference. The member for Mount Gambier was prepared to support it or introduce a bill in his house only in relation to locality. That appeared to be the approach adopted by the government. As I understand it, the Minister for Gambling did not support the 1 kilometre limitation and wanted to use locality.

I understand that there are precedents in licensing law as to what 'locality' means. I think the Hons Angus Redford and Robert Lawson might be more familiar with that than I. My understanding of how the law operates is that it does not have a strict geographic limit, but there must be some common themes in terms of the locality, so clearly it would not apply from Whyalla to Angle Vale, nor would it apply, say, from Port Adelaide to Highbury. That is my understanding of locality. My preference is the 1 kilometre rule.

In relation to discussions, I have been involved in an objection to the Roosters Club shifting to North Adelaide, which was heard by Judge Kelly yesterday. Another solicitor argued that case on behalf of the No Pokies campaign, and Brian Hayes, instructed by Wallmans, argued the case against the Roosters Club being allowed to shift, because it would contravene the shopping centre provisions.

In relation to West Torrens, I earlier thanked the Leader of the Opposition for bringing it to my attention, and I will look into that. If someone has objected and they want a hand, I am more than happy to assist them. I am not here to do any favours for the clubs, much to the chagrin of the North Adelaide Football Club, which is not happy about my approach. However, I think it is important that it does not shift to North Adelaide, from a back road onto a main road, where more people would be exposed to gambling, contrary

to, I believe, the intention of the shopping centre amendment moved by the Hon. John Olsen 4½ years ago.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. J.F. STEFANI: I move:

Page 3, line 10—Leave out '8 May 2002 or made, but not determined, before that date' and insert:

18 July 2002

I would like to again reinforce the measure that this chamber and this parliament is being asked to address. The position is very clear. In the first instance, the parliament has passed an imperfect law. That law has a flaw that allows operators, in the normal course of business, to apply for a transfer of their gaming machine licences. I believe that the operator, in these circumstances, was acting within the law. Therefore, I feel very strongly that the parliament should not, for its own reasons, retrospectively address the mistake that occurred in the legislation.

It is presumptuous of this parliament to enshrine, in a proposed amendment to the law, a date that will be fixed by the definition of an amendment to the law before a conscience vote is taken by both chambers. I find that proposition very objectionable, because it strikes at the heart of our conscience, in that in our deliberations each of us is charged with a duty to deal with the law as it is presented to the parliament, not the date to which it is assumed the law will apply. In those circumstances, I strongly urge all members to consider that position and to support my amendment to prohibit the consideration of the transfer of future gaming machine licences from today.

The Hon. T.G. CAMERON: I am still somewhat perplexed about this question of retrospectivity. In arriving at my final decision in relation to this matter, I would be very interested in members' comments on the following. In another place, the Hon. Mr Buckby made a brief contribution. He said:

Let me assure members that the people of Angle Vale do not want poker machines there, by any stretch of the imagination.

He said that they also did not want a liquor licence to be given to the Angle Vale location. He said that there were ample poker machines available in Gawler, 'which is not 10 minutes away from Angle Vale'. If the Hon. Mr Buckby can do it in 10 minutes, I would suggest that he watch out for speed cameras. Mr Buckby then went on further to say:

As I said, the people of Angle Vale do not want poker machines. They do not want this hotel in the proposed location and for that reason I have much pleasure in supporting the bill.

I thank Rory McEwen for giving me that. However, I took the time to go through some correspondence that I received from Wallmans, and attached to that correspondence is Judge Kelly's decision in relation to this matter. I think that some of the comments that he has made do bear some consideration on this question of retrospectivity. Judge Kelly stated:

In 1992. . . I found that there was a need for hotel facilities at this very site. . . the population in the locality has increased markedly and continues to increase.

I note that he is talking here about a hotel, not about a hotel with poker machines. He continued:

The need witnesses in this case have confirmed all that I believed in the original case, namely, that a need for a licence to permit hotel facilities was proven. That need is currently unmet and there are no relevant licensed premises anywhere within the locality. . . there is a need for hotel facilities (which these days often embraces a desire to gamble in the case of many) and such is not being met by other licensed facilities in the locality.

He went on to say that, without gaming, it is unlikely that this project will go ahead. I think the AHA has been making similar noises about how projects are going to be scrapped because of the super tax that has been put on poker machines. He went on to say:

I. . . reject the notion that somehow this applicant has been involved in an abuse of process.

Some of this has me a bit perplexed, and I thank Wallmans for getting this to me at the eleventh hour. He continued:

The attempt to remove it [the hotel licence] is perfectly permissible under the legislation.

The judge states that the attempt to remove the hotel licence from Whyalla to Angle Vale is perfectly permissible under the legislation. He went on to make various other comments about annoyance, disturbance, etc. That has put a slightly different complexion on this question of retrospectivity.

From my point of view, during one of the short breaks, I took the opportunity to have a brief discussion with the solicitors representing Mr Cufone, and I was particularly interested to find just how much money Mr Cufone had expended to date on his application. I am assuming that he was advised by his solicitors that, if he proceeded down this path, he was operating within the law. Certainly, that was the opinion of Judge Kelly. I understand that, to date, notwithstanding that Mr Cufone has to proceed with an application to another jurisdiction to get a gaming licence, that is probably going to cost him a few more bob, but to date he has expended in excess of $200 000, operating within the law.

The Hon. R.I. Lucas: Is that all legal fees?

The Hon. T.G. CAMERON: No.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I am sure there are some people who would welcome your going back to the law. That is entirely your decision.

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order!

The Hon. T.G. CAMERON: I must stop the Hon. Angus Redford there.

The CHAIRMAN: I am going to stop him, too.

The Hon. T.G. CAMERON: The honourable member is casting aspersions.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: You said, 'What has he spent it on?' and as I was about to answer you blurted out that you were going back to law because he was charged $200 000 for legal fees. Just settle down and we will get there.

Members interjecting:

The CHAIRMAN: Order! I will conduct the debate.

The Hon. T.G. CAMERON: I cannot tell you precisely what this money has been spent on, but I understand that the purchase of the land and the fees approximated $80 000 to $85 000 and there were settlement costs, etc., and legal fees but certainly not to the tune of $200 000. I do not think that I wrote the figure down, so I am relying on my memory.

The Hon. A.J. REDFORD: On a point of order, Mr President, the honourable member says that I have cast aspersions. I have not cast aspersions on anybody.

The CHAIRMAN: Order! That is not a point of order; it is a disagreement or an objection.

The Hon. T.G. CAMERON: I understand that it was $80 000 to $85 000 for the purchase of the land and the

settlement. There have been various costs associated with council applications, architects' fees, drafting fees and plans having to be drawn up. You cannot submit an application to the Licensing Commission to build a new hotel without engaging architects and town planners, etc. I understand it was $85 000 for the land and its purchase and approximately $40 000 for legal fees, and the rest has been swallowed up by architects' fees, etc. I suspect that the lawyers have not even taken into account loss of interest or loss of income in having this money tied up for that period of time.

However, I did want to correct the record, because I believe an impression has been created that there is no desire in the local community for this hotel. On five different occasions Judge Kelly makes quite clear that there was a need for a hotel at this site and that the hotel application was strongly supported by the local community. I am not privy to the transcript of the case, but the judge said that without gaming it is unlikely that this project will go ahead. I am no lawyer or town planner but, as I understand it, you have to make two applications. First, you have to jump the bar as far as the Licensing Court is concerned and go through all of that time and expense and, after you have been through all of that, you then have to go to the Gaming Commission and make an application for a licence to operate the machines.

One can only assume that Wallmans advised Anport Pty Ltd, and I assume that, if Mr Cufone was going to spend that amount of money, he may have sought an alternative legal opinion. But it is quite clear that Mr Cufone was advised that his application, first, for a liquor licence and subsequently for a gaming licence, and his application to transfer that from Whyalla to Angle Vale, was legal. It certainly appears that Judge Kelly agrees with that, because he says, 'The attempt to remove it (the hotel licence) is not just permissible but perfectly permissible under the legislation.' He was referring, of course, to the transfer from Whyalla to Angle Vale.

These matters have been weighing on my mind. I have already decided to support the Hon. Nick Xenophon's bill, but I am a little undecided on this question of retrospectivity. It seems to me that, under this dual application process where basically you have to jump two hurdles, if this bill is backdated to when it was originally introduced and the Hon. Julian Stefani's amendment fails, then we are embracing retrospectivity. I note that Rory McEwen in another place said quite emphatically, as follows:

> So there is nothing retrospective about our now saying and admitting that we failed in drafting to capture what we intended when we last amended the Gaming Machines Act.

I have a great deal of sympathy for what Rory McEwen has said, but I am a bit persuaded by the argument made by the Hon. Julian Stefani that, if we did get it wrong and we made a mistake and lawyers and judges interpreted what we did as being legal and, subsequently, years later, after expending well in excess of $200 000, this place was to retrospectively amend the legislation, I wonder what kind of signal we would be sending to the business community. I am not a lawyer; I do not know whether Anport Pty Ltd would have any legal redress for compensation against the government. On a point of natural justice, one would assume they would. However, I doubt they would. That means that somebody has, in good faith, spent a couple of hundred thousand dollars only to find that, at the eleventh hour, just prior to submitting their application to the Gaming Commission, the bill has been made retrospective.

I have never Mr Cufone; I would not know him if I fell over him. Mr Cufone is probably here in this place now, but I do not know him. I believe it is important that a couple of the comments made by Judge Kelly are read into *Hansard*. On page 3 of the application, he says:

> I certainly reject the notion that somehow this applicant has been involved in an abuse of process.

At the top of page 4 of the application, he goes on to say:

> Mr Cufone is a good licensee with a good track record. Residents can expect him to act positively if problems do arise and if the affected residents bring such to his attention.

I would think that that is not a bad pat on the back from a judge of the Licensing Commission. I wanted to put that on the record for the benefit of other members. I will continue listening to the debate and, whilst I will be supporting the legislation, I am attracted to the amendment standing in the name of Julian Stefani.

The Hon. NICK XENOPHON: I do not support the Hon. Julian Stefani's amendment, and I do not resile from my position. The Hon. Terry Cameron raises a number of important points that ought to be addressed. There is a licensing court that considers need; there is some established authority that looks at whether there are other licensed premises in the area. It also takes evidence into account from those who say, 'Yes, we would like some licensed premises in a particular area.' Evidence was also taken from a number of residents saying, 'We believe that it would obstruct our amenity.'

It would be fair to say that there were competing views. I urge members opposite to listen to the local member, the Hon. Malcolm Buckby, who, I understand, doorknocked the area last Christmas. He got a very clear message about the issue of poker machines—

The Hon. T.G. Cameron: An election was coming, too.

The Hon. NICK XENOPHON: I am sure that the Hon. Malcolm Buckby was doorknocking for months prior to that. Given the result, I am sure he was doing a lot of work well before that. There is that factor. Mr Peter Hoban, the solicitor at Wallmans who is handling this issue, is a consummate professional. He fights very hard for his clients—

Members interjecting:

The CHAIRMAN: Order!

The Hon. NICK XENOPHON: No, I am not. I have no criticism at all of Mr Peter Hoban in his conduct in this matter; he is doing his job for his clients. But his clients were aware that this bill was moved in parliament two and a half months ago and they took their chances in proceeding with the matter because that was one of the issues that was raised as to whether it ought to be adjourned pending parliament's consideration.

Another matter that I want members to consider is that my understanding from brief discussions I had just now with Mr Peter Hoban is that the actual property was purchased in November 2001 and was settled on in December 2001. The freeze legislation was passed in December 2000 and then further extended in May 2001. So, on the basis of the information I have been given, when the property was purchased Mr Cufone was aware of that. That does not mean that he still cannot apply in the future.

I do not know what will happen with the freeze legislation, but in this case that is something that ought to be taken into account in fairness to all parties concerned. So, I do not resile from my position and I urge members not to support the amendment of the Hon. Julian Stefani.

The Hon. R.I. LUCAS: I put my position in some detail in the second reading contribution in support of the possibili-

ty of removing the retrospectivity, and I congratulate the Hon. Mr Stefani on the amendment he has now moved, and indicate my intention to support it. I repeat, as I said on the second reading, that the Minister for Gambling, on behalf of the government, has acknowledged that this is a retrospective bill. There is no argument about that, at least from the government's viewpoint; they acknowledge that this is a retrospective bill.

The Hon. Mr Cameron has now highlighted—and I was not aware of it, but I think it is significant information—that this particular proprietor, on the basis of the law that the parliament had passed, has spent up to $200 000 to get to this stage. The Hon. Mr Xenophon makes the point—and I am not sure what the point is meant to be—that the legislation was passed and he made the applications afterwards. He did so on the basis of the law. He has had legal advice which said that what he was doing was legal. The honourable Mr Xenophon—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I thought you wanted me to finish this by 8.15. He had legal advice which said that what he was doing was lawful, and he proceeded to spend $200 000 on the basis that what he was seeking to do was lawful. Members of the government and the Hon. Mr Xenophon are seeking to change the law; they acknowledge that what the proprietor was doing was lawful. The Hon. Mr Xenophon might want to call it a loophole or whatever, but they are acknowledging by inference or explicitly that what he was doing was lawful: he was spending $200 000 of his hard-earned money getting to the particular stage on the basis of the law as passed by the parliament.

We have had the argument, and I will not repeat it, as to what everyone thought was intended by the parliament. The Hon. Mr Redford has a view on this issue, and the Hon. Diana Laidlaw indicated that, while she voted the same way as the Hon. Mr Redford, she did so for entirely different reasons; and she made that quite explicit in her second reading contribution.

I do not want to repeat all of that, but new information has been introduced by the Hon. Mr Cameron in relation to how much money this particular proprietor has spent on the basis of something which was lawful, and what the parliament is seeking to do is to say to that person that $200 000 is just a waste of money because those who supported it made a mistake. It is not sufficient to say that you only have to wait to 31 May, because there is no guarantee that, come 31 May, the parliament will not continue a cap or some version of a cap.

In the past, people have said that there will not be a cap, and yet it has been continued and continued. So, it is entirely possible that it will continue. It is not sufficient to tell the proprietor to wait until 31 May when all will be resolved; it may not be. Parliament is voting on saying potentially to a person who, in accordance with the law of the land, has spent $200 000, retrospectively, 'Too bad. That is money that has been wasted and lost, and a law will be passed now retrospectively,' as acknowledged by the Minister for Gambling (Hon. Mr Hill), 'to take away the rights parliament had given.'

I do not intend to repeat all my arguments against the retrospectivity of the bill. I think the Hons Diana Laidlaw and John Dawkins had some discussion with the Hon. Carmel Zollo, and the Hon. Diana Laidlaw has indicated to me that she supports the Stefani amendment. The Hon. John Dawkins has indicated that he will support an amendment to remove the retrospectivity.

The Hon. NICK XENOPHON: In response to the opposition leader's remarks, my understanding and my recollection of the case is that, paraphrasing what Mr Hoban has said, in terms of the evidence given by Mr Cufone before the Licensing Court, which was accepted, the hotel had not operated for a number of years. A series of people in Whyalla had proposed to operate the hotel, but that had fallen through, I believe, some time at the beginning of this year. That is my understanding, and I will stand corrected.

The Hon. R.I. LUCAS: That's 2002.

The Hon. NICK XENOPHON: My understanding is as at 2002, but I stand to be corrected by Mr Hoban.

The Hon. M.J. Elliott interjecting:

The Hon. NICK XENOPHON: Yes, I understand that the purchase of the land at Angle Vale occurred at a time when negotiations were still under way for the Whyalla Hotel to be revived. That may put a slightly different complexion on the issue of retrospectivity.

An honourable member interjecting:

The Hon. NICK XENOPHON: Yes, but I am saying that there is that issue of purchase of the land. At the time the land was purchased, there was still an ongoing process about the Whyalla Hotel having a new operator who would revive it.

The Hon. J.F. STEFANI: Those circumstances are in the past. As has already been identified, the parliament has passed an imperfect law. It makes a mockery of the system to change the speed limit on a road. The sign has to be changed from 60 km/h to 50 km/h—and the parliament is about to do that—and people are acting within the law and travelling at 60 km/h. But then parliament, for its own reasons, decides to change the law and introduce a bill—and I stress a conscience bill, as it is—with a predetermined date when the law apply. I fail to understand how this parliament, because it has made an error, can turn the clock back and cut someone's knees right off and then make them pay for parliament's mistakes. I think it is absolutely ludicrous.

The Hon. A.J. REDFORD: As I said earlier, I do not believe this is retrospective. His Honour said in the judgment that he had dealt with the preliminary points and that there was a need for a hotel licence which was not being met by other licensed facilities. He said:

> This does not mean that I endorse the proposition that poker machines ought to be granted. That is entirely a matter for the commissioner, and I leave him to it.

Members interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: I understand the arguments that members are putting, but I cannot see the difference between this and another bill which we will support, that is, a situation where a publican may spend $10 million or $15 million investing in a very successful venue based on a certain tax regime. He might well have invested it, unfortunately for him, as late as last Wednesday, and we are going to pass a law in the not too distant future that impacts quite dramatically on his future cash flow. At the end of the day—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: That's exactly right: the honourable member makes a pertinent interjection. At the end of the day, I cannot understand the difference between a publican who has a hotel licence and does not have machines and a publican who has removed the licence and does not have machines. I really do not see any difference between the two cases.

The committee divided on the amendment:

AYES (8)

Cameron, T. G.	Kanck, S. M.
Lawson, R. D.	Lucas, R. I.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F. (teller)	Stephens, T. J.

NOES (9)

Elliott, M. J.	Evans, A. L.
Gago, G. E.	Gilfillan, I.
Redford, A. J.	Roberts, T. G.
Sneath, R. K.	Xenophon, N. (teller)
Zollo, C.	

PAIR(S)

Dawkins, J. S. L.	Holloway, P.
Laidlaw, D. V.	Gazzola, J.

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Title passed.

The Hon. NICK XENOPHON: I move:

That this bill be now read a third time.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise briefly to express strong opposition to this. It is disappointing that by a narrow margin of 11 to 10 the Legislative Council is not able to overturn the retrospective nature of the bill. Nevertheless, that is the way the parliament has voted. I indicate on my behalf strong opposition to the third reading, but given the lateness of the hour, whilst I will be voting against the bill, I do not intend personally to call 'divide' on the issue.

Bill read a third time and passed.

RURAL YOUTH

Adjourned debate on motion of Hon. D.W. Ridgway:

1. That this council notes the 50 year anniversary of the South Australian Rural Youth Movement this weekend and recognises the significant contribution made by the organisation, particularly to the training and encouragement of rural leaders for half a century; and
2. The council also expresses its good wishes to those 800 or more people who will assemble this weekend in Clare to recognise and celebrate this milestone.

(Continued from 17 July. Page 559.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I am pleased to support the motion moved by the Hon. David Ridgway that the council note the 50th anniversary of the South Australian Rural Youth Movement and recognises the significant contribution made by that organisation, particularly with regard to training and the encouragement of rural leaders for half a century. I am delighted that I will be participating in this event and am honoured to be opening the 50th year rural youth reunion rally this Saturday 20 July in Clare, which I understand was the location of the establishment of the first senior club in 1952.

The state government recognises the importance of providing rural youth with leadership training to facilitate greater involvement with their communities. Such training will have a lasting effect and deliberate beneficial outcome to all parties involved. I join with the Hon. David Ridgway and other members of this council in expressing my good wishes to the many people who are expected to assemble in Clare this weekend. On behalf of the government, I wish the participants a successful weekend and an enjoyable celebration of this milestone.

The Hon. D.W. RIDGWAY: I thank members for their contributions and good wishes to the people in Clare celebrating the 50th anniversary of the Rural Youth Movement.

Motion carried.

SEEDS ACT REPEAL BILL

The House of Assembly agreed to the bill without any amendment.

AGRICULTURAL AND VETERINARY CHEMICALS (SOUTH AUSTRALIA) (ADMINISTRATIVE ACTIONS) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

EDUCATION (COMPULSORY EDUCATION AGE) AMENDMENT BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

[Sitting suspended from 8.17 to 8.40 p.m.]

CHILD PROTECTION REVIEW (POWERS AND IMMUNITIES) BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

ADJOURNMENT

At 8.44 p.m. the council adjourned until Monday 19 August at 2.15 p.m.