LEGISLATIVE COUNCIL

Tuesday 27 August 2002

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

PAPERS TABLED

The following papers were laid on the table:

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

Regulations under the following Acts—
- Art Gallery Act 1939—Conduct and Enforcement
- Petroleum Products Regulation Act 1995—Retail Sales
- Police Superannuation Act 1990—Superannuation Scheme

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T.G. Roberts)—

- Flinders University—Report, 2001
- Nurses Board of South Australia—Report of the Review on the Operation of Section 24(3) of the Nurses Act 1999—June 2002
- Regulations under the following Acts—
  - Dangerous Substances Act 1979—2002 System
  - Daylight Saving Act 1971—2002-2003
  - Long Service Leave Act 1987—Application and Record Keeping
- The Flinders University of South Australia—
  - Amendment to Statutes 7.1, 7.3 and 7.4 (Sealed on 18 January 2001)
  - Amendment to Statutes 7.1 and 7.3 (Sealed on 2 May 2001)
  - Amendment to Statute 7.1 (Sealed on 5 June 2001)
  - Amendment to Statutes 7.1 and 7.3 (Sealed on 9 August 2001)
  - Amendment to Statutes 7.1, 7.3, 7.4 and 7.5 (Sealed on 3 December 2001)
  - Amendment to Statutes 7.1 and 7.3 (Sealed on 12 December 2001).

DISABILITY AGREEMENT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the commonwealth disability agreement made by the Minister for Social Justice earlier today in the other place.

FREEDOM OF INFORMATION

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to freedom of information reform made by the Hon. J. Weatherill earlier today in the other place.

QUESTION TIME

RIVERLINK

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government, representing the Minister for Energy, a question about Riverlink or SNI.

Leave granted.

The Hon. R.I. LUCAS: During the election campaign and prior to the election period, the then Leader of the Opposition and the then shadow treasurer (Messrs Rann and Foley) made a number of commitments on behalf of the Australian Labor Party, first as to the importance of the building of the Riverlink or SNI interconnector through the Riverland. As you will know, Mr President, Premier Rann went as far as issuing a pledge card to tens of thousands of South Australians—and I have a copy if you have lost yours, Mr President—which pledged cheaper power prices through the building of the Riverlink interconnector.

The then leader of the opposition also went onto indicate that, with leadership to be provided by an elected Labor government, the Riverlink or SNI interconnector would be built within 18 months of the election. That will be in September next year. As members know, currently an environmental impact statement process is being proceeded with. There is also an appeal before the National Electricity Tribunal in relation to whether or not the interconnector should receive regulated asset status.

In addition, members will be aware of the various claims made by the New South Wales Labor government, members of the then Labor Opposition in South Australia and others that, given the cheap prices in New South Wales, there would be an annual benefit to South Australia. I think TransGrid, the New South Wales Labor government's electricity company, presented evidence to the Economic and Finance Committee where it claimed annual benefits of $150 million to $190 million a year, and the aggregate savings to South Australians from the interconnector was to be billions of dollars, depending on the time period one wanted to look at. My two questions to the minister are:

1. Do the minister and the Labor government stand by their commitment that the Riverlink interconnector will be built by September next year; or are they now backing away from that particular commitment they made to the people of South Australia?

2. Given the current price differential between New South Wales and South Australia, and the price differential that has existed for the past 15 months or so since the building of the second stage of the Pelican Point power station, that is, that New South Wales power prices on average have been higher than South Australia, does the government stand by the commitment of cheaper power as a result of the interconnector; in particular, does it stand by the estimates that were given by the New South Wales Labor government power company and supported by the South Australian Labor opposition at the time of $150 million to $190 million in savings on an annual basis?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will get an answer from the Minister for Energy in relation to those specific questions, but I will make some comments in relation to Riverlink. Since the Leader of the Opposition has chosen to raise this subject, this council should be reminded of some actions of the previous government in relation to this matter. The previous government was implacably opposed to Riverlink from day one, even though it had been recommended. Letters were tabled in this council in the past from ElectraNet when it was still a government-owned utility supporting Riverlink.

This government opposed the construction of that particular link many years ago. I remember raising this matter in the council on a number of occasions two or three years ago. Of course, it exposed in many ways a real failure in the National Electricity Market. When the Riverlink proposal was originally assessed, there were two tests, that is, the customer benefit test and the public interest test. When the National Electricity Market people were looking at and assessing it,

they took legal advice and it was determined that they could not use the public interest test, even though it clearly showed Riverlink was the best option for this state.

In many ways that highlights the real failure that occurred in electricity under the previous Liberal government. Under the former treasurer—the former minister for electricity—nothing happened. Instead of seeking national leadership from his Liberal colleagues in Canberra to try to resolve some obvious faults in the National Electricity Market that were highlighted by the original electricity decision, the former government was happy to use that confusion to prevent Riverlink from being built. That is what happened.

For years this issue went around in circles under the previous government while these matters were being discussed. Of course, ultimately we know that that test was changed in the National Electricity Market as it was always going to be and as it should have been, because it was clearly a failure in the rules as they were originally set up for the National Electricity Market.

Of course, we also know the polices of the previous government regarding electricity. The then government broke its promises not only by selling ETSA but also by increasing by more than 30 per cent prices to the small business sector of this state, which has greatly affected its competitiveness compared to those interstate. Under the structure of the electricity market set up by the previous Treasurer—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, we had record growth, because we had one of the best seasons on record. Due to freakish seasons, in the rural sector we experienced a 30 per cent increase in production. We had a one in a 100 year season—the second in a row—for our crops. Thank heavens we did, because fortunately that growth was able to cover some of the pain we have felt from the massive hike in electricity prices for our business. At the end of this year, we are looking at establishing an Essential Services Commission—and we have a bill before the parliament at this time so I will not go into that—which will seek to ensure that any price increases for small customers are properly justified when they come into effect at the end of this year.

So, I do not believe that the history of the previous government in relation to Riverlink and SNI is particularly good at all. It was one of opposition and hindrance all the way through, while the then government was claiming it was supporting it. Of course, we know in reality what it was doing. I will ask the Minister for Energy to give a report on negotiations on this matter, as it is obviously his province and not mine, and I will bring back a reply.

The Hon. J.S.L. DAWKINS: I ask the following supplementary question: will the minister indicate the progress in the determination of a final route for SNI Riverlink from Wentworth to Robertstown?

The Hon. P. HOLLOWAY: I will seek a response from the Minister for Energy.

ANANGU PITJANTJATJARA LANDS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Anangu Pitjantjatjara lands.

Leave granted.

The Hon. A.J. REDFORD: On 19 August, in answer to a question asked of the minister by my colleague the Hon. Robert Lawson, the minister mentioned that he had employed Dr Mick Dodson to act as a mediator between the AP executive and the Pitjantjatjara Council. The minister said that Dr Dodson was to 'try to pull together the difficulties associated with the ownership and control of the anthropological information that is vital in dealing with a whole range of questions on the lands, the most important of which to a lot of traditional owners is the royalties that may be negotiated out of land access in respect of exploration for mining, wealth and oil'. The minister then informed the Legislative Council that the mediation involving Dr Dodson had 'broken down'. My questions are:

1. Has Dr Dodson provided the minister with a report in relation to his activities?

2. Will the minister table that report in the parliament and provide copies of it to the groups involved in the attempted mediation, and in particular will he provide a copy to the AP executive?

3. If not, why not?

4. If the minister is not yet in a position to release the report, will he outline to this council the substance of Dr Dodson's report?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I reported that the mediation process had broken down and, although an agreement was not reached between the AP executive and the Pitjantjatjara Council, the work that the mediator had done over the time frames he had been employed was able to be put to good use. In subsequent meetings, we were able to work towards a solution by providing some avenues for discussion from the information that was pulled together and Mr Dodson's personal experience in dealing with similar problems in other parts of Australia.

We put together a number of options that were discussed informally. We put a proposal on the table to put a joint explanatory team together to go to the communities so that they could understand what the new governance changes would mean and how they would impact on them at a personal level and to try to allay fears that we were interfering in land tenure, ownership and control. The team would also explain that it was a formula for future governance and service delivery—mainly human service delivery. The impact of those discussions at an informal level resulted in the AP executive determining to undertake that process on its own. I understand that it has been visiting the communities and putting proposals based on their view of the world and how they see the solutions that are being provided. I would have preferred that to have been done jointly with the government's proposals, but the executive did not see it that way.

The report is an important document in relation to how we move forward. Certainly, the approach that I have made to the opposition is to work together in a bipartisan way to put together a program where government can responsibly work with the communities to rebuild their lives and their communities to a point where they can take ownership of a whole range of service delivery programs as well as manage the responsibilities of the legislation, which is to manage the land. The report will be tabled tomorrow, when I make a contribution in relation to the formation of the select committee. The document will then, obviously, become public.

The document can be seen as a snapshot, but it cannot be seen in isolation as providing solutions to the problems. But it certainly spells out the difficulties that the mediator had in trying to get the parties to an agreed position to move

forward. I hope that the select committee can provide, perhaps, an additional tool for moving the agenda forward. I certainly hope that re-establishing the lower house standing committee, which was abandoned under the previous government, can play a role in monitoring the management of the lands, and bringing information into this council and informing cross agencies about the progress of some of the programs that we hope to coordinate and put together.

The answer is that the report will be tabled. It will be done in a constructive way so as to avoid any further division. Unfortunately, what has been happening in the lands (I understand that it has ceased in the last few days) has not been helpful in obtaining a solution in a bipartisan way across government and rebuilding the communities with the cooperation that we require from the leadership teams that exist within the lands. I will table the report when the debate and the discussions around the formation of the select committee occur.

FREEDOM OF INFORMATION

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Leader of the Government a question about freedom of information.

Leave granted.

The Hon. A.J. REDFORD: In another place this afternoon a ministerial statement was made by the Hon. J. Weatherill, the Minister for Urban Development and Planning and the Minister for Administrative Services, on the topic of freedom of information reform. In that ministerial statement the minister said the following:

> Sir, a good government does not fear scrutiny or openness and freedom of information legislation is an important avenue for the public to scrutinise the activities of government.

Indeed, only last week I reminded the leader of the Labor policy issued prior to the election, which stated:

> Freedom of information legislation is an important avenue to the public to scrutinise the activities of government. In government Labor will review the Freedom of Information Act to ensure that it remains an effective avenue to ensure open and accountable government.

Also, a press release last year states:

> The government can bring in any changes to legislation that it likes but unless there is the will of government to follow it it won't work.

In the light of that, I asked some questions of the leader, and in particular the minister, about whether or not the government was considering changes along the lines that I had suggested last week. The minister responded that I would simply have to wait. He said that it is a very lengthy bill and that it contains a considerable number of changes. Indeed, the day before the Hon. Michael Elliott asked a question about the government's approach to FOI applications and asked for a commitment as to whether or not refusals could be based on an elapsure of time. In answer to that question, the Hon. Paul Holloway said:

> There have been a number of increases in requests for FOI information. It is sometimes difficult, particularly if the information is not particularly explicit, or alternatively if the particular information is not held in an easily accessible database and it will take some time to find the information. I can certainly understand that in some cases where freedom of information requests are made it may be particularly difficult to gather all the information.

The honourable member then mentioned that there might be an announcement at some stage in the future. In the light of that, it was interesting to read in the ministerial statement in another place the following sentence:

> The bill will not distinguish between the general public and members of parliament when applying a fee for an FOI application.

My questions to the leader are:

1. How does that fit with the concept of good government not fearing the scrutiny or openness and freedom of information as described by the minister in another place today?

2. How does the government's rhetoric sit with the suggestion that members of parliament, and particularly members of the opposition and the crossbenches, will now have to pay for freedom of information?

3. How can the government assert that it has a policy of more open government and that it will subject itself to scrutiny when it quite brazenly puts forward a suggestion such as this?

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I am pleased that my colleague in another place, the Minister for Administrative Services, has now made his statement in relation to the Freedom of Information Act, and I understand that he has now tabled his report. I think that all South Australians will be pleased that, under this new bill, there are considerable extensions of freedoms in a number of areas.

The Hon. A.J. Redford interjecting:

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

The Hon. P. HOLLOWAY: The tactics of members opposite are quite obvious: they realise that this government is genuinely much more open and accountable than the previous government and they are trying to discredit this government. Of course, the Leader of the Opposition is a past master at these sorts of tactics. What he is trying to do is to submit far more freedom of information requests than have ever been requested in history at massive cost to the taxpayers of this state. I know that my department has received requests from the Leader of the Opposition seeking all sorts of information.

Members interjecting:

The PRESIDENT: Order! There is too much interjection while the minister is trying to answer the question. He should be heard in silence.

The Hon. P. HOLLOWAY: Of course, the Leader of the Opposition and members opposite are obviously deliberately trying to flood the system because they know that if there are enough requests the resources available in the system will not be able to deliver, so that people such as the Hon. Angus Redford and the Leader of the Opposition will be able to say, 'They have not been able to deliver within the time frames when we have put in these requests,' ignoring the fact that they are trying to totally jam the system. I think we know the sorts of tactics being employed by this opposition.

What is positive in the statement that the government has made today in relation to areas such as commercial confidentiality clauses is that this new bill will limit the application of exemptions. Another significant reform in the bill that my colleague in another place will introduce is that it will allow cabinet and executive council to make some documents available if the minister recommends that access may be given and cabinet agrees.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The document will be made available to the public which cannot happen now. The objects of the act will be changed to promote openness and accountability. As we all know, the objects of an act are important in relation to the way the courts interpret an act.

We can see it now. This is what they are doing. This is what the Leader of the Opposition is about. He is all about spoiling; he is all about disinformation. We saw it for four years; we saw the secret state. There was never a government in the history of South Australia that was as secretive as the previous government and, frankly, they ought to be ashamed of what they did. We now have a government in this state that is making information available to an unprecedented extent, while this lot, of course—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —all they are good at is spoiling.

The Hon. A.J. REDFORD: I have a supplementary question.

The PRESIDENT: Before you ask your supplementary question, I want to say this. People are getting a little excited today: it is getting near the end of the session. I ask members to remember standing orders. When someone is debating in an orderly fashion, interjections are out of order.

The Hon. A.J. REDFORD: For my part, I apologise, but I am very upset. Is the measure to charge members of parliament, and therefore avoid the scrutiny of this government, to be done by regulation or will it be part of primary legislation?

The Hon. P. HOLLOWAY: My understanding is that it is part of the act. Of course, I also remind members, and it is my understanding—and I will check this with the minister responsible: I hope that members of the council understand that I am not the minister responsible for introducing this act—that under the charges now available there is something like a 10:1 subsidy—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: On average there is about a 10:1 subsidy for the provision of information under this act. It is necessary that we have freedom of information, but it is costly for the public. For each dollar received from applications, it costs something like $10 to process those applications.

An honourable member: That has always been the case.

The Hon. P. HOLLOWAY: Yes, it has been the case, but what is different is an obvious abuse of the system that is now taking place.

LOCAL GOVERNMENT

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Local Government, questions about increases in council rates.

Leave granted.

The Hon. J.F. STEFANI: In an article published in the *Advertiser* of 22 August 2002 the Minister for Local Government, the Hon. Jay Weatherill, was quoted as seeking an explanation from councils about how they determine their rates and what communication has occurred between councils and ratepayers. This is amidst community concerns over the soaring costs of council rates. The minister was quoted as saying:

> Councils have an enormous number of tools in their tool kit to develop very flexible rating policies.

They have an obligation to communicate their rating policy to their ratepayers. I want to find out to what extent, if at all, they are drawing to the attention of their communities their entitlements to seek rate remissions and rebates on the basis of hardship and other grounds. The minister said the council rating policies needed to be more accountable, and this demand was part of a package of measures to improve local government accountability. He wanted councils to explore the tools that they have before the state government considered making any changes to the rating system. My questions are:

1. When did the minister write to the Local Government Association or to the councils in relation to this matter?

2. Has the minister received any response to his correspondence?

3. What changes are the government considering in relation to the rating system?

4. Does the minister approve of the increases that have occurred, which in many instances are much more than the CPI increase?

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

REGIONAL DEVELOPMENT

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question regarding regional development.

Leave granted.

The Hon. R.K. SNEATH: I understand that as part of the minister's regular meetings with the stakeholders in regional South Australia discussions were recently held with representatives of the Murray Bridge council and the Murraylands Regional Development Board. Can the minister advise of any recent funding decisions from the Regional Development Infrastructure Fund that might have an impact on the Murray Bridge area?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for the question. It is an important one and I know that he has direct links to regional areas, being a rural-based member. The Murray Bridge council sought assistance from the Regional Development Infrastructure Fund of $1.2 million for the completion of the southern freeway ramps at Monarto. The council sought funding to construct two ramps providing egress from the southern lane of the freeway and extending minor services across the freeway bridge. Current estimates will provide for a basic interchange which complies with the minimum standards set by Transport SA. I am pleased to announce that the Minister for Industry, Investment and Trade has approved RDIF funding as requested by the regional board for this project.

The ramps will improve access to and from the Monarto industrial site, which has attracted companies including Big W, Adelaide Mushrooms, trucking companies and the Australian Wheat Board. The ramps will reduce costs to these companies and attract additional companies to the area. They will also improve access for wineries at Langhorne Creek. The ramps have a broader benefit to the region, including safety. The ramps will eliminate the dangers to the travelling public of heavy vehicles doing U-turns across the freeway to access the northern ramps, as is occurring at the moment. The

ramps will also improve access to the Monarto Zoo and have a favourable impact on Murray Bridge and Callington, lowering heavy vehicle traffic servicing Monarto. The government notes with appreciation the support of the Murray Bridge council and the Murraylands Regional Development Board. The council, in particular, reduced the costs of the ramps by managing the work and using its own work force where possible.

The Hon. D.W. RIDGWAY: I have a supplementary question. Can the minister please indicate when a chairman of the Murray Mallee Strategic Task Force will be appointed?

The Hon. T.G. ROBERTS: I am not sure that is a supplementary to this question, but the establishment of—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Well, as I pointed out yesterday, there are a lot of regional development bodies in South Australia. I have been to as many as I can. I have met with people in my office. The decision to appoint a chair is still being discussed. I have a view in relation to whether members of parliament should chair those meetings or whether they should attend and report back to me as minister. That is a question that is still being discussed.

The Murraylands body is doing a very good job in relation to building a bridge between the development board, the community and into the office. While we have set up other infrastructure in relation to service provision within regional areas, including the formation of a new council (which I am formulating at the moment) and accepting nominations and expressions of interest as we speak, the finalisation of the make-up of the council and the chair is yet to be decided.

The Hon. J.S.L. DAWKINS: I have a supplementary question. Given that the Murray Mallee strategic task force has asked that a member of parliament act as chair, when will that appointment be made?

The Hon. T.G. ROBERTS: Again, if it is the wish of the task force to have a member of parliament as chair, the government will comply. As I have said, my preference is to appoint a local person to chair the meetings rather than a member of parliament and that a member of parliament regularly attend meetings. I will extend an invitation to members, and I will make that a commitment when the meetings are held. I suspect that backbenchers on this side of the council will get an invitation as well as members opposite and the Democrats. I know that Ian Gilfillan regularly attends regional development board and local community meetings. The more members of parliament who attend and report back to their party rooms the better. However, if the task force is insistent on a member of parliament as chair of that body, that will be discussed at the first opportunity.

ADELAIDE RAVENS NETBALL CLUB

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Recreation and Sport, a question about the axing of the Adelaide Ravens Netball Club.

Leave granted.

The Hon. M.J. ELLIOTT: South Australia has a strong history of netball competition, one of the best in the nation. South Australia has consistently produced the majority of representatives in the national team, including the team that won gold at the recent Commonwealth Games. Yesterday, Netball Australia (the national governing body of netball) announced that the Adelaide Ravens Netball Club would be removed from the National Netball League and replaced with an AIS ACT team.

In today's *Australian*, it was stated that some of the excuses given were such things as crowd numbers, on-court performances—something I do not believe the Ravens had a problem with—and lack of financial support. The axing of the Ravens will have a huge impact on the development of the most played sport in South Australia, because there will be fewer opportunities for junior and up and coming players to play at the national level. It may be that players of the future will have to cross the border to play at the top level.

Of course, there would have been displays of outrage if a similar decision had been made to axe one of our AFL teams. However, because this is traditionally a female sport with less business and government support, such a decision was possible. I note the Premier's response in parliament yesterday when he pledged that he would do what he could for the Ravens. The Premier has also been supportive in relation to AFL football clubs playing finals here, too, because he is so committed to these sorts of things. My questions are:

1. Was the minister aware of Netball Australia's decision to axe the Adelaide Ravens prior to the Premier's statement yesterday? If so, when was he informed and what steps did he take to prevent such a decision?

2. Will the minister confirm that the state government previously refused to underwrite the Ravens for $50 000 as part of the team's business plan submitted to Netball Australia?

3. Will the minister explain why the netball supporting public of South Australia should not see the Premier's pledge as too little too late?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I have the same concerns as those of the honourable member. Inherent in his question is the financial control that business has in relation to sport. We are seeing it in the AFL, the Rugby League particularly, and the linkages between betting and decisions made by some sporting clubs in relation to how that is dealt with.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: I'm not saying the Ravens, but a lot of people would have lost money backing Canterbury to win the grand final, and with boards of directors making decisions that breach rules I am sure that the money that would be invested in those teams in that sport would be done cold. The trend towards financial independence within sporting groups is a good one, but the impacts on decisions made by national bodies on state teams have to be recognised and, if we have to intervene at a particular level at a particular time or if we have the information made available at the right time, perhaps we can get better outcomes. I will certainly pass on the questions asked by the honourable member and bring back a reply.

SCHOOLS, CAPITAL WORKS

The Hon. A.L. EVANS: First, I would like to apologise for not wearing a tie in the council today. I have a boil on my neck right where my collar is, so I have come without a tie.

The Hon. M.J. Elliott: You will have to leave straight after question time! It is the rules.

The Hon. A.L. EVANS: I was not sure what they were, so I thought I would apologise. I seek leave to make a brief

explanation before asking the minister representing the Minister for Education a question concerning capital works projects.

Leave granted.

The Hon. A.L. EVANS: It has been reported that South Australian schools are at risk of losing $1.5 million in federal funding this year due to the state government's delay in approving capital works projects. An article in today's *Advertiser* states that the federal education minister has written to the state government warning that the money will be withheld unless it fulfils its commitment to deliver equivalent state funds to the Gawler Primary School and the Orroroo Area School. The minister's letter stated that these projects were high priority and that he had instructed his department to withhold a sum equal to the commonwealth capital grant approval for these two projects from the 2002 allocation for South Australia until the state meets its commitment. The Hon. Trish White has said that the Gawler project was on hold due to circumstances beyond the government's control. My questions to the minister are:

1. What are the circumstances to which the minister refers?

2. Since coming to office has the minister made any attempt to ensure that capital works projects are commenced? If so, what are these attempts?

3. Has the minister responded to the federal minister's letter and, if so, what was the nature of her response?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer those questions to my colleague in another place and bring back a reply.

MURRAY RIVER FISHERY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about river fisheries compensation.

Leave granted.

The Hon. D.W. RIDGWAY: On 11 March this year, on radio with Matthew Abraham and David Bevan the minister was interviewed on this subject, and he stated:

> . . . our commitment is that we will remove gill nets on the River Murray.

David Bevan asked:

> Is that a result of Labor Party policy, or is that a result of your negotiations and your compact with Peter Lewis?

The minister said:

> Well, look, we have agreed to that as part of our compact with Peter Lewis.

David Bevan then asked:

> What compensation will be given to the I think it's 30 families affected by the ban on commercial fishing in the River Murray?

The minister replied:

> Well, look, they're matters that need to be looked at. I mean, that's been the practice in the past, that when property rights are taken that there's some negotiations take place on that, and they're matters that would have to be addressed.

In relation to property rights, I see that one of the fishing reaches was valued during the Fisheries Act National Competition Policy Review in June 2001 at $100 000. I may not be certain of the relevance of the Land Acquisition Act but I certainly would accept that banks have used these fishing reaches for security and fishers have borrowed against them, so I assume that they have the same value as land.

When land is acquired by the government, the compensation payable to the claimant shall be such as adequately to compensate him for any loss he has suffered for the reason of acquisition of this land. The member for Hammond was later interviewed and he was asked whether they would be compensated. The member for Hammond said:

> They'll be compensated. All they have to have is their last three years of tax returns, their records of what income they derived from their activities of fishing the commercial species, and we'll be able to compensate them fairly and squarely. . . They will have an income.

Matthew Abraham said:

> But they'll no longer be allowed to fish. . .

The member for Hammond said:

> [But] They will have an income.

Matthew Abraham asked for how long, and the member for Hammond said:

> Well, as long as they live.

Matthew Abraham said:

> Do you know how much that's going to cost?

The member for Hammond said:

> It can be capitalised. Whatever they get in annual income over the next several years, for the next 15 or 20 or 30 years that they may have left in life, they will be able to arrive at a figure which is a capitalisation of that income stream. That's a pretty clear concept.

David Bevan said:

> So, it's your understanding that those 30 families will be compensated for the next 15 or 20 years.

The member for Hammond said:

> They'll be given a lump sum which is the equivalent of the income they'll forgo as a result of not being able to fish for native fish.

David Bevan said:

> For how long?

The member for Hammond said:

> Forever. . . It's got to be determined case by case. And it will be and it'll be done fairly. It does not matter what it's going to cost to compensate them fairly, and I'll fight for that. And I'm quite sure that there won't be any necessity for fighting, because Paul Holloway and the Labor Party are committed to compensating them.

Matthew Abraham said:

> Well, there won't be a necessity to fight for it, because what we are told is, if it's in the compact, what Peter wants, Peter gets.

The member for Hammond said:

> No, that's what the Labor Party agreed to, the Labor Party will deliver. . .

The formula at which the Labor Party arrived was to add the three years' income together, divide that income by three, and multiple by 1.5. My questions are:

1. What criteria did the government use in choosing this formula?

2. Does the minister consider this formula to be fair and equitable and to fully compensate the fishers for their investment?

3. Was the member for West Torrens involved in negotiations with the member for Hammond—or is welshing now a disease affecting all members of the government?

The PRESIDENT: Order! Before the minister answers that question, all members should be aware of standing order 193 about offensive or deleterious remarks. It is becoming a habit of members to draw this into conversations in the chamber. I ask members to be very careful when making

offensive or objectionable remarks. I do not want to see too much more of it in the future.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thought the Hon. David Ridgway was better than the last question indicated, but we will see. In relation to the river fishery, the honourable member referred to comments I made on 11 March, which would have been four or five days after this government came to office. On that occasion, on radio, I reaffirmed the government's commitment to honour the undertaking it had with the Speaker in relation to the immediate removal of gill nets from the Murray River—that was the request he had made—and also that we would phase out fishing for native fish species over the next 12 months. On that occasion I was simply reaffirming that.

Since then, that is what the government has done. On 30 June this year gill nets were removed from the fishery. I note that the Liberal Party is seeking to reinstate them. I believe this council has the matter listed tomorrow for a debate. I guess we will see what happens in that debate about whether or not this council expresses its view as to whether or not gill nets should be placed back in the Murray River, despite the fact that every other state in this country has removed them. I guess we will see what happens tomorrow.

In his question the honourable member referred to rights. Of course, a fishing licence is a right to fish for fish in a fishery for 12 months. That is essentially the right that is conferred by a fishing licence, that is, a right to fish for 12 months. Of course, the practice has developed—and the convention behind that simple right to fish for 12 months, as the honourable member has said—that people borrow against it. There is an understanding that there will be some continuity of that licence. It is interesting to point out that, in relation to the inland fishery, I believe a previous Labor government back in the 1970s, as a means of signalling the ultimate phase-out of this fishery, removed the right of sale and the right of transferability of that fishing licence. One of the things that has been forgotten in this debate over inland fisheries is that the previous Liberal government put back the right of transferability of these licences as recently as 1995.

Members interjecting:

The Hon. P. HOLLOWAY: This goes right to the heart of the question. The honourable member talks about rights, and I am talking about where this right exists in relation to fisheries. I am saying that there was no right for transferability in the early 1990s. As I understand it, this right for transferability was put back in the mid 1990s.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I know that Karlene Maywald, the member for Chaffey, has been strongly critical of the decision of the previous government to reinstate that right. That is another issue. A unique feature of these inland fisheries and fishing licences is that they refer to particular reaches—unlike other fisheries, in the ocean, where a licence is for a certain species, and in most cases they are subject to quota. So, there are unusual features in relation to the river fishery.

In terms of rights, the only right a fishing licence confers is the right to fish for 12 months. However, the government recognises that there is the expectation in the community that if people are investing in an industry they have the right to have those licences renewed. It is on that basis that the government is making an ex gratia payment—and that is what we call them. The ex gratia payment is based on 1.5 times gross income figures. There are considerable costs involved in the river fishery. Of course, if one looks at the average net income of fishers, one sees that it is somewhat less than $11 000 a year.

The Hon. A.J. Redford: Where did you get that from?

The Hon. P. HOLLOWAY: This is from the assessment of the information. Less than $11 000 per annum is the average net income. As one might imagine, the average gross income of that fishery is considerably higher, because of the considerable costs involved. There is a huge variety in income within that fishery. The government put considerable effort into how one might fairly and equitably compensate those inland fisheries, and considerable work was done by my officers and me in looking at individual cases, as well as the overall figures, to come up with a formula that would be fair and equitable, given the conditions that prevail in the fishery.

I have mentioned on previous occasions that prior to the government's announcements there had been about half a dozen sales of fishing licences over the past few years. The cost of those licences varied between $10 000 and $75 000, which I believe was the highest. That is the price that the market had placed on those licences prior to the year 2000. In effect, if one looks at the total compensation package that this government has offered, one sees that if all the entitlements were taken up it would be just above $2.7 million for the 30 fishers. That relates to $90 000 per annum, which compares very favourably with the value that one might put in relation to the value of a licence.

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: No, I am saying that the value of licences—as they were traded in the marketplace—was between $10 000 and $75 000. The government is offering a $2.7 million package, which is equivalent, on average, to about $90 000 per fishery if all those entitlements were taken up. I believe that when one considers that in terms of average net income and in terms of the prices that were paid for licences it is, indeed, a very fair and equitable level of payment that we are making, particularly given that, essentially, fishing licences (to return to the initial point made by the honourable member) confer a right to fish for 12 months.

The Hon. CAROLINE SCHAEFER: Sir, I have a supplementary question. Does the minister agree that, with the reinstatement of the right of transferability, a property right was also bestowed, or inferred, on the transferability of licences?

The Hon. P. HOLLOWAY: When the previous government installed the right of transferability, one could argue that it certainly places an expectation within the community—I think it would be more correct to describe it as an expectation rather than a right. I think that one ought to consider the values in relation to that matter. I think that, when that right of transferability was installed, the question is: was any payment charged for that in relation to the customers? I suspect that there was not, and that, in fact, it was something that was really handed across at no cost. So, in a sense, it was a windfall gain.

FLINDERS MEDICAL CENTRE

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question about the use of internal hospital cordless telephones at the Flinders Medical Centre.

Leave granted.

The Hon. SANDRA KANCK: It has been brought to my attention that the internal cordless telephone system at the Flinders Medical Centre may have been out of order or not fully functioning in some departments for over seven years. I was recently approached by a constituent who lives in regional South Australia. Seven years ago, his late mother was an inpatient at the Flinders Medical Centre. At that time, my constituent was unable to travel to Adelaide to visit his mother. He attempted to communicate with her via telephone but was distressed to find that his incoming calls could not be received. Staff explained to him that the internal cordless phone system was not working. He was told that the system had been 'broken for a long time and there were no funds to fix it'. Communication was thus impossible, as his mother was very ill and could not walk to a pay telephone to make a call to her son.

That was seven years ago, but it appears that things have changed little since then, because recently a terminally ill friend of his in the same region was rushed to the emergency department of the Flinders Medical Centre. While in the emergency department, communication was possible via the internal cordless telephone system, however when the friend was moved to a ward further communication via the system was not possible. Once again, my constituent was told that the internal telephone system was not working and had been down for so long that 'no-one can remember when it last worked'. My questions are:

1. Will the minister investigate the current situation for patient communication to and from family and friends when in hospital at the Flinders Medical Centre?

2. Can the minister establish how long the internal cordless phones have been operating below optimal level? Does the minister acknowledge the particular difficulties that families and friends from rural and regional areas have in communicating with patients?

3. Can the minister advise when the internal cordless phone system will be fully operational in all areas of the hospital?

4. If there are not enough phone jacks in the wards, will the minister investigate the cost of installing extra phone jacks in all wards and ensure that all bedridden patients have suitable access to telephones?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will pass on those questions to the minister in another place and bring back a reply. I can pass on that, at a personal level, I am aware that there are difficulties with the telephone system, in that it generally takes time for a person to pick up the cordless phones and take them to a patient.

In many cases the staff are very busy and unable to spare the few seconds it takes to stand, say, with an elderly patient who cannot hold the telephone, or people who have injuries that prevent their holding a telephone. These telephones can be very difficult for people to utilise. I think that not only is there a technical difficulty but an application problem, which may be overcome with new technology, such as hands-free telephones. I will refer the questions to the minister and bring back a reply.

RABBITS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the calicivirus.

Leave granted.

The Hon. T.J. STEPHENS: All members of the chamber would know that the introduction of rabbits into this country has been one of the greatest environmental disasters with which this great nation has had to deal. One of the more successful approaches to the control and reduction of rabbit numbers was the introduction in recent years of the calicivirus. This measure was widely reported as having incredibly successful results in the reduction of rabbit numbers. Feedback from the agriculture sector and environmentalists was glowing with regard to how our native vegetation—previously devastated in some areas—was making a rapid and stunning recovery.

I have been very disturbed of late following a number of reports to me that—to quote my favourite cartoon character—those 'wascally wabbits' are on the increase. My questions are:

1. Is the minister aware of this disturbing turnaround in rabbit numbers?

2. Does the minister's department have any idea of the current rabbit numbers and, to be fair to the minister, an approximation will do?

The Hon. T.G. Roberts: Do you mean how many?

The Hon. T.J. STEPHENS: Yes, 50 or 60. I continue:

3. What strategies does the minister have in mind to address the situation favourably?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I guess that all members would be concerned at some reports of a recent increase in rabbit numbers. I have not received any official information, but certainly I have heard a lot of anecdotal evidence from people. I was talking to some people near the Victor Harbor region the other day who said that rabbits were at levels they had not seen for some years. Of course, I suppose it has some relationship to the numbers of foxes present, which are the natural predators of rabbits. Fox numbers certainly seem to be on the increase. Strategies for controlling rabbit numbers are, of course, the province of the Animal and Pest Control Commission.

I will seek an answer from the Minister for Water, Land and Biodiversity Conservation in relation to the particular measures his office is implementing. Certainly, as the Minister for Agriculture, I can say that I am concerned at reports that the numbers of rabbits could be on the increase, particularly in the higher rainfall regions. I will seek some more information for the honourable member and bring back a reply.

The Hon. R.K. SNEATH: As a supplementary question, does the minister think that the deregulation or the banning of steel traps has anything to do with the latest rabbit increase?

The Hon. P. HOLLOWAY: I must confess that, many years ago, I was the owner of a couple of rabbit traps. Of course, since that time we have become much more enlightened in relation to the methods we use. Traps are, in fact, cruel.

An honourable member interjecting:

The Hon. P. HOLLOWAY: That is right. We now use more humane methods of rabbit control, and I think that is probably a good thing.

REPLIES TO QUESTIONS

REGIONAL ROADS

In reply to **Hon. DIANA LAIDLAW** (18 July).

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

In the ministerial announcement made to the House of Assembly on Wednesday 17 July 2002, the Minister for Transport made the following statement:

> A further phase of this package will involve the development of a number of longer term initiatives. These measures require development and consultation with stakeholders. Without making specific commitments, measures to be considered are likely to include:
>
> · Severe increases in the penalties for speeding offences more than 35 km/h above the posted speed limit, including possible mandatory loss of licence.
> · Severe increases in the penalties for drink driving above 0.15 per cent BAC, including possible mandatory impoundment of vehicles.
> · Introduction of a graduated provisional licence scheme along the lines of that operating in NSW.
> · Examination of the use of computer simulation software packages for driver training and assessment.
> · Examination of the practicality of introducing front number plates for motor vehicle cycles.

The honourable member will note that the statement refers quite clearly to a second phase program, which will be taken up only after considerable development work and community and industry consultation.

The specific measures to which the honourable member refers were listed among several examples which were indicative of the nature of the matters to be considered in the second phase, not commitments.

BUS PRIORITY LANES

In reply to **Hon. DIANA LAIDLAW** (17 July).

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

The former government's bus priority program has been continued. The current title of the program is 'Metropolitan Traffic Management Program'. The program is mentioned on page 41 of the capital investment statement and is funded with an amount of $1.75 million for 2002-03.

CITY BUILDINGS

In reply to **Hon. T.G. CAMERON** (11 July).

The Hon. T.G. ROBERTS: The Minister for Urban Development and Planning has advised that:

1. Information from the Adelaide City Council indicates that there are three to four instances a year of debris falling from existing buildings usually during winter. Consolidated statistics on such incidences are not kept. To the best of the council's knowledge there have not been any injuries in the last three years.

2. Inquiries of the various state and territory administrations have indicated that there are no specific legislative requirements for older buildings to be regularly inspected for public safety. Some local governments such as the Sydney City Council have their own inspection regimes for buildings that are showing signs of deterioration but Sydney only has a five yearly requirement for newer buildings that use silicone sealant for glass retention.

In South Australia, local councils are required by the Development Act to have inspection policies with respect to building work in their area. Such policies should identify the major risks in their area and the level of inspections that the local council will undertake. While these policies are intended to deal primarily with new work councils are encouraged to include policies on hazardous and dangerous buildings as well as heritage buildings and the fire safety of existing buildings.

Where a building is identified as being a threat to safety because of its condition a council is able to issue an emergency order under the Development Act to safeguard occupants and the public.

There are sufficient provisions in the Development Act for councils to deal with building facades that are considered to be a threat to safety, and through their inspection policies councils can encourage the early detection of potentially hazardous facades.

in addition, Planning SA is in the process of preparing an advisory notice for councils on this issue.

RURAL ROADS

In reply to **Hon. D.W. RIDGWAY** (16 July).

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

The sealing of unsealed rural arterial roads program is an initiative of the former government. The program began in 1994 with the aim of sealing the remaining 436 km of the State's 8900 km of rural arterial roads, which had not been sealed at that time. By the end of next financial year, with the works currently scheduled, only 44 km of the 8900 km will remain unsealed.

1. Where has the $5.625 million gone?

The lower funding for the program in 2002-03 is the result of a number of factors:

· The roadworks on the unsealed rural arterial roads program were accelerated in 2001-02, by bringing forward $2.14 million from 2002-03. The net expenditure in the 2002-03 program is therefore reduced by $2.14 million (already spent in 2001-02), from $5.625 million to $3.48 million.

This funding has been re-allocated to support the government's commitment to road safety. The government has increased the allocation of funds in the 2002-03 budget to higher priority safety improvements, which will provide significant benefits to the broader, rural community. Programs benefiting will include increased funding for shoulder sealing of $5.1 million (to increase pavement width on higher volume arterial roads), the funding of a new State Black Spot Road Safety initiative of $3.5 million, a continuation of the seal widening on the Lincoln Highway of $1.0 million, and other safety related minor works and road safety audit response works of $4.0 million.

· The roads impacted by the deferment of funds from the unsealed rural arterial program are the Lucindale-Mount Burr Road and the Morgan-Blanchetown Road. These roads are of a lower priority, both in terms of the unsealed rural arterial road program (these are the last roads scheduled to be sealed under this program), and also when compared with other projects and programs on the wider state road network. This lower priority is a reflection of the following:
  · Both roads carry low volumes of mostly local access traffic. Alternative sealed routes are available for traffic.
  · Other sealed roads on the rural arterial road network have higher traffic volumes, higher heavy vehicle movements and a higher existing crash history, that also warrant attention.
  · Sealing these roads is difficult to justify in overall economic terms, when compared to other infrastructure needs.

2. How does the minister expect rural and regional South Australia to grow and prosper if his government is not prepared to invest in road infrastructure?

The lower funding allocation to unsealed rural arterial roads has allowed funds to be directed to higher priority road works, which have greater overall benefits in safety for regional South Australia. Benefits will be in the form of increased safety from the State Black Spot Program and shoulder sealing works on higher volume roads.

3. What action does the Minister propose to assist the District Councils that are now facing significant problems due to the $5.6 million cut?

As indicated, the redirection is $3.48 million, significantly less than the $5.625 million quoted.

The Minister for Transport is advised by Transport SA that all councils have been paid for works undertaken on the unsealed rural arterial roads program. There is no debit carried by any council in relation to these works.

No further commitment has been made to councils in relation to when future sealing of these roads may occur. Consequently, deferral of the work on these roads should not have any direct impact on these councils budgets.

Supplementary question (Hon. T.G. Cameron): When (does) the government intend to restore the funding so that the roads can be built?

Funding for sealing the deferred arterial roads will be considered in future budget allocations on a priority basis in the context of the state's overall road needs. Transport SA will continue to ensure the travelling surface on these unsealed roads is maintained to a safe standard for all road users.

GAMBLING, LOYALTY PROGRAMS

In reply to **Hon. NICK XENOPHON** (10 July).

The Hon. T.G. ROBERTS: The Minister for Gambling has advised:

1. The Office of the Liquor and Gambling Commissioner has advised that the current 'Responsible Gambling Code of Practice' and 'Advertising Code of Practice' do not address the specific issue raised by the Hon. Nick Xenophon MLC. The current 'Advertising Code of Practice' refers to the way in which gaming machines are advertised or promoted but does not directly address issues relating to the conduct of player loyalty schemes.

2. The commissioner advises that legal advice would need to be sought on this question. The same issue would presumably arise where the promoter of any other 'loyalty' or 'frequent flyer' scheme continued to provide unsolicited material after a person had requested that they be taken off a mailing list.

3. Yes—the minister does consider this unsatisfactory. In general it would seem logical and appropriate that if a person has been encouraged to join a loyalty scheme and has also been encouraged to participate in the scheme in an active way then the promoter / operator of such a scheme should be readily available and accessible to loyalty scheme customers for any inquiry they should make. This should particularly apply in an instance where a person no longer wished to be part of a loyalty scheme or to continue to receive promotional literature.

4. The Minister for Gambling has sought advice on this issue with the Independent Gambling Authority in the context of the question from the Hon. Nick Xenophon MLC. The authority advises that it considers there is some point in considering mandating standards of loyalty schemes in the advertising and responsible gambling codes of practice under the Gaming Machines Act 1992. The authority will invite submissions from the public in respect of its review of those codes likely to be conducted in December. The Minister for Gambling and the authority invites Mr Xenophon to participate in the process at that time.

5. The minister advises the house that he has raised matters in relation to the loyalty scheme with the authority. The concerns will be dealt with as part of a comprehensive review of inducements to gaming to be conducted as part of the review of the Gaming Machines Act codes of practice in December. The exact date for completion of the review of these codes will depend on the nature, quality and length of the submissions made to the authority at its hearings, tentatively scheduled for December.

6. The Minister for Gambling advises honourable members that on the question of whether poker machines loyalty schemes could exacerbate problem gambling, this could only be answered following a specific study of the issue. However, the Minister is of the view that loyalty schemes which link gaming credits to points collected outside of gaming venues could entice new customers to gaming venues and potentially exacerbate problem gambling. The minister acknowledges that there is anecdotal evidence that player loyalty schemes increase gaming spend at venues offering such schemes, however this is also true of other loyalty schemes operating in the general retail environment. The minister considers that the gaming environment should be dealt with as a whole—this is why this issue and others are best dealt with as a codes of practice issue.

ENVIRONMENT PROTECTION AUTHORITY

In reply to **Hon. M.J. ELLIOTT** (11 July).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised:

1. and 2. The government's intention and policy was to revamp the EPA as an independent authority. The first step in that process is to provide the Authority with its own staff by transferring the agency staff to the Authority. This was completed on 1 July 2002. This is consistent with the recommendations of the ERD Committee.

3. With respect to aquaculture, the EPA's role is to consider licensing and leasing applications before they can be granted. This provides a high level of independence in the grant of licences and leases. Without the EPA's approval of an application, it cannot be approved.

4. PIRSA and EPA staff have met frequently over several months to plan a smooth transition to the new Aquaculture Act. The new Act has only been in place since 1 July 2002.

PIRSA is arranging to issue interim aquaculture licenses. The EPA is involved in the process and is satisfied with the transitional arrangements.

The structure in place is well positioned to apply the act, and ensure that the Aquaculture industry progresses in an ecologically sustainable manner. The structure provides for a high level of scrutiny of aquaculture practice, with the EPA assessing the likely environmental impact of all proposals.

An aquaculture unit is being established within the EPA and will comprise three staff to review proposed licenses, leases and environmental monitoring programs, and make recommendations to the board of the EPA.

FESTIVAL THEATRE

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: My personal explanation relates to a page-one article appearing in the *City Messenger* that I read today, although the paper, I note, is dated Wednesday 28 August (tomorrow). So, perhaps the paper will withdraw its front-page article—I am very hopeful. Perhaps tomorrow it will put something in that is fair and reasonable. However, in the meantime, if it does not do that, I want to briefly put on the record the following facts, and my colleague the Hon. Robert Lucas will take up a number of issues with the editor of the paper later. First, the newspaper says:

> Diana Laidlaw, the arts minister under the previous state government, diverted $3 million of funds from an open space levy so a large pathway could be carved out between the Festival Centre and the plaza leading to the Riverbank Promenade.

That is factually incorrect—absolutely factually incorrect. If I had done such a thing, it would be shameful, but I did no such thing. The one-third of the plaza that is being removed above Festival Drive is part of the Adelaide Festival Centre Trust redevelopment. It was approved by the Public Works Committee and it went through Crown development processes, as I understand it. It has been fully funded and, as the Premier said in answer to questions from the Hon. Julian Stefani in this place, it is on budget.

It did not require any further funds to be obtained through me. The $3 million which was referred to was for a special additional project which related to the arts court, and this was part of the master concept plan. Contrary to statements in this article, the government always worked to a master concept plan that was overseen by government officers in the Adelaide Festival Centre Trust, the Major Projects Panel and DAIS, and this additional $3 million was spent on advice from the public sector that, if part of the festival centre workshops were demolished at the same time that the other festival centre plaza was demolished, the government—that is, taxpayers—would save considerable funds and there would be less inconvenience to the public, staff and users. I took that advice in the context of the overall plan for the area.

I highlight as well that this did not become a mess until the government withdrew funds and withdrew from the project this year. The project, therefore, is not advancing according to the concept plan and it is this that is causing anxiety in terms of north-south access routes in this area. The planning approval for the arts court and the Festival Centre Trust was on the basis of north-south access. That was all part of the master planning concept process that I have referred to that the government worked to, and any accusations of planning shortfall by the Messenger today, I repeat, does not rest with

the former government. It arises only because this government withdrew from the project and in this budget deleted the next stage of funding, which was some $9 million. I will take up the other issues where I am falsely accused with the newspaper itself.

The Hon. CARMEL ZOLLO: I take a point of order—

The PRESIDENT: Order! The Hon. Ms Laidlaw is clearly moving away from personal explanation. She is starting to debate the issue.

The Hon. CARMEL ZOLLO: —I think she started to debate the issue two or three minutes ago, actually.

LEGAL SERVICES COMMISSION (MISCELLANEOUS) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

The *Legal Services Commission (Miscellaneous) Amendment Bill* was introduced into the last Parliament and passed in this House, but lapsed when Parliament was prorogued before the last election.

The *Legal Services Commission Act 1977* establishes the Legal Services Commission as the statutory authority responsible for the application of funds granted by the State and Commonwealth Government for the provision of publicly funded legal assistance to the people of South Australia.

The *Legal Services Commission Act 1977* (the Act) was enacted in contemplation of a relatively uncomplicated scale of operation. It was enacted when there was a different basis for Commonwealth Government funding than is now the case, and under a system of legal aid where there was no national uniformity of administrative practice, as there is now.

The *Legal Services Commission (Miscellaneous) Amendment Bill 2002* proposes a number of changes to that Act. Some will help the Commission to operate more efficiently by formalising existing administrative practice and removing unnecessary restrictions upon it. Others recognise the changed nature of the relationship between the State Government and the Commission and the Commonwealth Government since the Act was enacted in 1977. In 1997/98 the Commonwealth instituted a purchaser-provider model of funding for Commonwealth law matters only, in place of the previous partnership arrangement under which the State and the Commonwealth shared responsibility for the funding of all matters.

Some parts of the Act no longer assist sensible business practice. The Act presently unduly restricts the ability of the Commission to delegate its power to expend money from the Legal Services Fund and prevents the Director from delegating the power to grant and refuse aid. In order to conduct its daily business in a way which does not offend these provisions, it has long been the practice of the Commission to authorise fixed financial delegations to senior management annually, and for an appropriate officer other than the Director to authorise the grant or refusal of legal aid.

In his 2000-2001 Interim Audit, the South Australian Auditor-General commented adversely on the fact that, in the absence of appropriate amendment to the Act, the Commission and the Director were continuing to delegate authority in this way.

This Bill amends the Act to give the Commission and the Director appropriate powers of delegation.

Another provision in the Act, which has been abandoned on a national scale, and is not complied with by the Commission in practice, is the requirement for applicants for legal aid to statutorily declare that the contents of their applications are true and correct. In the past, the practice amongst Australian Legal Aid Commissions was not uniform on this requirement. Some Commissions required statutory declarations, and others did not.

In 1995, a national uniform application form was adopted by all Australian Legal Aid Commissions, including the South Australian Commission. The form does not require verification by statutory declaration, on the basis that this is unnecessary. Standard conditions of all grants of legal aid are that the Director may terminate or change the conditions or terms of the grant at any time, and that an applicant who knowingly withholds information or supplies false information is guilty of an offence.

Since the adoption of the national uniform application form, the Commission has not required applicants to sign such declarations, and has continued to pass resolutions (under s17(2)*(a)* of the Act) exempting applicants from complying with these verification requirements.

In his 2000-2001 Interim Audit, the South Australian Auditor-General commented adversely on the fact that, in the absence of appropriate amendment of the Act, the application form contained no requirement for a statutory declaration.

This Bill removes the requirement for applicants to verify their applications by statutory declaration.

Another minor amendment is to remove restrictions on the name and location of the Commission's offices to ensure that the Commission may not only continue to conduct its business from a head office and branch offices, but may operate under any other office configuration that it considers 'necessary or desirable'.

This Bill also addresses a concern in relation to section 29 of the Act. The effect of section 29 is that a legally-aided client assigned to an in-house Commission solicitor is the client of that solicitor, not of the Commission. There is no retainer between the Commission and the client, because the Commission is not a solicitor.

This may be interpreted to mean that, where the file is assigned in-house, a Commission lawyer may not disclose information about the case to the Commission, its Director or other practitioners employed by the Commission in a supervising capacity without the client's instructions to do so. This may also be interpreted to mean that the Commission may not reallocate the file to another solicitor without the client's, and his or her solicitor's, consent.

This Bill repeals section 29 and substitutes a new section that provides that the Commission will be taken to be the legal practitioner retained by the assisted person, may require its employed solicitors to provide legal assistance to those persons, and must supervise the provision of legal assistance by its employed solicitors. The Director is responsible for ensuring that this work is properly allocated and supervised. Because the Commission is the solicitor of record, there is also provision authorising a solicitor employed by the Commission to sign court documents.

Section 29 currently provides that a legal practitioner employed by the Commission is entitled to appear on behalf of an assisted person before any court or tribunal. An equivalent provision is not included in the new section 29. It is no longer necessary for reference to be made in the Act to such rights of audience as this matter is addressed by section 51 of the *Legal Practitioners Act 1981*, which provides that a legal practitioner employed by the Commission and acting in the course of that employment is entitled to practise before any court or tribunal established under the law of the State. Under section 55B of the *Judiciary Act 1903* of the Commonwealth, rights of audience in federal courts and tribunals follow the rights created by section 51.

I now turn to the provisions in the Act that refer to arrangements between the State and Commonwealth Governments with respect to legal aid, and to the Commission's position vis a vis the Commonwealth Government under those arrangements.

In meeting the cost of providing legal aid, the Commission receives funds from the State and Commonwealth Governments under agreements negotiated between the State and Commonwealth Governments. In 1996 the Commonwealth Government announced a radical change to the basis of its funding to legal aid commissions. It moved from a partnership with the States in the provision of legal aid services to a purchaser-provider model of funding, under which the Commonwealth, as a principal, contracts with the legal aid commissions to deliver legal aid services in matters only involving Commonwealth law. By the end of 1997, all legal aid commissions had signed the new agreements.

The Act does not reflect this changed relationship in a number of ways.

Since its establishment in 1977, the Commission has included members who are nominees of the Commonwealth Government. Now that the Commission is a provider negotiating the supply of services to the Commonwealth, it is not appropriate for nominees of the Commonwealth Government to remain on the Commission.

At the expiry of the terms of the Commonwealth Government nominees to the Commission in July and September 1999, the Commonwealth Government indicated that it would make no further

nominations. It has taken the same position with all other Australian Legal Aid Commissions.

In his 2000-2001 Interim Audit, the South Australian Auditor-General commented adversely on the fact that, in spite of the requirements of Act, there were no Commonwealth nominees on the LSC.

In recognition of the changed nature of the funding relationship between the Commonwealth Government and the Commission, this Bill removes the requirement for there to be two nominees of the Commonwealth Government on the Commission.

Section 27 of the Act, which describes legal aid funding agreements between the State and the Commonwealth, is couched in terms of the pre-1997 'partnership' agreement between the State and the Commonwealth with respect to funding for legal aid, now superseded by the Commonwealth's purchaser-provider arrangements. The Bill changes the wording of this section to reflect the fact that the current agreement is a standard purchaser-provider agreement under which the Commission has the status of a provider of services in respect of Commonwealth law matters.

Other incidental amendments safeguard the Commission's competitive advantage by no longer imposing a duty on the Commission to liaise with and provide statistics to the Commonwealth at its behest, allowing this to happen when agreed between the Commission and the State Attorney-General, and by releasing the Commission from any statutory duty to 'have regard to the recommendations of any body established by the Commonwealth for the purpose of advising on matters pertaining to the provision of legal assistance'. This should now be a term of the funding agreement between the Commonwealth and the State and/or Commission, not a statutory requirement.

In addition, the Act has undergone a statutory revision, to replace outmoded language and remove obsolete provisions such as the one which refers to the appointment of the first Director of the Commission, and to replace references to obsolete Acts.

I commend the Bill to the House.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 6—Constitution of Legal Services Commission

This clause amends section 6 of the principal Act, which establishes the Legal Services Commission and deals with its constitution, by removing the requirement that two persons nominated by the Commonwealth Attorney-General be appointed to the Commission. This requirement is no longer appropriate in the light of current funding arrangements. Section 6(5), which provides the Governor with the power to appoint deputies of the members nominated by the Commonwealth, is no longer required and has been removed.

Clause 4: Amendment of s. 10—Functions of Commission

Section 10 of the principal Act describes the functions of the Commission. Clause 4 amends this section by:

1) removing the requirement that the Commission establish an office to be called the "Legal Services Office";
2) deleting the word "local" from subsection (1)*(e)*, which requires the Commission to establish "such local offices and other facilities as the Commission considers necessary and desirable", thereby allowing the Commission to establish an appropriate configuration of local and branch offices;
3) deleting subsection (1)*(ha)*, which currently requires the Commission to cooperate with any Commonwealth legal aid body for the purpose of providing statistical or other information, and inserting a new subsection that permits, but does not require, the Commission to cooperate with a Commonwealth body for such purposes.

Clause 5: Amendment of s. 11—Principles on which Commission operates

This clause amends section 11 of the principal Act, which describes the principles on which the Commission operates. Paragraph *(c)* of this section requires the Commission to have regard to the recommendations of any Commonwealth body established for the purpose of advising on matters pertaining to the provision of legal assistance. This paragraph is removed.

Clause 6: Substitution of s. 13

Section 13 of the principal Act provides the Commission with a power of delegation but prohibits the Commission from delegating the power to expend money from the *Legal Services Fund*. Clause 6 repeals this section and substitutes a new section that does not include this prohibition. The substituted power of delegation is in a standard form and is consistent with the Director's power of delegation, which is inserted by clause 7.

Clause 7: Insertion of s. 14A

This clause inserts a new section, which provides the Director with the power to delegate any of the Director's powers or functions to a particular person or committee. The delegation must be in writing. The written instrument may allow for the delegation to be further delegated. The delegation may be conditional, does not derogate from the delegator's power to act in a matter and can be revoked at will.

Clause 8: Amendment of s. 15—Employment of legal practitioners and other persons by Commission

Section 15 of the principal Act deals with employment matters. Section 15(8) currently requires the Commission to make reciprocal arrangements with other legal aid bodies for the purpose of facilitating the transfer of staff, where such an arrangement is practicable. Clause 8 amends this section by removing subsection (8) and substituting a provision that allows, but does not require, the Commission to make such arrangements.

Clause 9: Amendment of s. 17—Application for legal assistance

Clause 9 amends section 17 of the principal Act, which deals with applications for legal assistance. The amendment removes the requirement that an application for legal assistance be verified by statutory declaration.

Clause 10: Amendment of s. 27—Agreements between State and Commonwealth

Section 27 of the principal Act deals with agreements between the State and Commonwealth. Clause 10 amends this section by deleting subsection (1), the wording of which reflects earlier funding arrangements, and substituting a new subsection that allows the State or the Commission to enter into agreements or arrangements with the Commonwealth in relation to the provision of legal assistance. The Commission can only enter into such arrangements with the approval of the Attorney-General. Although the section does not limit the matters about which the agreements or arrangements may provide, subsection (1a) does suggest that the agreements or arrangements may be in relation to money to be made available by the Commonwealth or the priorities to be observed in relation to such money in the provision of legal aid.

Clause 11: Substitution of s. 29

Section 29 of the principal Act currently provides that a legal practitioner employed by the Commission is entitled to appear before any court or tribunal on behalf of assisted persons. This section also provides that an authorised legal practitioner has the same rights, powers and privileges as a practitioner in private practice in relation to his or her clients and is entitled to act as solicitor for assisted persons in relation to the institution and conduct of proceedings. This clause repeals section 29 and substitutes a new section that clarifies a number of matters relating to the provision of legal assistance to assisted persons. Subsection (1) provides that for the purposes of providing legal assistance to an assisted person, the Commission will be taken to be the legal practitioner retained by the person to act on the person's behalf. The Commission may require a legal practitioner employed by the Commission to provide a person with legal assistance and must supervise the provision of legal assistance by the employed practitioner.

Subsection (2) provides that the Director is responsible for ensuring that the provision of legal assistance by the Commission is properly allocated and supervised. Subsection (3) provides that if a document relevant to proceedings is required or permitted to be signed by the solicitor for an assisted person, a document signed by an authorised legal practitioner employed by the Commission will be taken to have been signed by the assisted person's solicitor.

Clause 12: Amendment of s. 31—Discipline of legal practitioner employed by Commission

Section 31*(a)* of the principal Act presently provides that a practitioner employed by the Commission incurs the same liability for unprofessional conduct as a practitioner in private practice. The *Legal Practitioners Act 1981* defines two categories of misconduct—unprofessional and unsatisfactory. The effect of the amendment made by this clause, which inserts the words "or unsatisfactory" after "unprofessional" in section 31*(a)*, is to clarify that a practitioner employed by the Commission incurs the same liability for both unprofessional *and* unsatisfactory conduct as a practitioner in private practice.

Clause 13: Statute law revision amendments

Clause 13 and the Schedule set out further amendments of the principal Act of a statute law revision nature.

The Hon. A.J. REDFORD secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This bill is the result of a review of the criminal law in the area of criminal offences punishing dishonesty in its various forms. The review is based on the earlier comprehensive work of the Model Criminal Code Officers Committee (MCCOC), a committee reporting to the Standing Committee of Attorneys-General which, in turn, drew largely on the substantial English experience in reform of the criminal law in this area. The MCCOC review involved substantial public consultation. Following the Model Code Report, published in December 1995, South Australia developed the model reflected in this bill. The bill (and a brief accompanying explanation) was released for public comment and the comments received have been taken into consideration. The bill was introduced into the last Parliament and passed in another place, but lapsed when Parliament was prorogued before the last election.

The State of the law in South Australia

South Australian criminal law on theft, fraud, receiving, forgery, blackmail, robbery, and burglary is almost entirely contained in the *Criminal Law Consolidation Act 1935* (the principal Act), Parts 5 and 6, sections 130-236, as largely supplemented by the common law. The offences are antiquated and inadequate for modern conditions. They are, in general terms, the offences contained in the English consolidating statutes of 1827, 1861 and 1916. Those consolidating statutes, in turn, brought together a wide range of diverse specific enactments that went back to the time of Henry III (*circa* 1224).

The definition of larceny at common law as the "asportation of the property of another without their consent" dates from the *Carrier's Case* of 1474.

Cheating was a common law offence from very early times, but false pretences was not made a criminal offence until 1757.

The current South Australian false pretences offence (section 195) is in very much the same form as it was originally. The distinction between obtaining by false pretences, on the one hand, and larceny by a trick, on the other, turns on the question whether the fraud induced the victim to intend to pass property or merely possession to the thief. This is very difficult to understand and apply, and makes no real sense at all. It is only one example of the deficiencies and unnecessary complexities of the current state of the law.

Examples could be multiplied but, in general terms, the position can be summarised by saying that South Australian law in the areas of theft, fraud, receiving, forgery, blackmail and robbery (and associated offences) is the common law, as overlaid and supplemented by numerous other enactments, of various ages, which, in many cases, are inconsistent with the general principles with which they are supposed to work. In addition, there are a large number of anomalies, such as offences directed at the forgery of currency (sections 217-220) and offences relating to the conduct of company directors (sections 189-194). Neither of these sets of offences are of any use.

South Australia has the most antiquated law in these areas in Australia. It is unnecessarily complex, difficult to understand, full of anomalies and a barrier to the effective enforcement of the law against dishonesty generally, both in this State and nationally.

In 1977, the Mitchell Committee said:

The defects of the present law are that it is unduly complex, lacks coherence in its basic elements and has not kept up to date with techniques of dishonesty. . . . [The] distinctions are difficult enough for lawyers; for laymen they are an abyss of technicality.

The law in South Australia on "secret commissions" is set out in the *Secret Commissions Prohibition Act* enacted in 1920. It came into effect on 1 January 1921. It creates a series of offences which, broadly speaking, criminalise the behaviour of giving, soliciting, or receiving, payment by or for an agent in order to influence a judgement or decision. Some offences deal with "secret" payments and some do not. Some offences require that the payment be made or received "corruptly" and some do not. The object of the legislation was to create a series of criminal offences dealing with corruption in both private and public life. The offences deal with variations on bribery and deceit in dealings. It differs from the more widely known criminal laws dealing with bribery and corruption in that it was primarily aimed at private, rather than public, business dealings.

In 1992, the South Australian Parliament passed the *Statutes Amendment and Repeal (Public Offences) Act 1992*. That Act contained a new regime of public sector oriented corruption offences. Although the current secret commissions legislation does cover "servants of the Crown", the 1992 offences dealing with bribery and corruption of public officers and abuse of public office deal comprehensively with the serious offences appropriate to this area. The area left untouched by the 1992 reforms is the area of corruption and bribery in private life and business.

There are a number of reasons why this Act requires an overhaul.

- The *Secret Commissions Prohibition Act* is drafted in a style common to legislation of that age, but one which makes it hard to understand by and obscure to those who must conform their actions to its dictates. Further, in South Australia, its prohibitions have remained in an obscure separate Act of Parliament rather than, as in most other jurisdictions, incorporated into the mainstream of criminal legislation, be that a Criminal Code or a general Crimes Act. At the very least, therefore, the legislation requires a modern form and an integration into the general body of the criminal law.
- Much has changed since the legislation was originally passed. It overlaps with the general criminal law relating to fraud, extortion, and bribery and corruption, and the assumptions about those areas of the criminal law against which its needs were assessed and its scope defined may not be valid today. The same is true, if not more so, about the society in which it operates. The legislation needs to be reconsidered in light of the current legal and social environment in which it is intended to operate and, in particular, integrated with bribery and corruption offences.
- While the offences contained in the legislation have not been widely used since its enactment, a number of matters requiring attention has been exposed. These include, significant confusion about the meaning of the word "corruptly", a reversal of onus of proof which could be described as "draconian", a need to reconsider the applicable penalties, and a peculiar statute of limitations which bars action 6 months after the principal discovers the offence.

The Model Criminal Code and the Standing Committee of Attorneys-General

In 1991, the Standing Committee of Attorneys-General (SCAG) formed what became the Model Criminal Code Officers Committee (MCCOC) with a remit to make recommendations about a model criminal code for all Australian States and Territories. In September 1992, a special SCAG meeting on complex fraud cases requested MCCOC to give priority to theft and fraud as the first substantive chapter of such a code. This request was based in part on Recommendation 8 of the National Crime Authority's conference on white collar crime held in Melbourne in June 1992, which said:

That the various State laws and codes be revised so as to provide uniform fraud legislation as a mechanism for consistency for investigation and presentation of evidence in all Australian jurisdictions.

MCCOC took up the issues in the following way. It issued 2 discussion papers; the first, in December 1993, dealing with theft, fraud, robbery and burglary and the second, in July 1994, dealing with blackmail, forgery, bribery and secret commissions. In December 1995, it issued a Final Report which consolidated its recommendations in those areas. The Final Report was based on nation-wide submissions (including 40 written submissions) and consultations. In June 1996, MCCOC released a Discussion Paper on conspiracy to defraud followed by a Report in May 1997. Implementation of the Model Code recommendations is a matter for each Australian State and Territory to decide for itself.

It follows that the current law in South Australia in the areas of theft, fraud, receiving, forgery, blackmail, robbery, burglary and secret commissions is long overdue for reform. A complete overhaul of the law is overdue, not only on its intrinsic merits, but also in light

of the recommendations of the National Crime Authority Conference and the special meeting of SCAG.

MCCOC recommended a structure for theft, fraud and related offences based on the English *Theft Act*. The *Theft Act* model was developed by the English Criminal Law Revision Committee in 1966 and enacted in England in 1968. It represents an almost entirely fresh start and is, as far as possible, expressed in simple and plain language. Its basics are offences of theft, obtaining by deception, and receiving, with the aggravated offences of robbery, forgery, burglary and blackmail. There are, in addition, supplementary offences, such as taking a motor vehicle without consent and making off without payment.

Some form of the *Theft Act* model has already been enacted in Victoria, the Australian Capital Territory and the Northern Territory. The scheme thus has the advantage of having been tested in 3 Australian jurisdictions and, more substantially, in England over the past 28 years. However, the view has been taken that the drafting of the English *Theft Act* and, in consequence, the MCCOC recommended provisions, is antiquated and does not comply with the drafting style of the South Australian statute book. Consequently, an entirely fresh version adopting a substantially modified approach to the whole subject has been drafted. The result is a bill quite different in form from other models, although its effect is very similar.

Theft

The general offence of larceny and the large number of specific offences of larceny, currently contained in sections 131-154 of the principal Act, are to be replaced with a general offence of theft. Hence, specific offences of stealing trees, dogs, oysters, pigeons, and so on, will be subsumed into a general offence. Theft is defined as the taking, retaining, dealing with or disposing of property without the owner's consent dishonestly, intending a serious encroachment on the proprietary rights of the owner.

The core of the meaning of theft (and a number of other offences in the bill) is 'dishonesty'. The bill captures and codifies the meaning of 'dishonest' as it has been developed in the English *Theft Act* environment. 'Dishonest' is defined as acting dishonestly according to the standards of ordinary people and knowing that one is so acting. This is a community standard of dishonest behaviour and, accordingly, will be a matter for a jury to decide in serious cases.

It may be noted that the definition of dishonesty includes the current common law defence of 'claim of right'—that is, a person will not be dishonest if he or she mistakenly believes that he or she is exercising a right. This is (and has always been) an exception to the old rule that ignorance of the law is no excuse, but the mistake must be about some legal or equitable (in the technical sense of that word) right, as opposed to moral right. It is not enough that the person thinks that there is some moral right to do what they are doing (such as defrauding rich insurance companies). They must believe that they are acting in accordance with law—for example, taking back property which the defendant honestly (but mistakenly) believes belongs by law to her.

The old offence of larceny required proof of what was known as an 'intention to permanently deprive the owner' of the object of the larceny. The meaning of this phrase became the subject of some litigation at common law. In the case of the *Theft Act* and this bill, the law is reduced to a codified form of words, rendering the state of the law more certain. In the case of this bill, it is referred to as 'intending a serious encroachment on an owner's proprietary rights'.

The existing law concerning theft by trustees, rules in relation to theft of real property and the rule relating to 'general deficiency' are preserved by the bill.

In common language, a thief is someone who steals goods and a receiver is someone who pays the thief for the stolen goods. However, it has never been as simple as that. There has always been a considerable overlap between theft and receiving and that overlap has produced complex legal disputes. This has been so ever since the offence of receiving was invented by statute. Section 196 of the principal Act currently provides as follows:

> *(2) Charges of stealing any property and of receiving that property or part of that property may be included in separate counts of the same information and those counts may be tried together.*
>
> *(3) Any person or persons charged in separate counts of the same information with stealing any property and with receiving that property or part of that property may severally be found guilty either of stealing or of receiving the property or part of the property.*

Under the modern approach to the area, theft is defined, in law, so widely that all receiving amounts to theft, because theft has moved away from its medieval roots as a crime simply involving the *taking* of possession without consent. The only reason for keeping any crime of receiving is the popular perception that there is some kind of difference between the archetypal thief and the archetypal receiver. This maintains an unnecessary complication in the law and unnecessarily complicates the task for judge and, where it is appropriate, jury. Therefore, the crime of receiving is being formally incorporated into theft and hence the *separate* offence of receiving will disappear; but, in deference to the popular conception, the name of receiving will still be referred to in the crime of theft.

Robbery

The traditional offences of robbery and aggravated robbery are retained with no substantive change. The double references to assault with intent to rob are removed, with assault with intent to rob being dealt with by section 270B of the principal Act.

Money-laundering

The offence of money-laundering is transferred from its current location in the principal Act to a Division dealing just with money laundering. An additional offence has been added, directed at a person who ought reasonably to know that the property is tainted. This amendment brings South Australian law into line with all other jurisdictions except New South Wales.

Fraud and Deception

A variety of offences of fraud are replaced by one general offence of deception. The effect of this is to do away with the archaic differences between the various statutory fraud offences and, also, to do away with the archaic difference between the offence of obtaining by false pretences and larceny by a trick. The offence also collapses the distinction between obtaining and attempt to obtain. No actual obtaining as a result of the deception is required.

Conspiracy to Defraud

The common law offence of conspiracy to defraud remains alone among the abolition of the rest of the common law relating to offences of dishonesty. While this decision is not in line with a determination to codify the law for reasons of access and precision, it conforms to the same decision that has been made in Victoria (and other places, notably, the UK). It really is an amorphous "fall back" offence of uncertain content designed to catch innovative dishonesty when all else fails.

There is no doubt at all that conspiracy to defraud catches conduct that goes beyond any specific offences. It exists in 2 main forms which are not mutually exclusive. The first variant was described by an eminent judge as follows:

> *[A]n agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud.*

This form of the offence does not necessarily involve deception.

The second form of the offence requires a dishonest agreement by 2 or more persons to 'defraud' another by deceiving him/her into acting contrary to his/her duty. It now appears to be settled that the person deceived need not be a public official and need not suffer any economic loss or prejudice.

Some time ago, the UK Law Commission comprehensively surveyed what it thought conspiracy to defraud (which was not caught by the then existing (*Theft Act*)) law covered. The latest summary of the position is quoted below. Like the Law Commission, the position taken by this bill is that it is not currently possible to represent adequately, and in a principled manner, the scope and operation of the protean offence of conspiracy to defraud and, therefore, as a matter of practical reality, it must be retained.

> *. . . we have already concluded, in our conspiracy to defraud report, that we could not recommend any restrictions on the use of conspiracy to defraud 'unless and until ways can be found of preserving its practical advantages for the administration of justice'. Our view at that time was that conspiracy to defraud added substantially to the reach of the criminal law in the case of certain kinds of conduct (or planned conduct) which should in certain circumstances be criminal. We set out a number of instances of conduct within that category, some of which we have subsequently considered. One such lacuna was that it was not possible to prosecute an individual for obtaining a loan by deception. We recommended that the offence of obtaining services by deception, contrary to section 1 of the Theft Act 1978, should extend to such a case; this recommendation was repeated in our money transfers report and implemented by section 4 of the Theft (Amendment) Act 1996. Another lacuna, that of corruption not involving consideration, has been addressed in*

our recent report on corruption. Yet another, the unauthorised use or disclosure of confidential information, is the subject of our continuing project on the misuse of trade secrets. There are further possible lacunae that might emerge if conspiracy to defraud were abolished. We think that the proper course is to await the responses to this consultation paper and then, if it is agreed that a general offence of dishonesty would not be appropriate, consider whether the matters that we have previously considered as possible lacunae should be the subject of specific new offences. We are very conscious that some of them are highly controversial.

Forgery

The current law contains a great many specific offences of forgery which are of considerable age. They are all to be replaced with a general offence of 'dishonest dealings with documents' which extends the offence of forgery, based on the pivotal notion of dishonesty, beyond creating and using a false document to dishonestly destroying, concealing or suppressing a document where a duty (as specified in the bill) to produce the document exists. There is also a summary offence of strict liability of possession, without lawful excuse, of an article for creating a false document or falsifying a document. It should be noted that the definition of 'document' includes electronic information.

Penalties

It is appropriate, at this point, to comment about maximum penalties. Forgery maxima provide as good an example as any. Some of the current forgery offences are punishable by life imprisonment. This is merely the result of the abolition of capital punishment (and its replacement by life imprisonment) in relation to non-homicide offences in the nineteenth century, and is absurd in the twenty first. It amounts, in its current state, to an abdication by the legislature of any role at all in indicating to the courts the level at which penalties for offences should be set. It is not only the life maxima that are absurd. Interference with a crossing on a cheque with intent to defraud carries a maximum of 14 years compared with, for example, 10 years for the indecent assault of a child under 12 years of age. Preserving the sanctity of certain, sometimes important, documents is one thing—getting comparative social priorities right is quite another, and it is the latter that should take precedence.

It is not intended by any amendments in the area of penalties to send the message to either the judiciary or the general public that the current applicable penalties in practice should be reduced. On the contrary, all that is being done is to fix applicable maxima at a realistic level when compared to other offences of comparable general gravity.

Computer and Electronic Theft/Fraud

It is notorious that the old common law system had great difficulty dealing with the new ways in which various old forms of dishonesty (and some new ones) were facilitated by the use of electronic and, more recently, computerised forms of money and money's worth. There are essentially 2 ways in which the law can be changed in order to cope with the problem. The first is to try to use definitions in order to integrate the new concepts to a general set of offences. That is the course that has been taken in relation to the new offences relating to the dishonest dealings with documents. The second method is to try to create a specific offence or specific offences to cover the field. The latter is what the bill tries to do with general dishonesty offences. The Division is headed *Dishonest Manipulation of Machines* and the notions of manipulation and machine have been defined specifically with this in mind.

The Problem Of Appropriation

The common law of larceny and, hence, current South Australian law, requires that the offender take and move the goods before they can be stolen. This reflects the requirements of a traditional society in which a thief was seen as someone who took something. But that is inadequate. The common law had to invent the idea (and offence) of 'conversion' to cover the idea that a person could come into possession of something lawfully and then unlawfully do something with it. The *Theft Act* offence of theft, and those models derived from it, solve the problems created by this *ad hoc* approach by basing the offence on the idea of 'appropriation' which, in turn, is defined in terms of 'any assumption of the rights of the owner'. This concept is, and was intended to be, wider than the combined offences of taking and conversion. But it, in turn, has given rise to problems. This can best be illustrated by example.

Example 1:

Suppose D removes an item from the shelf of a supermarket and switches labels with another item with the intention of getting a lower price from the checkout. Is that an act of appropriation? The answer is—yes. And so it should be. What is the appropriation? The answer is—the switching of labels. It cannot be the taking of the item off the shelf, because that is not an act by way of interference with or usurpation of the rights of the owner in any way (and because, otherwise, all shopping would be appropriation—which would not be sensible, and the court so held). There is no problem under the general formula of 'assumption of the rights of the owner'. The owner has the right to affix the price to the item but D has assumed that right.

Example 2:

Suppose D1, D2 and D3 go into a supermarket. D1 and D2 distract the manager while D3 takes 2 bottles of whiskey from the shelf and conceals them in her shopping bag. Is there an appropriation? The answer is—yes. Where is the appropriation? On parity of reasoning, it has to be the concealment of the bottles. It is very hard to find an exact usurpation of the rights of the owner there.

Other examples can be given. This sort of problem gave rise to some complex and confusing English court decisions on the subject. The result appears to be that the general concept of appropriation has become so wide as to have virtually no limits at all. In that case, it is reasonable to question whether it serves any useful purpose.

The solution to this problem adopted by the bill is to use the concept of dealing with property and, in turn, to define dealing to include such basic concepts as taking, retaining, obtaining and receiving property (including the notion of conversion) and to supplement these ways of describing theft offences with supplementary offences which specifically cover the margins of appropriation.

So, for example, the instance of label swapping in example 1 is dealt with by an offence of dishonest interference with merchandise. Other famous examples are included under an offence of dishonest exploitation of advantage. These offences savour of both theft and fraud and so are set out on their own.

This set of offences also contains a generalised offence of making off without payment. The current offence, which is contained in section 11 of the *Summary Offences Act 1953*, is confined to food and lodging, but there is no sound reason (but for the accidents of history) why that should be so and, indeed, there has been a consistent demand from the petrol station industry for a general offence to criminalise 'drive-offs' from petrol stations. This offence will cover that situation.

Preparatory Conduct—Going Equipped

The current law contains a series of offences labelled 'nocturnal offences'. These include the offence of being armed at night with a dangerous or offensive weapon intending to use the weapon to commit certain offences, possession of housebreaking equipment at night, and being in disguise or being in a building at night intending to commit certain offences. These offences also attract generally disproportionately high maximum penalties ranging from 7 to 10 years imprisonment. The current offences are also limited in that they are only committed if the relevant conduct takes place at night.

These offences derive originally from the notorious *Waltham Black Act* of 1722 (9 Geo 1, c 22) entitled 'An Act for the more effectual punishing of wicked and evil disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and Properties of His Majesty's Subjects, and for the more speedy bringing of Offenders to Justice'. In fact, the *Waltham Black Act* was the most severe Act passed in the eighteenth century and no other Act contained so many offences punishable by death.

The current provisions of section 171 of the principal Act (Nocturnal offences) derive from that Act. For example, the *Waltham Black Act* was so called because it made it an offence to be out at night with a blacked up face. The offence was aimed at nocturnal poachers. That provision is now in section 171(3) ('being in disguise at night with intent'). There seems no obvious modern justification for such an offence, particularly one punishable by 7 to 10 years imprisonment. The offence in section 171(4) ('being in a building at night with intent') has been dealt with more comprehensively by the home invasion amendments of 1999.

It is proposed to deal with the offence in section 171(1) ('being armed at night with a dangerous or offensive weapon with intent') in 2 ways. First, the proposed offence in what would become section 270C will cover possession of *any* article with intent in relation to offences of dishonesty, whether it be during the day or at night. However, the ambit of the current offence will be limited, in that it must occur in 'suspicious circumstances', as defined in the bill. It is suggested that this limitation is justified by the true purpose of the offence; that is, to catch behaviour preparatory to the commission of a more serious offence. Second, insofar as the current

offence deals with possession of weapons with intent to commit an offence against the person (as opposed to an offence of dishonesty), a corresponding offence is proposed to be enacted as section 270D. It can then be reviewed in its proper context when offences against the person are examined in the future.

Similarly, it is proposed to replace the offence in section 171(2) ('possession of housebreaking implements') with new section 270C. This section will cover possession of *any* article with intent, whether it be during the day or at night. However, again, the ambit of the current offence will be limited in that it must occur in 'suspicious circumstances', as defined in the bill. It follows that *mere* possession of housebreaking implements at night is proposed no longer to be an offence as such, but will have to occur in suspicious circumstances as defined.

In general, therefore, it is proposed to replace these outmoded offences with modern offences, with suitable penalties, directed at similar conduct. The Division is headed 'Preparatory Conduct', for these offences are aimed at conduct which is more remote from the offence than an attempted offence, extending to behaviour which is preparatory to the commission of an offence. It is for that reason that an intention to commit an offence in suspicious circumstances is required.

Secret Commissions

The South Australian *Secret Commissions Prohibition Act 1920* is the current source of law on this subject, and its shortcomings have been addressed above. The bill, therefore, proposes a new Part in the principal Act to replace the *Secret Commissions Act*. The offences concern unlawful bias in commercial relationships. They cover both public and private sector fiduciaries. The essence of the offences is the exercise of an unlawful bias in the relationship, resulting in a benefit or a detriment undisclosed at the time of the transaction. The series of offences also includes a correlative offence of the bribery of a fiduciary.

Blackmail

Blackmail (or extortion, as it is sometimes known) has always been regarded as a serious offence and there are a number of variations on the offence in the principal Act. These are all old specific variations on the main theme, and the essence of the proposal contained in the bill is to generalise them into one offence. The difficult part of the offence(s) is, and has always been, that the demand must be 'unwarranted', and the bill proposes that the test be analogous to that proposed for the equally slippery notion of 'dishonesty'; that is, a demand will be 'unwarranted' if it is improper according to the standards of ordinary people and if the accused knows that this is so.

Piracy

The part of the principal Act under review contains a series of very serious offences indeed, dealing with piracy. These offences are very old and are, more or less, almost identical to the English statutes from which they were copied. For example, the offence contained in section 208 of the Act is almost word for word from the *Piracy Act* of 1699 and the offence of trading with pirates in section 211 is almost word for word from the *Piracy Act* of 1721. These are all punishable by life imprisonment as a result of the abolition of the death penalty.

It should be obvious that there is not a great deal of piracy in South Australia but that some offence of piracy should be on the criminal statute book, not only because of the obligations imposed by international conventions, but also because of the complexities surrounding the reach of State and Commonwealth criminal laws in the seas surrounding the State. The bill, therefore, contains updated piracy offences. Advice is being sought from the Commonwealth about a co-operative legal regime in this area. The old piracy offences are punishable by life imprisonment and that maximum penalty is retained in the bill.

Maximum Penalties

The subject of maximum penalties has been discussed in part above. In general terms, the maximum penalties provided for this sequence of offences in current legislation are inconsistent and the product of uncorrected historical accident, with the exception of the offences relating to serious criminal trespass, where the law was renewed and the will of Parliament firmly expressed in late 1999. An attempt has been made to rationalise the rest. It is repeated that there is no intention to send a message that any of this rationalisation is directed at a lowering of currently applicable actual penalties. The law relating to serious criminal trespass remains substantively the same as that passed in 1999.

The following table compares the old maximum penalties and those proposed by the bill.

Offence	Old Maximum Penalty	New Maximum Penalty
Larceny (General)	5 years	10 years
Larceny (Various specific)	Up to 8 years	2 years to 10 years
Robbery	14 years	15 years
Aggravated robbery	Life	Life
Receiving	8 years	10 years
Money laundering	$200 000 or 20 years (individual) $600 00 (body corporate)	$200 000 or 20 years (individual) $600 000 (body corporate)
Fraud (Deception)	4 years (general offence) 7 years (some specific offences)	10 years
Forgery (Dishonest dealings with documents)	Various, but up to life in a number of instances	10 years
Dishonest manipulation of machines	N/A	10 years
Miscellaneous dishonesty offences	N/A	2 years to 10 years
Nocturnal offences (Preparatory offences)	7 to 10 years	up to 7 years
Secret commissions offences	$1 000 or 6 months (individual) $2 000 (body corporate)	7 years
Blackmail	Various—2 years to life	15 years
Piracy offences	Life	Life

Miscellaneous

Although the focus of this bill is on offences of dishonesty and related matters, including necessary consequential amendments, it now also contains some miscellaneous amendments to the principal Act which would, in the absence of this bill, be contained in a portfolio measure.

Clauses 10 and 11 of the bill contain drafting amendments to the provisions of the principal Act dealing with mental incompetence designed to tidy up some wording to better achieve the purposes of these provisions. Clause 17 of the bill removes an archaic reference to insanity from the principal Act, hitherto overlooked.

Clause 18 of the bill provides for a regulation making power. There has not been a general regulation making power provided for in the principal Act to date, but recently a situation arose in which it would have been expedient to have such a power. It is not, however, contemplated that the power would be used very often.

Conclusion

This bill represents a major reform effort in a technical and complex area of the criminal law. Technical and complex it may be but, in a sense, there are few more important areas of the law. A great deal of the workings of the criminal justice system are spent in the area of offences of dishonesty. Dishonesty is distressingly prevalent, but it has ever been thus. The law of South Australia has, for many years, been burdened with an increasingly antiquated legislative framework

which represents the law as it essentially was in 1861 and earlier. This bill is an attempt to reform and codify the law on the subject, bring it up to date, sweep away anachronisms and provide a fair and reasonable offence structure.

I commend the bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 5—Interpretation

This clause proposes to insert the definition of local government body into section 5(1) of the principal Act.

Clause 4: Substitution of ss. 130-166

Sections 130 to 166 of the principal Act (which comprise much of the current Part 5 of the principal Act) are to be repealed and new Parts 5 (Offences of Dishonesty) and 6 (Secret Commissions) are to be substituted.

PART 5: OFFENCES OF DISHONESTY

DIVISION 1—PRELIMINARY

This Division is necessary for understanding how new Part 5 is to be interpreted and applied in relation to a person's conduct and the criminal law.

130. Interpretation

New section 130 contains a number of definitions for the purposes of the new Part, including definitions of benefit, deception, detriment, fundamental mistake, manipulate (a machine), owner (of property), proceeds, property, stolen property and tainted property.

131. Dishonesty

New section 131 discusses what makes a person's conduct dishonest (and, therefore, liable to criminal sanction). The concept of what constitutes dishonest conduct flows throughout new Part 5.

There are 2 limbs to dishonest conduct. A person's conduct is dishonest if—

1. the person acts dishonestly according to the standards of ordinary people (a question of fact to be decided according to the jury's own knowledge and experience); and
2. the person knows that he or she is so acting.

The conduct of a person who acts in a particular way is not dishonest if the person honestly but mistakenly believes that he or she has a legal or equitable right to act in that way.

132. Consent of owner

Reference to the consent of the owner of property extends to—

- the implied consent of the owner; or
- the actual or implied consent of a person who has actual or implied authority to consent on behalf of the owner.

A person is taken to have the implied consent of another if the person honestly believes in the consent from the words or conduct of the other. A consent obtained by dishonest deception cannot be regarded as consent.

133. Operation of this Part

This clause provides that new Part 5 operates to the exclusion of offences of dishonesty that exist at common law or under laws of the Imperial Parliament. However, the common law offence of conspiracy to defraud continues as part of the criminal law of South Australia.

DIVISION 2—THEFT

134. Theft (and receiving)

Three things must be satisfied for a person to commit theft. A person is guilty of theft if the person takes, receives, retains, deals with or disposes of property—

- dishonestly; and
- without the owner's consent; and
- intending to deprive the owner permanently of the property or to make a serious encroachment on the owner's proprietary rights.

The maximum penalty for theft is imprisonment for 10 years.

Subclause (2) explains how a person intends to make a serious encroachment on an owner's proprietary rights. This will occur if the person intends—

- to treat the property as his/her own to dispose of regardless of the owner's rights; or
- to deal with the property in a way that creates a substantial risk (of which the person is aware) that the owner will not get it back or that, when the owner gets it back, its value will be substantially impaired.

A person may commit theft of property—

- that has lawfully come into his/her possession; or
- by the misuse of powers that are vested in the person as agent or trustee or in some other capacity that allows the person to deal with the property.

However, if a person honestly believes that he/she has acquired a good title to property, but it later appears that the title is defective because of a defect in the title of the transferor or for some other reason, the later retention of the property, or any later dealing with the property, by the person cannot amount to theft.

Theft committed by receiving stolen property from another amounts to the offence of receiving (but may be described either as theft or receiving in an instrument of charge and is, in any event, punishable as a species of theft). If a person is charged with receiving, the court may, if satisfied beyond reasonable doubt that the defendant is guilty of theft but not that the theft was committed by receiving stolen property from another, find the defendant guilty of theft.

135. Special provision with regard to land and fixtures

A trespass to land, or other physical interference with land, cannot amount to theft of the land (even when it results in acquisition of the land by adverse possession), but a thing attached to land, or forming part of land, can be stolen by severing it from the land.

136. General deficiency

A person may be charged with, and convicted of, theft by reference to a general deficiency in money or other property, and it is not necessary, in such a case, to establish any particular act or acts of theft.

DIVISION 3—ROBBERY

137. Robbery

A person who commits theft is guilty of robbery if—

- the person uses force, or threatens to use force, against another in order to commit the theft or to escape from the scene of the offence; and
- the force is used, or the threat is made, at the time of, or immediately before or after, the theft.

The maximum penalty for robbery is imprisonment for 15 years.

A person who commits robbery is guilty of aggravated robbery if the person—

- commits the robbery in company with one or more other persons; or
- has an offensive weapon with him/her when committing the robbery.

The maximum penalty for aggravated robbery is imprisonment for life.

If 2 or more persons jointly commit robbery in company, each is guilty of aggravated robbery.

DIVISION 4—MONEY LAUNDERING

138. Money laundering

A person who engages, directly or indirectly, in a transaction involving property the person knows to be tainted property is guilty of an offence. The maximum penalty for a natural person convicted of money laundering is imprisonment for 20 years and for a body corporate a fine of $600 000.

A person who engages, directly or indirectly, in a transaction involving tainted property in circumstances in which the person ought reasonably to know that the property is tainted is guilty of an offence. The maximum penalty for a natural person convicted of such an offence is imprisonment for 4 years and for a body corporate a fine of $120 000.

A transaction includes any of the following:

- bringing property into the State;
- receiving property;
- being in possession of property;
- concealing property;
- disposing of property.

DIVISION 5—DECEPTION

139. Deception

A person who deceives another and by doing so dishonestly benefits (*see new section 130*) him/herself or a third person, or dishonestly causes a detriment (*see new section 130*) to the person subjected to the deception or a third person is guilty of an offence the maximum penalty for which is imprisonment for 10 years.

DIVISION 6—DISHONEST DEALINGS WITH DOCUMENTS

140. Dishonest dealings with documents

For the purposes of this new section, a document is false if the document gives a misleading impression about—

· the nature, validity or effect of the document; or
· any fact (such as, for example, the identity, capacity or official position of an apparent signatory to the document) on which its validity or effect may be dependent; or
· the existence or terms of a transaction to which the document appears to relate.

A true copy of a document that is false under the criteria prescribed above is also false.

A person engages in conduct to which this new section applies if the person—

· creates a document that is false; or
· falsifies a document; or
· has possession of a document knowing it to be false; or
· produces, publishes or uses a document knowing it to be false; or
· destroys, conceals or suppresses a document.

Proposed subsection (4) provides that a person is guilty of an offence if the person dishonestly engages in conduct to which this proposed section applies intending one of the following:

· to deceive another, or people generally, or to facilitate deception of another, or people generally, by someone else;
· to exploit the ignorance of another, or the ignorance of people generally, about the true state of affairs;
· to manipulate a machine or to facilitate manipulation of a machine by someone else,

and, by that means, to benefit him/herself or another, or to cause a detriment to another. The maximum penalty for such an offence is imprisonment for 10 years.

A person cannot be convicted of an offence against proposed subsection (4) on the basis that the person has concealed or suppressed a document unless it is established that—

· the person has taken some positive step to conceal or suppress the document; or
· the person was under a duty to reveal the existence of the document and failed to comply with that duty; or
· the person, knowing of the existence of the document, has responded dishonestly to inquiries directed at finding out whether the document, or a document of the relevant kind, exists.

It is a summary offence (penalty of imprisonment for 2 years) if a person has, in his/her possession, without lawful excuse, any article for creating a false document or for falsifying a document.

DIVISION 7—DISHONEST MANIPULATION OF MACHINES

141. Dishonest manipulation of machines

A person who dishonestly manipulates a machine (*see new section 130*) in order to benefit him/herself or another, or cause a detriment to another, is guilty of an offence, the penalty for which is imprisonment for 10 years.

A person who dishonestly takes advantage of the malfunction of a machine in order to benefit him/herself or another, or cause a detriment to another, is guilty of an offence, the penalty for which is imprisonment for 10 years.

DIVISION 8—DISHONEST EXPLOITATION OF ADVANTAGE

142. Dishonest exploitation of position of advantage

This new section applies to the following advantages:

· the advantage that a person who has no disability or is not so severely disabled has over a person who is subject to a mental or physical disability;
· the advantage that one person has over another where they are both in a particular situation and one is familiar with local conditions (*see new section 130*) while the other is not.

A person who dishonestly exploits an advantage to which this proposed section applies in order to benefit him/herself or another or cause a detriment to another is guilty of an offence and liable to a penalty of imprisonment for up to 10 years.

DIVISION 9—MISCELLANEOUS OFFENCES OF DISHONESTY

143. Dishonest interference with merchandise

A person who dishonestly interferes with merchandise, or a label attached to merchandise, so that the person or someone else can get the merchandise at a reduced price is guilty of a summary offence (imprisonment for a maximum of 2 years).

144. Making off without payment

A person who, knowing that payment for goods or services is required or expected, dishonestly makes off intending to avoid payment is guilty of a summary offence (imprisonment for up to 2 years).

However, this proposed section does not apply if the transaction for the supply of the goods or services is unlawful or unenforceable as contrary to public policy.

PART 6: SECRET COMMISSIONS

DIVISION 1—PRELIMINARY

145. Interpretation

New section 145 contains definitions of words used in new Part 6. In particular, a person who works for a public agency (as defined) by agreement between the person's employer and the public agency or an authority responsible for staffing the public agency is to be regarded, for the purposes of this new Part, as an employee of the public agency.

DIVISION 2—UNLAWFUL BIAS IN COMMERCIAL RELATIONSHIPS

146. Fiduciaries

A person is, for the purposes of this new Part, to be regarded as a fiduciary of another (the principal) if—

· the person is an agent of the other (under an express or implied authority); or
· the person is an employee of the other; or
· the person is a public officer and the other is the public agency of which the person is a member or for which the person acts; or
· the person is a partner and the other is another partner in the same partnership; or
· the person is an officer of a body corporate and the other is the body corporate; or
· the person is a lawyer and the other is a client; or
· the person is engaged on a commercial basis to provide advice or recommendations to the other on investment, business management or the sale or purchase of a business or real or personal property; or
· the person is engaged on a commercial basis to provide advice or recommendations to the other on any other subject and the terms or circumstances of the engagement are such that the other (that is, the principal) is reasonably entitled to expect that the advice or recommendations will be disinterested or that, if a possible conflict of interest exists, it will be disclosed.

147. Exercise of fiduciary functions

A fiduciary exercises a fiduciary function if the fiduciary—

· exercises or intentionally refrains from exercising a power or function in the affairs of the principal; or
· gives or intentionally refrains from giving advice, or makes or intentionally refrains from making a recommendation, to the principal; or
· exercises an influence that the fiduciary has because of the fiduciary's position as such over the principal or in the affairs of the principal.

148. Unlawful bias

A fiduciary exercises an unlawful bias if—

· the fiduciary has received (or expects to receive) a benefit from a third party for exercising a fiduciary function in a particular way and the fiduciary exercises the function in the relevant way without appropriate disclosure of the benefit or expected benefit; and
· the fiduciary's failure to make appropriate disclosure of the benefit or expected benefit is intentional or reckless.

Appropriate disclosure is made if the fiduciary discloses to the principal the nature and value (or approximate value) of the benefit and the identity of the third party from whom the benefit has been (or is to be) received.

149. Offence for fiduciary to exercise unlawful bias

A fiduciary who exercises an unlawful bias is guilty of an offence and liable to a maximum penalty of imprisonment for 7 years.

150. Bribery

A person who bribes a fiduciary to exercise an unlawful bias is guilty of an offence and liable to a penalty of imprisonment for up to 7 years.

A fiduciary who accepts a bribe to exercise an unlawful bias is guilty of an offence and liable to a penalty of imprisonment for up to 7 years.

It is proposed that this new section will apply even though the relevant fiduciary relationship had not been formed when the benefit was given or offered if, at the relevant time, the fiduciary and the person who gave or offered to give the benefit anticipated the formation of the relevant fiduciary

relationship or the formation of fiduciary relationships of the relevant kind.

DIVISION 3—EXCLUSION OF DEFENCE

151. Exclusion of defence

It is not a defence to a charge of an offence against new Part 6 to establish that the provision or acceptance of benefits of the kind to which the charge relates is customary in a trade or business in which the fiduciary or the person giving or offering the benefit was engaged.

Clause 5: Substitution of heading

It is proposed that sections 167 to 170 (as amended in a minor consequential manner—*see clauses 6 and 7 below*) will become a separate Part of the principal Act. These sections would comprise new Part 6A to be headed "SERIOUS CRIMINAL TRESPASS".

Clause 6: Amendment of s. 167—Sacrilege

Clause 7: Amendment of s. 168—Serious criminal trespass

On the passage of the bill, the use of the term "larceny" will become obsolete and "theft" will, instead, be used. The amendments proposed in these clauses are consequential.

Clause 8: Substitution of ss. 171 to 236

it is proposed to repeal sections 171 to 236 of the principal Act and to substitute the following new Parts dealing with blackmail and piracy.

PART 6B: BLACKMAIL

171. Interpretation

New section 171 contains definitions of words and phrases use in this new Part, including demand, harm, menace, serious offence and threat.

The question whether a defendant's conduct was improper according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

172. Blackmail

A person who menaces another intending to get the other to submit to a demand is guilty of blackmail and liable to imprisonment for up to 15 years. The object of the demand is irrelevant.

PART 6C: PIRACY

173. Interpretation

A person commits an act of piracy if—

- the person, acting without reasonable excuse, takes control of a ship, while it is in the course of a voyage, from the person lawfully in charge of it; or
- the person, acting without reasonable excuse, commits an act of violence against the captain or a member of the crew of a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it; or
- the person, acting without reasonable excuse, boards a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it, endanger the ship or steal or damage the ship's cargo; or
- the person boards a ship, while it is in the course of a voyage, in order to commit robbery or any other act of violence against a passenger or a member of the crew.

174. Piracy

A person who commits an act of piracy is guilty of an offence and liable to imprisonment for life.

Clause 9: Amendment of s. 237—Definitions

This amendment is consequential on the amendment proposed to section 5 of the principal Act by clause 3.

Clause 10: Amendment of s. 269G—What happens if trial judge decides to proceed first with trial of objective elements of offence

Section 269G should have provided for the Court to direct that a person who was found to be mentally incompetent under that section be declared liable to supervision under the relevant Part. This amendment corrects a drafting oversight.

Clause 11: Amendment of s. 269Y—Appeals

In place of section 354(4) of the principal Act (*see* clause 17 of the bill), this clause proposes to amend section 269Y of the principal Act dealing with appeals. Section 269Y is located in that Part of the principal Act (Part 8A) which makes provision for mental impairment within the criminal justice system. The proposed amendment will confer powers on the appellate court where the court is of the opinion that the appellant was mentally impaired or unfit to stand trial.

Clause 12: Amendment of s. 270B—Assaults with intent

Section 270B of the principal Act provides that a person who assaults another with intent to commit an offence to which the section applies is guilty of an offence. The proposed amendment to this section is consequential. The note to section 270B (which refers to larceny) is to be struck out and a subsection inserted that provides that the section will apply to the following offences:

- an offence against the person;
- theft or an offence of which theft is an element;
- an offence involving interference with, damage to, or destruction of, property that is punishable by imprisonment for 3 years of more.

Clause 13: Insertion of Part 9 Div. 4

New Division 4 is to be inserted in Part 9 of the principal Act after section 270B dealing with conduct preparatory to the possible commission of an offence.

DIVISION 4—PREPARATORY CONDUCT

270C. Going equipped for commission of offence of dishonesty or offence against property

A person who is, in suspicious circumstances, in possession of an article intending to use it to commit an offence to which new section 270C applies is guilty of an offence, the maximum penalty for which is—

- if the maximum penalty for the intended offence is life imprisonment or imprisonment for 14 years or more—imprisonment for 7 years;
- in any other case—imprisonment for one-half the maximum period of imprisonment fixed for the intended offence.

It is proposed that this new section will apply to the following offences:

- theft (or receiving) or an offence of which theft is an element;
- an offence against Part 6A (Serious Criminal Trespass);
- unlawfully driving, using or interfering with a motor vehicle;
- an offence against Part 5 Division 6 (Dishonest Dealings with Documents);
- an offence against Part 5 Division 7 (Dishonest Manipulation of Machines);
- an offence involving interference with, damage to or destruction of property punishable by imprisonment for 3 years or more.

A person is in suspicious circumstances if it can be reasonably inferred from the person's conduct or circumstances surrounding the person's conduct (or both) that the person—

- is proceeding to the scene of a proposed offence; or
- is keeping the scene of a proposed offence under surveillance; or
- is in, or in the vicinity of, the scene of a proposed offence awaiting an opportunity to commit the offence.

270D. Going equipped for commission of offence against the person

A person who is armed, at night, with a dangerous or offensive weapon intending to use the weapon to commit an offence against the person is guilty of an offence.

The maximum penalty for such an offence is—

- if the offender has been previously convicted of an offence against the person or an offence against this proposed section (or a corresponding previous enactment)—imprisonment for 10 years;
- in any other case—imprisonment for 7 years.

Clause 14: Amendment of s. 271—General power of arrest

On the passage of the bill, the use of the term "larceny" will become obsolete and "theft" will, instead, be used. The amendment proposed in this clause is consequential.

Clause 15: Repeal of ss. 317 and 318

These sections of the principal Act are obsolete and are to be repealed.

Clause 16: Insertion of Part 9 div. 15

The following new Division is to be inserted in Part 9 of the principal Act after section 329.

DIVISION 15—OVERLAPPING OFFENCES

330. Overlapping offences

No objection to a charge or a conviction can be made on the ground that the defendant might, on the same facts, have been charged with, or convicted of, some other offence.

Clause 17: Amendment of s. 354—Powers of Court in special cases

When the power to detain for the Governor's pleasure was removed and replaced with the provisions in the principal Act in relation to persons being declared liable to supervision under Part 8A, one reference to the power to detain for the Governor's pleasure was accidentally retained. This clause proposes to strike out section 354(4), which contains this reference. Subsection (4) relates to

the powers of the appellate court to quash a conviction and order detention where it appears to the court that the appellant was 'insane' at the time of commission of the offence. The powers of the court set out in subsection (4) will be provided for by the proposed amendment to section 269Y of the principal Act (*see* clause 11 of the bill).

Clause 18: Insertion of Part 12

New part 12 is to be inserted after section 369 of the principal Act.

PART 12: REGULATIONS

370. Regulations

The Governor may make regulations for the purposes of the Act.

Clause 19: Further amendments of principal Act and related amendments to other Acts

The principal Act is further amended as set out in Schedule 2, while Schedule 3 provides for related amendments to other Acts.

Schedule 1: Repeal and Transitional Provision

The *Secret Commissions Prohibition Act 1920* is to be repealed as a consequence of new Part 6.

The principal Act as in force before the commencement of this measure will apply to offences committed before this measure becomes law. The principal Act as amended by this measure will apply to offences committed on or after this measure becomes law.

Schedule 2: Further amendment of Criminal Law Consolidation Act 1935

These amendments remove italicised headings in the principal Act and replace them with, where relevant, Divisional headings.

Schedule 3: Related Amendments to Other Acts

Schedule 3 contains amendments that are related to the amendments proposed to the criminal law by this measure to the following Acts:

- *Criminal Assets Confiscation Act 1996*
- *Criminal Law (Sentencing) Act 1988*
- *Criminal Law (Undercover Operations) Act 1995*
- *Financial Transaction Reports (State Provisions) Act 1992*
- *Kidnapping Act 1960*
- *Road Traffic Act 1961*
- *Shop Theft (Alternative Enforcement) Act 2000*
- *Summary Offences Act 1953*
- *Summary Procedure Act 1921.*

The Hon. A.J. REDFORD secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (TERRITORIAL APPLICATION OF THE CRIMINAL LAW) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

The *Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment Bill* was introduced into the last Parliament and committee debate was scheduled for February 2002. The bill lapsed in January 2002 when Parliament was prorogued before the last election.

The bill seeks to clarify the application of the criminal jurisdiction of South Australian courts. This area of the law is complex, and recent statutory attempts to clarify it have been only partially successful.

The common law was that a State could only take jurisdiction over criminal offences committed within its territory. This approach did not adequately address modern criminal behaviour, which is often trans-territorial. In fact some serious crimes are more likely than not to be trans-territorial—for example internet crime, drug trafficking, and some kinds of fraud and conspiracy.

Under the common law, it was difficult to determine which State should prosecute offences where part of the conduct occurred in another State or Territory. Because of this difficulty, there have been occasions when people who had clearly committed offences were acquitted for want of jurisdiction, because it was not clear which elements of the offence occurred in which State, and which were significant for the purposes of determining jurisdiction.

An additional problem with the common law manifested itself in the case of *Thompson* in 1989. In this case, the High Court dismissed an appeal against conviction by a man who had murdered two people. One of the grounds of appeal was that the ACT Supreme Court had no jurisdiction to hear the matter. The accused had killed two sisters, placed their bodies in a car and simulated a car crash. He and the victims lived in the ACT. The car, with the bodies in it, was found crashed into a tree in NSW beside an ACT/NSW highway near the ACT/NSW border. There was no evidence of where the actual killings had taken place. The claim of "no jurisdiction" was based on the assertion that it could not be established to the required standard that the murder had taken place in the ACT, and not in NSW. While the case turned on the required standard of proof of jurisdiction, it revealed potential loopholes in the common law.

Recognising this, the Standing Committee of Attorneys-General referred the matter to a Special Committee of Solicitors-General. In 1992, these bodies recommended that all States enact a statutory criminal jurisdiction provision in addition to the common law. The South Australian provision is section 5C of the *Criminal Law Consolidation Act 1935*, enacted in 1992. NSW, Tasmania, and the ACT enacted similar provisions. All of these provisions operate alongside the common law.

Section 5C of the *Criminal Law Consolidation Act 1935* provides that an offence against the law of South Australia is committed if all of the elements necessary to constitute the offence exist and a territorial nexus exists between South Australia and at least one element of the offence. That territorial nexus exists if an element of the offence is, or includes, an event occurring in South Australia, or the element is, or includes, an event that occurs outside South Australia, but while the person alleged to have committed the offence is in South Australia.

While able to deal with the *Thompson* scenario, section 5C and its equivalent in other States and Territories have been shown not to work in the way contemplated by the Special Committee of Solicitors-General, particularly in conspiracy cases.

In some conspiracy cases, the courts have preferred to follow common law principles on jurisdiction, and have ignored this more general provision. In the case of *Isaac*, in 1996, the defendants conspired in NSW to commit a robbery in the ACT and were prosecuted in NSW. The facts fell squarely within the formulation proposed in section 3C (the NSW equivalent of section 5C). The agreement which constitutes the entire conspiracy took place wholly within NSW (the prosecuting State). There was a territorial nexus between not just one but *all* of the elements of the offence and the prosecuting forum in that the parties made all arrangements for the robbery while in NSW. Under section 3C, the fact that the object of the conspiracy (the robbery) was to occur in another State should have been irrelevant. However, the court refused to allow a NSW prosecution, following instead a line of British cases on conspiracy, under which, simply stated, State A has jurisdiction over a charge of conspiracy to commit a crime outside State A only if State A would have jurisdiction over the crime to be committed. It was said, in *Isaac*, that the crime was an ACT crime over which NSW had no jurisdiction. The result of this is that the only possible place which could try the offence might have been the ACT in which no relevant act was committed at all.

A further technical difficulty with this sort of case was revealed in the case of *Catanzariti*. In 1996, the defendants conspired in South Australia to commit a cannabis offence in the Northern Territory and were prosecuted in South Australia. Again, and for the same reasons as in *Isaac*, the facts fell squarely within section 5C. However, the court found that South Australia had no jurisdiction because the indictment charged conspiracy to commit a specified Northern Territory offence, and not a South Australian offence, and there was no such offence of conspiracy under South Australian law. The problem is that the defendants could not be said to have conspired to have broken South Australian law, because they did not plan to break South Australian law, and it is not a criminal offence against the law of South Australia to conspire to commit an offence against the law of another place.

In another conspiracy case, section 5C was shown to be entirely deficient. In *Lipohar*, in 2000, the High Court found that section 5C did not extend jurisdiction to South Australia but, by a variety of means, found that South Australia had jurisdiction at common law. *Lipohar* involved a conspiracy outside South Australia, by persons who did not enter South Australia, to defraud the State Bank of millions of dollars in relation to property in Victoria (the SGIC building in Collins Street). The only physical connection with South Australia (as it happened) was the sending of a facsimile consisting of a false bank guarantee from Victoria to the victim's solicitors in South Australia. While the only State with any interest in prosecuting

was South Australia, section 5C would not allow this, because there was no element of the offence with which a territorial nexus with South Australia could be demonstrated. (The sending of the fax was not an element of the offence, just a minor part of it. The territorial location of the victim (in this case, in South Australia) is not an 'element' of the common law offence of conspiracy to defraud.).

The decision in *Lipohar* prompted the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC) to review judicial decisions on section 5C and its counterparts in other States and Territories. In its report in January 2001, MCCOC endorsed a new model criminal jurisdiction provision, and recommended its adoption by all States and Territories. MCCOC pointed out that section 5C may also be ineffective in some non-conspiracy cases, citing the following example. Suppose NSW allows pyramid selling and South Australia does not. Hypothetically (and for the purpose of this example), this is because NSW considers pyramid selling a valid expression of free market forces with which the State should not interfere while South Australia considers such schemes to be frauds on the public and punishable by the State. If a person in NSW sets up an internet pyramid selling scheme aimed at South Australians, section 5C would not allow prosecution by South Australian authorities if none of the elements of the offence could be shown to have occurred in South Australia.

This bill, and the model provision recommended by MCCOC in Part 2.7 of the Model Criminal Code on which the bill is based, corrects this and other defects in section 5C in a number of ways.

First, the bill makes it clear that the provision *extends* the territorial reach of State offences in a substantive sense.

Secondly, the commission of an offence is defined without reference to where it occurs, but rather by reference to the act, omission or state of affairs constituting the offence or giving rise to the offence (the relevant act).

Thirdly, the bill redefines the geographical nexus that must exist before South Australia may claim jurisdiction.

The effect is that South Australia has jurisdiction in the following kinds of offences:

- It may try offences where the relevant act giving rise to the alleged offence occurred wholly or partly in South Australia.
- It may try an offence where it cannot be ascertained whether the relevant act giving rise to the alleged offence took place within or outside South Australia, so long as it can be demonstrated that the alleged offence caused harm or a threat of harm in South Australia.
- It may, in certain circumstances, try an offence where no relevant act occurred in South Australia. These circumstances include where the relevant act is also unlawful in the State where it occurred and the alleged offence causes harm or a threat of harm in South Australia; and where the relevant act took place in another State and gave rise to an offence in that State, and the defendant was in South Australia when the act took place. If the relevant act took place wholly within another State and was lawful in that State, jurisdiction may only be asserted by South Australia if the alleged offence caused harm or a threat of harm sufficiently serious to justify the imposition of a criminal penalty under South Australian law.

The bill also allows South Australia to try offences of conspiracy if the offence which is the object of the conspiracy has the appropriate geographical nexus with South Australia.

The common law of conspiracy will not allow South Australia to prosecute an offence of conspiracy to commit something which is not an offence against South Australian law but is an offence against the law of another State. The bill will allow such a prosecution where there is, under South Australian law, an offence which corresponds with the interstate offence the object of the alleged conspiracy. It make no sense that a person who has committed an offence which crosses a border can escape by the means of a technical jurisdictional argument when he or she would be guilty of an offence in relation to that conduct in any place with which the crime is substantially connected.

Finally, the bill requires the jury to find a person not guilty on the grounds of mental impairment if they were the only grounds on which it would have found the person not guilty of the offence. This is a technical procedural requirement to ensure that these cases are appropriately recognised because they do not involve an acquittal (as do cases where jurisdiction is not made out).

In any case, the territorial nexus is presumed, and an accused who disputes it must satisfy the jury, on the balance of probabilities, that it does not exist. In other respects, the procedures set out in section 5C have not been changed.

To date, the only Australian jurisdiction to have enacted a provision based on Part 2.7 of the Model Criminal Code is New South Wales (new Part 1A of the *Crimes Act 1900 (NSW)*).

The object of the bill is to clarify the law about the jurisdiction of South Australian criminal courts and to extend that jurisdiction to enable the effective application of South Australian criminal law within nationally agreed parameters.

I commend the bill to the house.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Repeal of s. 5C

Current section 5C of the principal Act sets the limits of the criminal jurisdiction of South Australian courts. It was enacted in 1992 and applies in addition to the common law principles (which held that a State could only take jurisdiction over criminal offences committed within its territory). It is, however, now considered to be inadequate to address the prosecution of crimes which may extend beyond State territorial limits (for example, crimes such as drug trafficking, fraud, internet crime, conspiracy and hijacking). This section is to be repealed and a new Part 1A (comprising new sections 5E to 5I) is to be inserted after section 5D of the principal Act to provide more extensively for the territorial application of South Australian criminal law.

Clause 4: Insertion of Part 1A

PART 1A: TERRITORIAL APPLICATION OF THE CRIMINAL LAW

5E. Interpretation

New section 5E sets out definitions for the purposes of new Part 1A, including the definition of a relevant act in relation to an offence. The question whether the necessary territorial nexus (*see new section 5G(2)*) exists in relation to an alleged offence is a question of fact to be determined, where a court sits with a jury, by the jury.

5F. Application

New section 5F(1) provides that the law of this State operates extra-territorially to the extent contemplated by new Part 1A.

New section 5F(2) provides that—

- new Part 1A does not operate to extend the operation of a law that is expressly or by necessary implication limited in its application to this State or a particular part of this State; and
- new Part 1A operates subject to any other specific provision as to the territorial application of the law of the State; and
- new Part 1A is in addition to, and does not derogate from, any other law providing for the extra-territorial operation of the criminal law (for example, the *Crimes at Sea Act 1998*).

This new subsection is similar in its effect to current section 5C(8)*(a)* and *(b)*.

5G. Territorial requirements for commission of offence against a law of this State

New section 5G(1) provides that an offence against a law of this State is committed if all elements necessary to constitute the offence (disregarding territorial considerations) exist and the necessary territorial nexus exists.

New section 5G(2) sets out the new nexus tests. It provides that the necessary territorial nexus exists if—

- a relevant act occurred wholly or partly in this State; or
- it is not possible to establish whether any of the relevant acts giving rise to the alleged offence occurred within or outside this State but the alleged offence caused harm or a threat of harm in this State; or
- although no relevant act occurred in this State—
  - (1) the alleged offence caused harm or a threat of harm in this State and the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts (or at least one of them) occurred; or
  - (2) the alleged offence caused harm or a threat of harm in this State and the harm, or the threat, is sufficiently serious to justify the imposition of a criminal penalty under the law of this State; or
  - (3) the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts (or at least one of them) occurred and the alleged offender was in this State when the relevant acts (or at least one of them) occurred; or

- the alleged offence is a conspiracy to commit, an attempt to commit, or in some other way preparatory to the commission of another offence for which the necessary territorial nexus would exist under one or more of the above if it (the other offence) were committed as contemplated.

5H. Procedural provisions

The procedural provisions set out in new section 5H are similar in effect to those provision set out in current 5C(3) to (7) (inclusive), with the addition of dealing with the technical issue of a finding of not guilty on the grounds of mental impairment (*see new section 5H(3)(a)*).

5I. Double criminality

New section 5I creates a specific offence (an auxiliary offence) under the law of this State where—

- an offence against the law of another State (the external offence) is committed wholly or partly in this State; and
- a corresponding offence (the local offence) exists.

The maximum penalty for an auxiliary offence is the maximum penalty for the external offence or the maximum penalty for the local offence (whichever is the lesser).

If a person is charged with an offence (but not specifically an auxiliary offence) and the court finds that the defendant has not committed the offence as charged but has committed the relevant auxiliary offence, the court may make or return a finding that the defendant is guilty of the auxiliary offence.

The Hon. A.J. REDFORD secured the adjournment of the debate.

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This bill was introduced into the last Parliament and was passed in this council, but lapsed when Parliament was prorogued before the last election.

This bill would add a new Division 10A to Part 3 of the *Wrongs Act 1936*. The new Division is entitled '*Unreasonable Delay in Resolution of Claim*'. The bill would also amend the *Survival of Causes of Action Act 1940* and update it by removing references to obsolete causes of action.

New Division 10A would create a new entitlement to damages in the nature of exemplary damages in certain circumstances. Courts and tribunals would be able to award damages under section 35C on the application of the personal representatives of a person who has suffered a personal injury (including disease or any impairment of physical or mental condition) and who has a made a claim for damages or compensation, but died before damages or workers compensation for non-economic loss have been determined. The section 35C damages could be awarded if the defendant is found liable to pay damages or compensation to the person who suffered the injury and certain other factors exist. The damages would be awarded against the defendant or other person who controlled or had an interest in the defence of the claim such as the insurer, a liquidator, or the personal representatives of a deceased defendant. They are called in the bill 'the person in default'. The section 35C damages would be payable if the court or tribunal finds that the person in default knew, or ought to have known, that the claimant was, because of advanced age, illness or injury, at risk of dying before resolution of the claim and that the person in default unreasonably delayed the resolution of the claim. The question of whether the person in default unreasonably delayed is to be determined in the context of the proceedings as a whole, including negotiations prior to the issue of proceedings in a court or tribunal, and including the conduct of the deceased person and any other parties.

Damages may not be awarded under this bill if damages for non-economic loss have been recovered already or are recoverable by the estate under section 3(2) of the *Survival of Causes of Action Act 1940* as amended by the *Survival of Causes of Acton (Dust-Related Conditions) Amendment Act 2001* (Act No 49 of 2001).

The amount of the damages would be at the discretion of the court or tribunal. In determining the amount of these damages the court or tribunal would be required to have regard to the need to ensure that the defendant or other person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim, the need to punish the person in default for the unreasonable delay and any other relevant factor. The first element is based on concepts of unjust enrichment and is restitutionary in nature. An amount by which the person in default would benefit or be unjustly enriched by unreasonable delay is the amount of the liability for non-economic loss. The second element is punitive in nature. The third element ensures that any other factors that are relevant are taken into account.

However, the amount that may be awarded when the claim that has been delayed unreasonably is a claim for workers' compensation may not exceed the total amount that would have been payable by way of compensation for non-economic loss under the relevant workers' compensation Act if the worker had not died.

In Australia liability for exemplary damages is several. This means that when there are several tortfeasors, exemplary damages may be awarded against only one or some of them or different amounts may be awarded against different tortfeasors.

The bill would direct that normally the damages be paid to the dependants of the deceased claimant, but the court or tribunal has a discretion about this. If they are not paid to dependants, then they are paid to the estate. In apportioning the damages between dependants, the court or tribunal would be required to have regard to any statutory entitlements, such as those that are conferred on dependants by the workers' compensation legislation.

A claim for section 35C damages could be added to proceedings commenced by the deceased person and continued by the personal representative or the personal representative could issue separate proceedings within 3 years of the date of death of the deceased person.

The object of these new provisions is to deter delay by persons who stand to gain by a reduction in their liability if the claimant dies before the claim is resolved. The bill should remove the incentive for them to delay claims and also provide an incentive to deal with them quickly.

The need for this reform arises because of the current state of the law, which gives an incentive to those who are liable to pay damages or compensation to delay a claim if it is thought that the claimant is likely to die in the near future. The manner in which this comes about is now summarised.

A person who suffers personal injury because of the civil wrong (tort) of another person may sue for common law damages, including for non-economic loss, i.e. for the claimant's personal pain and suffering, loss of mental or bodily function and loss of expectation of life. However, the liability for damages for non-economic loss ceases upon the death of the claimant. (Damages for economic loss have survived the death of the claimant since enactment of the *Survival of Causes of Action Act 1940)*.

A worker who suffers a permanent compensable disability in the course of his or her employment has a statutory right to compensation for his or her non-economic loss without proof of any fault on the part of the employer. The lump sum for non-economic loss is not payable under the *Workers' Rehabilitation and Compensation Act 1986* unless the worker survives for 28 days after suffering the disability, although the surviving spouse and any dependants become entitled by operation of that Act to death benefits on the death of the worker from the compensable injury.

Thus, if the claimant dies before the claim is settled or determined by the court or tribunal, the defendant is relieved of liability for damages or compensation for non-economic loss.

The new remedy would be available in any case in which the claimant dies after the Act comes into operation. This would have the effect of discouraging delay by defendants of claims that have been made already. It would ensure also that people who have been exposed to injurious substances in the past, but who have not yet made a claim, perhaps because they have not yet developed manifest symptoms, will have the benefit of the effect of this reform. It is thought that it is a fair approach because a defendant against whom a good claim is made is liable to pay damages or compensation for non-economic loss if the claimant lives. If the claimant dies, thereby relieving the defendant of that liability, a risk of a different liability would arise in its place, i.e. the risk of liability to pay the section 35C damages if the defendant is found to have unreasonably delayed the

proceedings knowing that by reason of advanced age, injury or illness the claimant was at risk of dying before the claim was resolved. Unreasonable delay in the circumstances in which this new remedy would apply is unconscionable and the defendant should not be permitted to benefit from it regardless of whether it occurred before or after the Act came into operation.

Obsolete Provisions of the Survival of Causes of Action Act 1940

Section 2 of the *Survival of Causes of Action Act 1940* provides that the causes of action of defamation, seduction, inducing one spouse to leave or remain apart from the other and claims under section 22 of the *Matrimonial Causes Act 1929-1938* for adultery do not survive the death of the plaintiff or the defendant. Actions for seduction, enticement and harbouring were abolished in 1972 by the *Statutes Amendment (Law of Property and Wrongs) Act 1972*. The time limit within which these actions must be brought is 6 years and all pending proceedings would have been finalised by now. Section 22 of the *Matrimonial Causes Act 1929* (SA) concerning actions for damages for adultery ceased to have any effect when the *Matrimonial Causes Act 1959* of the Commonwealth came into operation in 1961. Although the 1959 Commonwealth Act, which replaced it, allowed a husband or wife to sue for damages for adultery, this right was abolished on 1 January 1976 by the *Family Law Act 1975*. The High Court ruled that an action for damages for adultery could not be maintained after I January 1976. Thus the reference in the *Survival of Causes of Action Act* to damages for adultery became obsolete in 1961, or at the latest in 1976. Thus, the only one of these causes of action that can now be pursued is an action for defamation. Section 2 of the Act has been repealed and recast to modern drafting standards with reference to the obsolete causes of action removed.

Although a cause of action for breach of promise to marry survives the death of the plaintiff or defendant, section 3(1)(c) of the *Survival of Causes of Action Act* limited the damages recoverable for the benefit of the estate of the jilted party. The right to sue for damages for breach of a promise of marriage was abolished in South Australia on 18 November 1971 by the *Action for Breach of Promise of Marriage (Abolition) Act 1971*. All proceedings issued before 18 November 1971 would have been finalised by now. Section 3(1)(c) of the *Survival of Causes of Action Act* is now obsolete and so is to be repealed.

I commend this bill to the house.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of Survival of Causes of Action Act 1940

This clause provides for the amendment of the *Survival of Causes of Action Act 1940* to update its application in the light of Division 10A of Part 3 of the *Wrongs Act 1936* (*see* clause 4).

Clause 4: Amendment of Wrongs Act 1936

This clause provides for the amendment of the *Wrongs Act 1936*. It is intended to provide that a court may award damages, on the application of the personal representative of a deceased person, in certain cases involving unreasonable delay in the resolution of a claim for compensation or damages with respect to personal injury suffered by a person before he or she died. An award may be made if *(a)* the person in default, knowing that the claimant in the personal injury case was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim, unreasonably delayed the resolution of the claim; *(b)* the person in default is the person against whom the claim lay, or is some other person with authority to defend the claim; and *(c)* the deceased person died before compensation or damages for non-economic loss were finally determined by agreement by the parties or by a judgment or decision of a court or tribunal. A court or tribunal will, in determining the amount of any damages, have regard to *(a)* the extent to which unreasonable delay in the resolution of the claim is fairly attributable to the person in default (and his or her agents), and the extent to which there are other reasons for the delay; and *(b)* the need to ensure that the person in default does not benefit for his or her unreasonable delay; and *(c)* the need to punish the person for the unreasonable delay. Damages will be paid, at the direction of the court or tribunal, to the dependants of the deceased person, or to his or her estate. The provision will apply if the deceased person dies on or after the commencement of the measure (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

The Hon. A.J. REDFORD secured the adjournment of the debate.

OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This Bill is a part of the Government's package to implement its Ten Point plan on Honesty and Accountability in Government. The Government has committed to strengthening the powers of the State Ombudsman.

At the last election, Labor promised—

- to investigate how complaints against areas of Government which have been privatised or contracted out can better be handled; and
- to review the Ombudsman Act and broaden the powers of the Ombudsman to ensure that he can fully investigate claims made by the public against government agencies.

The Ombudsman Act, in its current form, applies to administrative acts of agencies—public service administrative units, other Government authorities and local government councils. Clause 3 of the Bill expands the definition of "administrative act" to clarify the Ombudsman's jurisdiction in relation to outsourced operations. The revised definition will ensure that the Ombudsman can investigate an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies.

The Bill also amends the definition of "agency to which this Act applies". The new definition is based on the recent amendments to the Freedom of Information Act. Paragraph (d) of the new definition is wider than the existing definition of 'authority' and will bring some bodies within the Ombudsman's jurisdiction without the need to refer to them specifically in the Act as is now the case with the Universities, the Sheriff and incorporated health centres and hospitals. The definition will allow a person or body to be declared by the regulations to be an agency to which the Act applies or an agency to which the Act does not apply.

The amendment will provide greater consistency within the jurisdictions exercised by the Ombudsman.

The Bill also amends the definition of "principal officer and "responsible Minister" so as to be consistent with the extended definition of agency.

Most matters dealt with by the Ombudsman are complaint driven. However, the Ombudsman does have an "own initiative" power under section 13(2) of the Act which can be used to deal with matters of administrative concern that become public knowledge without any specific complaint being lodged with the Ombudsman.

In his 2000/2001 Annual Report, the Ombudsman noted that there is currently little opportunity for the Ombudsman to audit administrative action generally. Firstly, the Ombudsman may institute an investigation at his own initiative. Such an investigation could be triggered by detection of a pattern of earlier complaints pointing to systemic issues requiring further investigation. Secondly, the Ombudsman can assist agencies in establishing improved systems of complaint-handling or provide some general advice based on his reported experience which may assist in the improvement of administrative action.

However, there is no general provision in the Act recognising an audit function. Therefore, the Act will be amended to allow the Ombudsman to have a general administrative "audit" role. Clause 5 of the Bill amends the Act to provide that, if the Ombudsman considers it to be in the public interest to do so, he may conduct a review of the administrative practices and procedures of an agency to which the Act applies.

The Act will also be amended to clarify the role of the Statutory Officers Committee. In 1996, the *Parliamentary Committees Act 1991* was amended to establish the *Ombudsman Parliamentary Committee*. The duties of the Committee included to consider matters relating to the general operation of the Ombudsman Act and to make recommendations in relation to the appointment of the Ombudsman.

The Committee was replaced by the *Statutory Officers Committee* in 1997.

As a result of the 1997 amendments, the Committee's duties were amended. For example, the Committee was no longer required to consider matters relating to the general operation of the Ombudsman Act. Clause 6 of the Bill will rectify this matter by reinstating the Committee's function to consider matters relating to the general operation of the Ombudsman Act. The Committee will also be required to produce an annual report on the work of the Committee relevant to the Ombudsman Act as was the case in the original 1996 provisions.

Clause 6 also contains two other amendments to the Act. The Ombudsman has noted that, in recent times some agencies within the jurisdiction of the Ombudsman have expressed the desire to attach the title Ombudsman to their internal complaint handling system operation. This could create unnecessary confusion and could be misleading to a consumer. Therefore, new section 32 has been inserted to prohibit the use of the word 'Ombudsman' in relation to internal complaints handling systems of agencies within the Ombudsman 's jurisdiction. New section 33 inserts a general regulation making power.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure by proclamation.

Clause 3: Amendment of s. 3—Interpretation

This clause redefines "administrative act" so that it includes an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which the Act applies. It also redefines "agency to which this Act applies", subsuming the existing definition of "authority". The proposed definition makes it unnecessary to mention the sheriff, the councils of universities, and health centres and hospitals incorporated under the South Australia Health Commission Act separately, as it includes persons holding an office established by an Act and bodies established for a public purpose by or under an Act. The new definition covers—

- a person who holds an office established by an Act;
- an administrative unit;
- any of the following incorporated or unincorporated bodies:
  - a body established for a public purpose by an Act;
  - a body established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations);
  - a body established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act or an enactment);
- a person or body declared by the regulations to be an agency to which the Ombudsman Act applies.

However, it does not include a person or body declared by the regulations to be an agency to which the Act does not apply.

The clause also updates the definition of "council", defines "administrative unit" and "Statutory Officers Committee", removes obsolete definitions, redefines "principal officer" and "responsible Minister", and makes other changes consequential on the new definitions.

Clause 4: Amendment of s. 6—Appointment of Ombudsman

This clause is consequential on the insertion of a definition of "Statutory Officers Committee".

Clause 5: Insertion of s. 14A

14A. Administrative audits

Proposed new section 14A empowers the Ombudsman, if he or she considers it to be in the public interest to do so, to conduct a review of the administrative practices and procedures of an agency to which the Act applies. The provisions of the Act will apply in relation to such a review as if it were an investigation of an administrative act under the Act, subject to such modifications as may be necessary, or as may be prescribed by the regulations.

Clause 6: Substitution of s. 31

This clause repeals section 31 of the principal Act which has been made obsolete by the *Summary Procedure Act 1921* and substitutes new provisions.

31. Conferral of certain functions on Statutory Officers Committee

Proposed new section 31 confers on the Statutory Officers Committee of the Parliament the additional functions of considering matters relating to the general operation of the Ombudsman Act and providing an annual report to Parliament by the end of December in each year on the work of the Committee relating to the Act during the preceding financial year. In considering matters relating to the general operation of the Act, the Committee will not be permitted to review any particular decision of the Ombudsman.

32. Use of word "Ombudsman" by agencies to which Act applies in describing internal reviews prohibited

Proposed new section 32 prohibits an agency to which the Act applies from using the word "Ombudsman" in describing a process or procedure by which the agency investigates and resolves complaints against the agency, or in describing a person responsible for carrying out such a process or procedure.

33. Regulations

Proposed new section 33 empowers the Governor to make regulations.

The Hon. R.I. LUCAS secured the adjournment of the debate.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 830.)

The Hon. M.J. ELLIOTT: I rise to oppose the second reading of this bill. The Democrats have resisted the extension of shop trading hours for some time now, although we eventually gave way in relation to city trading on the basis that small retailers would receive significant assistance. As it turned out, small retailers were dudded. In fact, some of the changes in the Retail Tenancies Act so desperately needed by them were not included and therefore the act did not have the required teeth. That is one of the reasons I will move a motion for a select committee at the completion of the second reading.

We need to ask ourselves what we are trying to achieve with the extension of shop trading hours. What are the benefits and the negatives of extending shop trading hours? I believe that it is extremely dangerous to look at shop trading hours in isolation without recognising that there will be a number of consequences. There are a number of social issues, which I will get to later, but I will refer now to the economic issues. There is no doubt that an extension of trading hours will work to the benefit of the larger retail chains. I have seen documents where one of the retail chains (I cannot remember which one) calculated that an extension of shop trading hours would give them an immediate additional 4 per cent market share, which would continue to grow over time.

While we are told that this bill will improve competition, the real effect will be competition in the short term as the giants squeeze the small guys, but it will not continue. There will be a number of losers as the steady growth of the oligopolies occurs, and the obvious losers will be their competitors. You usually find that the very large stores employ large numbers of casual staff (usually juniors), which gives them a competitive advantage, not because they are more efficient but because they use cheap casual labour they can flex in and out for a couple of hours at a time, whereas the smaller stores are more likely to employ older staff and are more likely to give them some level of permanency. It is surprising that a Labor government would encourage growth in casual employment over permanent employment; that growth in casual employment will probably be a consequence

of the change in shop trading hours as the big chains continue to grow market share.

The small retailers, which sometimes pay four or five times as much per square metre as that paid by the large stores, will have to try to compete. I want to read a letter received by my colleague Sandra Kanck only a couple of days ago from one small business owner, because it covers some of the issues. The letter states:

> As a small business owner, and a voter I am writing to express my concerns on this critical issue for small Business and to ask for your support when this matter is debated in Parliament.
>
> In the media in recent months and for that matter years, the argument that the large retailers and the media have reported and promoted—

and I stress that it is the large retailers, who happen to be big advertisers in the media—

> for further extending and deregulating shopping hours has been based on:
> · Fairness for all
> · Customer choice
> · Tourism
> · Jobs
> In respect of these:
> Fairness
> · How fair is it that small tenants in most shopping centres subsidise the rent of the larger retailers. Retail rents for small business tenants in most shopping centres is always more than double per sq metre that paid by larger retailers (Supermarkets etc).

For example, I know of a butcher shop owner who received his bill and was about to pay it when he suddenly realised that it was not his bill but that of one of the largest tenants in the shopping centre. This butcher was paying the same rent as this very large retailer. Those sorts of examples are often brought to my attention. The letter goes on:

> · How fair is it that as a small retailer I must play by the rules in respect of employment conditions and pay my staff penalty rates for working extended hours (Double pay on Sunday, One and a half times on Saturday afternoon etc) and yet the national retailer next to me (Coles, Woolworth's etc) flaunts the rules and pays no penalty rates and even employs kids virtually as slave labour. Where is the fairness in this? Are these the jobs they will create—a few extra hours here and there for a few kids that they call in when required and send home when not required?

I think that is a pretty fair question to ask. The letter goes on:

> · How fair is it that these National retailers can demand purchase prices on goods that the same supplier or manufacturer refuses to provide to the small retailer. Not only this but also force them to pay additional advertising fees to have their goods on the shelf or on display. How fair is this? Why should the smaller retailers subsidise the price of goods sold to the larger retailer.

I know of people who own small shops who do not buy from wholesalers but go to supermarkets for a lot of their stock, because they can buy their stock cheaper from these large retailers than from the wholesalers, and we are supposedly talking about competition. The letter continues:

> If fairness is the concern—why not set a level playing field on these issues. Let's legislate and force these large retailers to share the responsibility in respect of rents, labour costs, buying ethics, etc. If this were the case, small business would not fear the proposed extensions of hours—large business would not be demanding them because they simply would not compete with small business[es] that are more efficient and can provide superior customer service.

I think the points are very well made. If we talk about competition and use trading hours as an excuse to create competition, we should address the issue of retail rents and differential in labour costs. This person is not complaining about what they are paying their employees, they are complaining about what the big retailers are paying their employees.

If buying costs were fair and equitable, that would be reasonable. In relation to buying costs, I recall an article that appeared in the *Advertiser* about a week ago (some members may have seen it) that predicted the demise of many of the small Australian wineries because two retail chains owned, I believe, by Coles and Woolworths now dominate the wine retail market to the extent that they tell wineries what price they will sell for. That is not unusual; it is happening across a whole lot of commodities now. If I were a farmer or a food processor, I would be extremely worried by this continuous growth in monopolies, because it is making it increasingly difficult for these companies to compete.

The other thing these big companies tend to do is go to overseas suppliers. The small retailer does not have the ability to source from whatever country is going. I remember an experiment I did about three years ago when, on consecutive weeks, I went to the same store and took the same product off the shelf. Over a period of about four weeks the product came from three different countries. What these big retailers do is shop around the world and buy cheaply. Does that work for the consumer? They are not selling the stuff any more cheaply. They are buying goods wherever they are being dumped and the Australian producer, who is working according to all the laws of Australia—the environmental laws, the laws of employment etc.—is trying to compete, but the large Australian retailers have no commitment to Australia, to Australian products or to Australian producers.

They have a commitment to nothing more or less than their bottom line. After all, that is what business is all about, is it not? Small retailers carry a lot of disadvantages already, which should be addressed first. This retailer is suggesting that they could handle the changes in shop trading hours if all the other disadvantages were fixed. Wouldn't it be nice if a shopping centre had the same rent regardless of how many square metres you had? That might change the economics of things a bit. The next issue this person addressed was customer choice. The letter states:

> What a 'furphy'. This has nothing to do with choice or meeting customers' needs. Sure times have changed and some people (mainly retailers) do work longer hours, but let's face reality. The greatest proportion of workers (Public Service employees, banks, office workers, factory workers, teachers, etc) have experienced little or no change in their hours of employment. Most still work a 38.5 hour week and this is a reduction from 40-plus hours. On the other hand, shop hours have increased and most are currently openly (based on an 8 a.m. to 7 p.m. regime) a total of 66 or more hours per week (not counting Sunday trade). Not only this, but if customer needs are so important why are these larger stores who are demanding deregulation not opening in the city until 9 p.m. every night of the week, when the last deregulation clearly gave them that right?
>
> Tourism.
>
> Shops in most tourist areas in South Australia are already open for business seven days and also trade extended hours and are more than adequately meeting the needs of the tourist market. How many tourists really need to shop in supermarkets, or travel to the suburbs to visit major shopping precincts outside the CBD for their needs? Deregulation will in fact have the opposite effect in respect of meeting the needs of tourists. It will most certainly put more pressure on retailers in the CBD. . .

I interject that the reason why the CBD was given the special Sunday privilege was, first, to allow it to survive and, secondly, because it was considered a major tourist precinct. The most likely outcome of this is that the CBD will go backwards because perhaps the tourists might be interested in going there but, if the majority of Adelaidians do not go there because they are not working in the city and have

somewhere else to go, the city stores will close. So, the most likely place the tourists would want to use will be closed down as a consequence of the sorts of changes being proposed. The letter continues:

> . . . and force them to close their doors on Sundays as their businesses become even more unviable—and yes this will be seen by tourists visiting our city. Adelaide will be seen as a closed city. Jobs. Yes, a few more casual jobs might be created short term. But how many real jobs will be lost when small businesses throughout this state start shutting their doors?
>
> As a small retailer in the state I urge you to please consider these issues carefully before you cast your vote on further extending hours and providing greater market share to the national retailers. Your support on this issue is critically important to the survival of many small businesses in this state and the employment of many workers in retail. Please don't just be a supporter of small business in words only. For the survival of small business, please act and vote against further extensions to shopping hours until there is a level playing field.

That letter really did cover many of the issues in terms of the impact upon retailers and, to some extent, on employees, at least in so as far as employees facing casual work and short hours. I also focused, as I read that letter, on the issue of the impact upon those people who supply retailers in a market that is increasingly monopolised. No other country in the world has the level of market domination of just a few stores as we have here in Australia. There is nothing like it. In the United States the largest chain has about one-third of the market share of the US that the largest of the chains has here in Australia. Anyone who has travelled to Europe will know that it is pretty much the same, and that the small shops in all the big cities are still thriving. It is very cosmopolitan.

Australia has taken a very dangerous line and it is to the cost of small business, it is to the cost of employees and it is to the cost of the people who supply the retailers. We also need to take a close look at the question of the impact on prices. Anyone who has looked at market surveys knows that South Australia is a very cheap state in which to shop compared to the other states; significantly cheaper. It is no accident that this is the one state where the two major chains do not have the greatest level of monopoly. In this state we have the Foodland chain and a few more independents, although not many. Relatively speaking, there is more competition and the shorter hours actually help keep down costs.

Even consumers need to be aware that they will be paying for the convenience. The thing that I do not like is that it might be fine for some people to say, 'I'm prepared to pay an extra 4 or 5 per cent for my groceries for the convenience,' which is what I believe we are talking about, but there are a lot of people in Adelaide and country South Australia who cannot afford that extra 4 or 5 per cent for their groceries and other goods that we will be asking them to pay for the convenience of some people who are not able to use what are already significant shopping hours. If you cannot get your shopping done within the current shopping hours then you are hopeless: simple as that. Why are we going to make the poor in South Australia pay for the incompetence of the wealthy?

The Hon. T.G. Roberts: Indifference.

The Hon. M.J. ELLIOTT: It is indifference. It is an absurd notion. 'Extended shopping hours' has been nothing more or less than a catchcry. I mentioned those four topics: fairness, consumer choice, tourism and jobs; and we know that every one of those is a lie. In fact, even the sort of questionnaires they do are an insult. They say that 76 per cent of people believe that shops should be able to open when they want to. In South Australia, about 95 per cent of the shops can open whenever they want to. The only controls are on shops over a certain square metreage.

Almost all shops can open now without any change in the law. Why do they not do it? Because it is too expensive and, as I move to my next theme, it is too destructive to the lives of the families of the people who own and work in those shops. That is the issue that I now want to look at. There is a significant social impact besides that just on the businesses. This morning on radio I heard that the federal government is considering requiring parents to have parenting lessons. That is an interesting notion, and it is true that today many people do not know how to parent. I will not talk about the issue of compulsion right now, but there is a real need to help people know how to parent.

Often they have been poorly modelled. But what sort of modelling are we going to produce for parenting when you have the kids at home and mum and/or dad are at work because we have said that they have to be so we can have extended trading hours? Children are home if they are school age. You have an age between one and five when they are home more or less full time unless they are going to some sort of child-care. Children are home by 4 o'clock five days a week, and they are home all day Saturday and Sunday unless their parents take them to sport or they are doing something else of a social sort with the family.

What on earth are we doing with all this extended trading hours' nonsense? As a result of the way in which work is now apportioned, the job rich are working longer hours while some people cannot get a job at all. The people driving this theory—members of the Liberal Party—are saying that we should be giving parenting lessons. For goodness sake, you cannot be a parent while you are at work. Well, you can: I get on my phone sometimes and talk to my kids. When we sit at night, I talk to my kids over the phone. They get home after school at 6 o'clock and ask, 'Dad, when are you going to be home? How do I do this?' My wife, too, is working ridiculously long hours.

What are we doing? This bill is destructive of family life. People know very well I am not a conservative. I have some quite radical ideas on a number of issues. I am open to the idea of gay marriage and all sorts of other things, but I do value the notion of family—of couples and their children. We should be careful about what we are doing. Please excuse me for getting emotional. I myself am going through a marriage breakup, and there is no doubt in my mind that the major factor has been the ridiculous hours I have worked in this place and the hours that my wife has been working in her workplace. So, when I say this, I am speaking from the heart.

We have to stop this nonsense. The arguments for extended trading hours are so flimsy that they are ridiculous. The fact that we are even debating the issue in this place is appalling. Any person of any moral fibre who says that we will force people to work longer hours during week nights and to work on weekends should have a damned good look at themselves. I know there is an argument that people have a choice about when they work. I am sure that plenty of people in the Labor Party know that that is not true. A person takes a job when they can get it. If the job is at night—because we have allowed that—it will be a night-time job; if it is a casual job which does not pay well and which does not give security, it will be a casual, night-time job that does not give security.

There are enormous moral questions surrounding this issue, and it is about time that Business SA and the big retailers showed a bit of morality in the way in which they

behave. It is far overdue for that. The world is not run by the economy alone, and in fact this move is economically a retrograde step. This is about greed, and we have seen so much corporate greed over the past 15 to 20 years. We have to learn to see it when it is there. This is about corporate greed and nothing else.

None of the excuses given are valid. Some people might like the extra hours but, when lined up against all the negatives, it loses. I ask every member to look carefully at that. I will oppose the second reading of the bill. However, I have given notice of a motion for a select committee to be established when the bill is read a second time, and I hope that will pick up many of the issues I have talked about in my speech. I hope that we will get a chance to expose the lies that underpin what is before us. I urge all members to oppose the second reading and support my motion for a select committee.

The Hon. T.J. STEPHENS: Shop trading hours have been a contentious issue in South Australia for a long time. The way in which the current government is going about this issue, shop trading hours will continue to be conflict ridden for a long time. The government has taken an incredibly arrogant approach to tackling a complex issue. It has tried to bring in quite dramatic changes without many of the stakeholders' understanding or having any input into what is happening. The government has brought in a bill that may have a serious effect on a large number of businesses in South Australia, and on a large number of people employed in those businesses.

The minister does not give any of those businesses or business associations the courtesy of showing them the bill, to give them a chance to consider the implications for their business. I personally have been involved in shop trading hours debates over the years as both a small businessman and a retailer and, to a small degree, a landlord. I do not wish to see retail players disappear or businesses harmed by rushing through this legislation. This compromise deregulation may be the way to go, but all retailers, big and small, must have a proper opportunity to consider the full ramifications of this bill on their future. I am fearful that extending trading hours on Sundays will push our businesses backwards rather than forwards.

I am particularly concerned about the undisclosed industrial relations issues which were raised as a matter of urgency by the shadow minister when speaking on this bill. It is a fair point that, if the government is considering deregulating an industry, the industry needs to know the ground rules on which it will be deregulated. The UTLC this week is putting to the government a view about a range of industrial relations matters. I understand that the industrial relations review, which is being undertaken by Mr Stevens, is due to report to the minister by 15 October. It would be commonsense to wait to see the union's position on industrial relations, and how it will respond to further deregulation and extended shopping hours.

I cannot see the point of debating this bill, voting on it and rushing it through without having one vital part of the jigsaw in place. This bill should not be rushed through and passed—certainly not before the unions put their cards on the table in relation to extended shopping hours—because small business, in particular, needs to know the rules when it comes to employing staff outside traditional shopping hours. The government is keen on the deregulation of shopping hours, and this bill proposes rules as to who can trade and sell, and what product can be sold and at what hours, but it neglects the most important concerns faced by all employers.

Are the employers paying penalty rates on Sundays? If not, how will this affect the level playing field? Are there any proposed changes to the retail award in relation to rostering? Are any changes being made in relation to the relationship between landlords and tenants? Is any action being proposed in respect of the relationship between buyers and sellers as to the market share of goods? None of these issues are being addressed by this bill, yet we are supposed to accept it.

The consultation process has been so bad in relation to this bill that it should be halted to allow members the opportunity to undertake that consultation during the six or seven week break we are about to have. It will give all members the opportunity to consult and examine the ramifications and to come back at the end of October better informed to deliberate on this bill. Retailers do have a right to know the ground rules with respect to industrial relations, particularly in relation to youth wage rates. The UTLC has put in a submission about junior pay and it argues that junior pay should be abolished. That would affect a large number of industries, retail included. If the government is suggesting that it will deregulate and abolish junior pay rates, it should come out and say it. If the government is intending to deregulate and not abolish junior pay rates, well, it should come out and say that as well.

With respect to junior wage rates, my colleagues in the House of Assembly during question time tried to establish the ground rules, but to no avail. They asked whether the minister would rule out the abolition of junior wage rates, and he took the opportunity not to do so. None of the parties affected by the proposed extension to shopping hours—the Australian Retailers Association, Business SA, the State Retailers Association, the Newsagents Association or various segments of the union movement—are aware of the government's direction in relation to industrial relations reform. Obviously, they have submitted their recommendations to the minister with respect to shop trading hours reform based on the current industrial relations environment.

The other issue that has not been dealt with in relation to this legislation is that of unfair dismissal. The majority of the retail sector tends to be small business, and I think it is fair to say that, as a collective, it will have difficulties with unfair dismissals under the current provisions. The minister could have taken the opportunity in question time this week to clarify the government's position as to whether it intends to change any laws relating to unfair dismissal for small business but, again, there is no direction from the government.

So, small businesses that want to take advantage of longer trading hours may decide to put on additional staff. If they wish to revert to the original hours and extended trading is not viable, they need to know the rules in relation to dismissing the additional employees. The minister has not done a service to debate on the bill by rushing it into this place before the Stevens industrial relations review has been completed. The reason we support the bill's going to a select committee is that many groups are contacting us about issues that seem to be unresolved. At least a select committee would give them the chance to put the facts so that we can properly consider them in October when we come back.

I understand that there has been consultation on a broader issue, but there has been no consultation on the details and ramifications of the bill itself; for example, the possible ramifications on shopping centre leases have not been fully

examined. While the bill provides for an increase, the overall number of hours shops can trade has increased. It also supposedly will protect tenants in larger shopping centres from being forced to open all available hours.

It is very important to protect the rights of tenants to open and close according to customer demand and, at the same time, to recognise that they are part of a bigger picture and the culture of a large shopping centre. It must be acknowledged that the relationship between landlord and tenant, particularly in major shopping centres, is a difficult and complex relationship, and different powers are at play in that relationship. I was quite incredulous when I learned that the Retail Shop Leases Advisory Committee has not been consulted nor seen this bill.

The government brings in a bill to reduce to 54 the core hours in shopping centre leases, and the Attorney-General has not even bothered to send it to the Retail Shop Leases Advisory Committee. Why not ask what its view is? There is an opportunity for a select committee to take evidence on the whole question of core hours and the influence between the landlord and the various tenants. The Retail Shop Leases Advisory Committee was established so that the government of the day could get some advice on amendments to leases. If this government will not consult with it, then the select committee must provide that opportunity. It could not meet the Retail Shop Leases Advisory Committee and discuss matters such as the control of shopping centres, that is, the control of the landlord and/or core tenant over other tenants, particularly in regard to the renewal of leases or hours that needed to be traded.

There are also employment implications. If we are to believe that extended shopping hours is a trial, who will take on more staff for four more Sundays of shopping and two hours on week nights unless there is some certainty for the employer and some guarantee that the hours are permanently in the system? For an extra two hours a day, I am not sure whether they would take on more staff or spread the load out amongst existing staff. If they do spread it out amongst existing staff, they need to know whether it will trigger extra penalty rates. We want to consult with the community and through a select committee will have until about October to do that. It is a reasonable course of action in response to the many organisations that have lobbied us over the last seven days saying that now that they had seen the bill, they would like to talk to someone about it.

It may well be that, if the minister had bothered to speak to bodies such as the Property Council, the state retailers association, IGA Everyday, the NTA, Foodland, the Newsagents Association or the Pharmacy Guild, the government might find that those bodies could have a view on the bill or could even suggest improvements to it. However, as it turns out, the government does not even do such bodies the courtesy of sending them a copy of the bill. Perhaps a select committee could revisit the success of the Glenelg tourism precinct and look to achieving the same success in other metropolitan areas without needing the measures put forward by the government in this bill. Maybe we could target and deregulate two or three other tourism precinct areas and not necessarily go down the whole path. I am generally concerned that the vibrant atmosphere experienced in our city centre will be severely diminished. I will quote from a newspaper—and it will be a first for me to quote out of a newspaper dated tomorrow—

The Hon. T.G. Roberts: Does it have the winners there?

The Hon. T.J. STEPHENS: Sadly it does not have the winners there, as that would be very advantageous. The article is headed, 'City loser as trading changes go "too far"'. It was written by Tom Sullivan, and states:

> The city would be the loser in any move to extend shopping trading hours in the suburbs, a union leader says.
>
> Shop Distributive and Allied Employees' Association secretary Don Farrell says the reforms would shift market share from the city to the suburbs. 'I think it will have an impact upon the city. . . I think (small retailers) will have to be a bit more creative to get the people in,' Mr Farrell said
>
> Mr Farrell said the union agreed trading laws should be reviewed but felt the Government had probably gone too far.

The article continues:

> Project manager for the East End Coordination Group Ray Goldie was more pessimistic, saying small independent shops in Adelaide would shed a significant number of employees. He called for measures such as anti-trust laws to 'stop big companies growing bigger and stronger and opening more stores'.
>
> Grote Street Business Association President Deb Lavis said the group was concerned widespread Sunday trading might affect its efforts to strengthen city businesses.' As city businesses, we see the city as a feature of the weekend and we wanted to entice people in here'.

A vibrant city centre is a very important part of the mix of impressions we would like to put out about South Australia. On a personal note, I am very concerned about job losses in smaller retailers' areas. The larger retail associations claim that extended shopping hours statistics in other states show enormous jobs growth in the retail sector as a result of deregulation. The associations representing smaller retailers will say that the same figures basically illustrate that there have been job losses. They also say that they believe it would lead to an increase in grocery prices. They argue:

> There are only so many dollars to be spent on groceries in any given week. If small independent stores have to operate extra hours, then prices must logically be increased to cover these increased costs. Prices in the eastern states are 5.6 per cent higher than in South Australia. Do you want the same thing to happen here?

IGA's argument is that a business that is currently open, say, 60 hours a week, now will be open 70 hours a week. So that means an extra 10 hours of salary, 10 extra hours of electricity, cleaning and all those sorts of things, so there are obviously extra overheads.

The IGA is saying that the extension of shop trading hours will lift expenses in relation to fixed costs. Then it comes to a question of whether they actually make more sales—and that is a difficult question. IGA would argue that there is only a given amount of money to be spent each week on food, and that you are spreading the same amount of expenditure on food or their products over longer hours with higher fixed costs. Ultimately, that leads to less profit. A natural response to that is to put up your prices to protect your profit. So if deregulation has not increased the costs interstate, it would be interesting to know why they are more than 5 per cent higher than they are in South Australia. There is a submission in which the Foodland group argues that we have the cheapest food in Australia because of the independent mix of retailers here. It further argues:

> With more expensive groceries in the smaller independent supermarkets. . . all we will see is a shift in market share from the independents to the national chains. Administrative dollars to run those chains are all spent in the eastern states, further sideswiping the South Australian economy.

It believes ultimately that many family owned businesses are likely to close as a result, and it would argue that the family members who go out the family business door may not necessarily be picked up immediately in the employment

market. It would also argue that business closures will have an effect. I also have real concerns for the families of those businesses that may be forced to trade longer hours in order to maintain competition and survive. In order to compete by sidestepping increased salary costs, many business owners and their family members will personally work even longer hours. This will interrupt family life further and ultimately take its toll. Obviously, this speech was prepared prior to the contribution of the previous speaker. I must say that I am genuinely saddened by some of the remarks of the previous speaker, and my point would only reinforce that.

One point made by the IGA on this is that working mums and students predominantly make up the teams that currently work from 7 p.m. until 10 or 11 p.m. These shifts now become 9 p.m. until 1 or 2 a.m. This bill supposedly offers some protection to workers from being compelled to work on or open on Sundays. I would like to see that protection further scrutinised. I do not want to see a negative impact on the family life of our constituents working in the industry. These are the issues I believe a select committee must look into and, in doing so, provide a true forum where all stakeholders, all South Australian businesses from the big players to the very small, can examine the bill, suggest amendments and express their opinions.

Employers can look at it in light of employees, their mortgages, their ability to carry on their business and their ability to meet their commitments. The government cannot arrogantly drop this bill on the table and insist that, within a few days, it has to be passed. The Labor Party is good at talking about unemployment and about how someone should be providing jobs so that any man or woman in our community who wants to work can be given a job. The Labor Party does not appear to understand where those jobs come from. Those jobs are created by individuals who are willing to go out, take the risk and put their house and life savings on the line in order to succeed in business. They are the ones who must have a clear idea of what this bill means for their future.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the second reading of the bill. I do not intend to repeat much of what was put by the lead speaker for the Liberal Party, the Hon. Robert Lawson, when he spoke. He has adequately put the position of the Liberal Party and my position. However, I refer to the events of the past 24 hours, when the Treasurer and the government sought to apply pressure to those members of the Legislative Council who were contemplating either opposing the bill or supporting a short reference, for a period of some five or six weeks, to a select committee of the Legislative Council. I refer to a press statement that was issued yesterday by the Treasurer and the Minister for Industrial Relations. The press release is headed 'Liberal divisions may cost South Australia millions', and it reads as follows (I have a very poor photocopy, so I hope that I get it exactly right):

> The National Competition Council will recommend that the federal government withhold $57 million from South Australia unless legislation to reform shop trading hours is passed by state parliament. The Liberal Party has said it will block the Labor government's reform measures in the upper house of state parliament. The Treasurer, Kevin Foley, received a letter earlier today from Graeme Samuel, the President of the National Competition Council, advising that this blockage by the Liberals will cost South Australians $57 million.

I guess one of the tragedies, to which I referred earlier, is the relative laziness (I do not want to be too scathing in my criticism) of some of the local media, when one covers important issues such as the debate on shop trading hours. Those statements made by the Treasurer and the Minister for Industrial Relations are simply untrue: there is not a skerrick of truth in relation to them.

When the Treasurer and the minister were required, or decided, to release a copy of the letter from Graeme Samuel, the President of the National Competition Council, one could see that in no way does that letter back the statement that has been issued by the Treasurer and the Minister for Industrial Relations. In those circumstances, one would have thought that at least someone from the media here in South Australia would have fearlessly taken apart the Treasurer and the Minister for Industrial Relations as to their deliberate fabrication of a letter from the President of the National Competition Council to further their particular view on shop trading hours.

In another place today, there was another attempt at fabrication by a senior government minister, and we may well see action being taken in that chamber as appropriate—and I hope we do—perhaps by way of a privileges committee or something else to bring that minister to heel. It is outrageous behaviour by members of this government who came to power promising new standards of honesty, openness and accountability. We saw that hit the floorboards during question time today, when it was revealed that a decision has now been made to charge for access to freedom of information documents when, in the past, there never has been a charge for members of parliament. But that is another issue. On a critical issue such as this, to have two ministers of the government issue a public statement and gain considerable publicity on television and radio news yesterday afternoon and evening, along the lines that the approach being adopted by the Liberal government would cost $57 million, is a disgrace. And the actions of those two ministers, in my view, are a disgrace.

Let us look at what Mr Samuel, the President of the National Competition Council, said. I refer to a letter dated 26 August (and I suspect that, when Mr Foley met with the Commissioner, he asked for a letter to confirm his views on these issues in relation to the national competition payments assessment from the National Competition Council). The letter states:

> I refer to our recent discussions on this subject. I confirm that the council does not believe that it is in a position yet to make any recommendation to the federal Treasurer on 2002-03 competition payments for South Australia because South Australia is still to implement reforms to its retail trading hours legislation. Accordingly, the council has deferred making a recommendation that payments should be made to South Australia until this matter has been resolved.
>
> You would be aware that the council raised retail trading arrangements with South Australia in previous NCP assessments and that the council's 1999 and 2001 assessment reports found that South Australia was still to show that its trading hours arrangements comply with the COAG competition obligations. In this regard, I note that the council repeatedly requested the former South Australian government release its NCP review of this legislation so that the community might be aware of the public interest reasons relating to retail trading hours restrictions.
>
> The council considers that implementation of the reform proposal introduced into the parliament on 14 August 2002 would address South Australia's competition obligations for the 2002 assessment. Upon implementation of the reform proposal, the council will recommend to the federal Treasurer that South Australia receive full competition payments for the 2002-03 financial year. The council considers, however, that there is additional work for South Australia in relation to trading hours, as recognised by the government in the second reading explanation commitment to further action to

streamline South Australia's current complex system of exemptions. The council will look for South Australia to have considered and implemented this foreshadowed reform of the restrictions by the time of the 30 June 2003 NCP assessment.

I look forward to advice from you confirming that the legislation introduced into the parliament on 14 August 2002 has been fully implemented and confirming that South Australia will address remaining competition questions by the time of the 2003 assessment.

Yours sincerely, Graeme Samuel.

That is the letter in its entirety. There is no reference at all, as claimed by the two ministers, to back the following statement by those ministers:

The Treasurer, Kevin Foley, received a letter earlier today from Graeme Samuel, the President of the National Competition Council, advising that this blockage by the Liberals will cost South Australians $57 million.

There is no reference at all to the Liberals blocking the legislation and costing $57 million. There is no reference, or evidence to back the first sentence in the press release that the National Competition Council will recommend that the federal government withhold $57 million from South Australia unless legislation to reform shop trading hours is passed by the state parliament. It is a sad day when one cannot rely on the accuracy, honesty and integrity of statements being made by ministers in press releases—or, indeed, in any way; one should not limit that just to press releases.

Clearly, as I have just read from that letter, there is no justification for the claims that were made by the two ministers in their statements yesterday, which were subsequently and widely publicised on television and radio. There is no doubting that if one were to be fair to the National Competition Council letter one could say that the council was withholding its recommendation to see what occurred in other states. Whilst it is not stipulated in this letter one could, perhaps, interpolate or extrapolate and argue that the National Competition Council might recommend that there be some financial penalty should there not be parliamentary approval for the legislation.

That is not the claim that was made by the two ministers. The two ministers said that all of the national competition payments ($57 million) would be lost and that the National Competition Council would recommend that should this legislation not be passed by the parliament. I think that both the Treasurer and the Minister for Industrial Relations should be condemned—not only by members in this chamber but also by members in the House of Assembly—for making untrue statements in relation to the letter from the National Competition Council.

The final point I make about the letter is that I think the Treasurer has been endeavouring to play a game in relation to the use of the National Competition Council to assist the government in this argument. However, I suspect that, as inexperienced as he is, the Treasurer has a tiger by the tail and he will not know where he is going to end up. I just highlight to government members what the President of the National Competition Council said. He noted that the second reading explanation made a commitment to undertake further action to streamline South Australia's complex system of exemptions.

I know that the government and the minister have been saying to all involved, 'Look, we will institute these actions if they go through. We will let them settle down. We will review them further down the track and we will not be taking any immediate or precipitate action in relation to further flexibility of trading laws in South Australia.' But the President of the National Competition Council says, 'We note what you said in your second reading explanation and, by the time of our judgment next year with respect to the following year's $57 million national competition payment (the 2003 assessment), we will be looking to see that you have implemented the foreshadowed reform of the restrictions.'

The council's assessment is generally made in the middle of the year or in the third quarter at the latest. As I said, I think that the Treasurer has a tiger by the tail now; and should this legislation pass in one form or another the National Competition Council next year will be saying that the $57 million for next year will be dependent on further flexibility being introduced into trading laws in South Australia. I think that the union members from the SDA and all of the other interested parties, including marginal seat Labor members, would be well advised to look very closely at that aspect of Mr Graeme Samuel's letter and look forward with interest to the government's response to the NCP's assessment by 30 June next year.

This issue of trading hours and national competition payments is not a new thing. These or similar threats were made by the National Competition Council on a number of occasions during the latter part of the 1990s and the early part of this decade. Indeed, Mr Samuel's letter refers to the 1999 and 2001 assessments. It may well be that those are the occasions I recall when, as Treasurer, I had discussions with Mr Samuel and similar views were put. However, at that time, through the then premier and ministers, we were able to negotiate and discuss successfully with the National Competition Council.

As members will know, there was either no reform or a relatively modest amount of reform during those particular years in relation to shop trading hours and we still protected our $55 million to $57 million a year of national competition payments. I think this is a red herring or furphy that is being floated by the government and its ministers that in some way we will lose the whole $57 million; I think it is untrue. That will not happen. The issue in relation to whether or not there might be some financial penalty ultimately will be a challenge for not only the parliament but also, more particularly, the government.

Previous governments have heard the same threats from the National Competition Council and have been able successfully to negotiate and protect the state's finances without any penalty accruing on this issue of shop trading hours. One does not just immediately roll over and have one's tummy tickled by the National Competition Council, as the Treasurer seems to be doing. One, of course, gives appropriate recognition in terms of its authority and power to recommend to the federal government but, ultimately, governments need to make decisions in the public interest, as, indeed, is allowed under the National Competition Policy framework and, having made them, will need to abide by those decisions and accept whatever consequences might ensue as a result of those decisions.

With those remarks, I indicate my support for the second reading and what I understand, given the views of members in this chamber, will be a reference to a select committee. Again, as the Hon. Mr Lawson has indicated, we give our commitment that a speedy and targeted select committee will report back to enable consideration by this council in the first sitting week that we return in October.

The Hon. J. GAZZOLA secured the adjournment of the debate.

AIR TRANSPORT (ROUTE LICENSING-PASSENGER SERVICES) BILL

In committee.

(Continued from 26 August. Page 820.)

Clause 2.

The Hon. T.G. ROBERTS: I thank honourable members for their cooperation to get to this stage and for being flexible in their approach to dealing with this bill. I provide the following responses to the questions that were raised by the Hon. Diana Laidlaw in her contribution. Her first question was:

1. I wish to know the timetable for the proclamation of this bill.

It is intended that the bill be proclaimed as soon as possible after receiving assent, and it is anticipated that could occur as early as September 2002. She then asked:

2. Has the minister at this stage received any informal or formal proposals from air operators indicating the routes in which they would be interested and which would give the minister encouragement to declare as routes for restricted access?

The government does not have either informal or formal proposals under consideration. However, the minister is aware of efforts to attract an operator for the Cleve-Wudinna route.

I would like to add some comments on a personal level. When recently travelling to Wudinna, I had to fly to Ceduna and hire a vehicle to travel from Ceduna to Wudinna, which added two hours to the trip, and another two hours back. So, the inconvenience suffered by people in regional areas is considerable. I am sure that the charter aircraft business has picked up considerably at the expense of those companies that previously operated such routes. Consideration would be given to some negotiations in relation to those routes that do not have a regular airline service. Her next question was:

3. Has the government an agenda in mind as to which routes the minister will declare? If so, what is that agenda?

There is no planned agenda for declaring routes at this stage. She then asked:

4. If there is no agenda, is the government prepared to work with local government, regional development boards and air operators to develop such an agenda and, in each instance, a timetable for the calling of expressions of interest and tenders for the operation of these restricted route services?

It is not the government's intention to actively establish an agenda or timetable for the declaration or licensing of air service routes. The government's intention in bringing forward this legislation is to be in a position to act should the need arise, not to actively promote intervention in the market for air services. Having said that, the government will, however, be willing to work with local government, regional development boards or air service operators who believe that provisions in this legislation are necessary to secure air services for their communities. The Hon. Ms Laidlaw then asked:

5. I therefore want to ask the minister why, and on what advice, he has inserted clause 4 in relation to the prescribed criteria in addition to all the matters that are listed in clause 5 of the government bill under the heading of 'Declared Routes'.

Clause 4 of the bill seeks to ensure that the promotion of competition in air services and the avoidance of monopolies is promoted to the greatest extent possible, and South Australia, like all other jurisdictions, is committed to a national competition policy and must meet its obligations under the NCP agreements. These obligations are not intended, of course, to operate against the public interest. Read together, clauses 4 and 5 enable the minister to consider and balance all of the relevant factors when weighing up whether to declare a route or, having made a declaration, making subsequent decisions on route licences. She then asked:

6. How does the minister intend to give importance, or prominence, to all these various areas? What will guide him in terms of all the matters—and there are many—plus his flexibility, or the provision for the minister to add subjective measures? How will he give weight to these various provisions in the bill that he must take into account?. . . Effectively, I wish to know whether these items provided in clauses 4 and 5, and the subjective matters, will be given a weighting formula and, if so, what weight will be given to each category? In terms of the transparency of these assessments for declaring routes, will this weighting category be made publicly available at the time the minister is calling for the tenders, or in terms of the annual report, which I note in clause 19 the minister must provide to the parliament in terms of the operation of this act?

It is not intended that the various factors in clauses 4 and 5, embodied in a formula, will be subject to any particular weighting. This bill has, quite deliberately, been framed to give a minister an ability to respond to situations as they arise and to respond to changing circumstances over time. The current market situation is uncertain and volatile. Our goal is to be able to respond appropriately. Set formulae and weightings would only serve to decrease that flexibility.

With respect to ensuring transparency and accountability, the bill provides in clause 19 for an annual report to the parliament, as noted by the Hon. Diana Laidlaw. A number of other clauses in the bill seek to ensure that the public and air service operators in particular have access to relevant information. Clause 5 requires that at the time of declaring a route the minister give notice with information on, amongst other things, the number of route service licences that are available and information on any conditions that may be fixed in relation to a route licence.

Clause 13 of the bill stipulates that the minister must report to parliament within 12 days on each route service licence that has been awarded. In addition, clause 7(6) provides that an applicant who has not been granted a route service licence may seek a written statement of the minister's reasons for his decision. Between them, these clauses provide ample accountability in the operation of the legislation. The Hon. Ms Laidlaw then asked:

7. I wish to ask, reinforcing the matters I raised in my second reading contribution why the minister and the government, knowing the experiences in Queensland and Western Australia and knowing the increase of money that both governments this financial year have invested in increased subsidies for restricted access services in those Labor-held states, have chosen not specifically to make provision for subsidy in this bill, a measure which the minister need not provide but must at least consider?

As has been previously stated, the government does not believe that providing financial assistance to commercial airlines is an appropriate role for the government. However—and this is the purpose of the bill—the government may intervene usefully to bring more stability and increased operator confidence by declaring routes and issuing single operator licences. If the government were to change its policy, this bill does not prevent financial assistance being offered. However, it also does not raise false expectations that subsidies are available or will be offered. She then asked:

8. I repeat a matter that I raised in the second reading debate, namely, I note that the enabling provisions for a route service access regime in Queensland and Western Australia are incorporated in umbrella acts. . . The point I make here is that the states that provide a subsidy have acts that are relevant not just to air transport but to

all transport in their state, including regional transport, and provides for subsidies as required for all modes of transport to remote communities. . .

It is not the government's intention to offer subsidies for commercial air services. The development of umbrella legislation would be a major undertaking and would not, of itself, influence the government's policy on subsidies. Some consideration was given to inserting the air service route licensing scheme in the Passenger Transport Act 1994. Advice at that time was that the government's goals for route licensing could not easily be accommodated in the Passenger Transport Act—at least, no doubt, without significant amendments to the act.

As it has been our intention to legislate quickly to ensure that the government is in a position to take action should it need to do so, separate legislation has been drafted. So, the need for the legislation has come at a particularly difficult time, with South Australia being caught like other states. September 11 had some impact on regional services but probably not as much as the collapse of Ansett and Kendell. So we have had those complicating facts, plus the tragedy of Whyalla Airlines, which I think has had some impact on the numbers of people travelling. Fortunately for the former Whyalla Airline service, things seem to be coming to a conclusion that will not add to the tragedy that already exists but will hopefully ease the minds of a lot of people in relation to their responsibilities.

In relation to our remote and regional areas in particular, South Australia has probably felt the impact of airline restructuring more than any other state. We just do not have the numbers of people travelling. The numbers were starting to build up because a lot of travellers were choosing to fly as a matter of convenience, but I suspect that many people are now driving where they used to fly—

The Hon. Diana Laidlaw: Or not travelling.

The Hon. T.G. ROBERTS: —or perhaps not travelling, or getting more services locally rather than from a distance. I have personally observed that many regional flights—particularly air cargo—are being done by charter. I suspect that if we had a look at the charter hours flown by the charter companies, including the use of charter airlines by members of parliament for particular travel and committee work, we would find that there has been a considerable increase in the use of these flights. I hope that the answers I have supplied are satisfactory. I am winging this bill in the hope that the consensus that we have will enable us to get all stages through rapidly.

The Hon. DIANA LAIDLAW: I would like to thank the minister in this place and the staff and officers working for the Minister for Transport for not only the speed but the thoroughness of the answers provided to me. Certainly, as far as I am concerned I do not have further questions, at this stage, on any clause of the bill, and I am happy to see it pass through all stages.

I just make one brief comment, and it is a matter that I will take up at a later stage with the Minister for Transport, the Local Government Association or the regional development boards. My concern is that the minister has effectively outlined an approach where the government will be simply responding to circumstances, rather than seeking a general expression of interest for services, and then working through those issues.

I would take a different approach in this matter but, if the government wants to just sit back and wait, I regret that and I will be taking the issue further with other players. I also have some misgivings about the government not weighting some of the factors that the minister will be taking into account in certain circumstances, because it will be very hard for us to judge why some approaches have not been accepted, when we know that applications have been made or interest expressed to the minister. However, those issues can be dealt with at some other time and are not a reason for holding up the bill at this time.

The Hon. T.G. ROBERTS: I thank the honourable member for that. I know that there may be some cases where applications have been made for route licensing but were not taken up by the applicants themselves, on the basis that they were not secure in their own knowledge in relation to the potential—

The Hon. Diana Laidlaw: Are you referring to a specific route?

The Hon. T.G. ROBERTS: No. I am just generally saying that I can understand the concerns that you have in relation to the weighting and the approaches that perhaps have been made by applicants for route licensing support, and assistance to areas. Wudinna is probably a good example where a trial period was set for—

The Hon. Diana Laidlaw: By the former government, with a subsidy.

The Hon. T.G. ROBERTS: Yes. It was not successful. The numbers of people who were expected to use the flights were not apparent. If the subsidy had been maintained or increased, perhaps an airline would have been interested in it. The legislation does not rule that out and those negotiations can continue. But, as I said, there are some restrictions in relation to the subsidy that has been offered.

The Hon. DIANA LAIDLAW: I failed to acknowledge in my earlier remarks that I am pleased to have received the reassurance on record that the bill, when assented to and proclaimed, does not prevent the government—of any persuasion at any time—offering financial assistance if required.

Clause passed.

Remaining clauses (3 to 26) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

ESSENTIAL SERVICES COMMISSION BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I refer to questions asked by the Hon. Robert Lucas during the committee stage yesterday. In relation to question regarding whether the government had asked the ACCC as well as NECA to investigate and rule on the structure and operations of local generators, I provide the following answer.

The structure and operation of all generators within the National Electricity Market remains a significant concern for the government. Our concern is not confined to the local generators. The Minister for Energy continues to work closely with the other jurisdictions through the National Electricity Market Ministers Forum to ensure that a national policy approach is adopted in relation to this important issue. Also, the Minister for Energy has made submissions to the ACCC on the inappropriate rebidding activities being undertaken by some generators. Once again, this concern is not confined to local generators. It is the government's view that our previously expressed concern regarding the structure

and operation of local generators could be better addressed by having the NEM ministers forum, NECA and the ACCC consider those issues in relation to all generators and not by asking the ACCC and NECA to look at local generators in isolation from the national market.

In relation to the questions regarding whether the electricity privatisation contracts have been reviewed and whether the government has decided to improve the standards for system maintenance contained in those contracts, I can provide the following answer. A cabinet subcommittee has been established to review every privatisation, lease or outsourcing contract signed by the former Liberal government to make sure that every clause and every contracted promise is being adhered to and delivered. The subcommittee's review of the electricity privatisation contracts has not been completed.

Improving the standards for system maintenance will be achieved through the generation, transmission and distribution licensing conditions imposed by the regulator under the Electricity Act. The Electricity (Miscellaneous) Amendment Bill introduces new requirements for generators and operators of the transmission and distribution networks in clauses 9 and 10 respectively to include in their safety and technical management plans provisions dealing with reliability and maintenance.

In relation to the question regarding what action the regulator has taken of his volition in relation to seeking pricing information and contractual information from retailers, I can provide the following answer. The Independent Regulator, Lew Owens, has advised that, in the lead-up to full retail competition, utilising his power to monitor the electricity industry and recognising that the pricing justification process was likely to be introduced, he has been collecting pricing and contractual information for some months. He has also developed a discussion paper that is being used as a basis for continuing consultation with the electricity industry.

In relation to the questions regarding whether the SNOVIC 400 MW interconnector capacity project is on track, when it might be operational and what action the regulator has taken of his volition, I can provide the following answer. Both the SNI and SNOVIC (augmentation to the Snowy to Victoria interconnector designed to increase transfer capability of 400 MW at a cost of $44 million) proposals were approved by NEMMCO on 6 December 2001 with SNOVIC expected to be on line by summer 2002-03. On Friday 23 August, NEMMCO advised the market that, on Friday 16 August 2002, it and the IRPC had received formal advice of VENCorp's intention to perform inter-regional testing on the SNOVIC upgrade.

The proponent of SNOVIC, VENCorp, has advised that it has scheduled construction to be completed by 1 December 2002. Performance testing is scheduled to begin at this time with the aim of achieving the 1 900 MW summer import into Victoria from New South Wales/Snowy at the earliest time and preferably prior to the end of December 2002. The objective is to complete testing prior to the summer peak load period in Victoria and South Australia.

I now provide replies to the Leader of the Opposition's questions regarding the following matters:

1. Can the minister or his advisers provide information as to whether the 450 MW gas turbine capacity, which was assumed to be developed in Victoria (which, for the benefit of the advisers, was 300 MW at Edison Mission and 150 MW at AGL) has proceeded and is operational?

I advise that, in relation to the AGL plant in Somerton in Victoria, NEMMCO advises that it has no further information to that contained in the Statement of Opportunities 2002, that one unit was planned to be commissioned in June 2002 and a second unit by August 2002, and that the other units are planned to be available by September and October 2002. Advice received from AGL is that one unit is commercially operating now with a further unit to be operational by the end of September 2002. The remaining two units are expected to be operational by the coming summer. Each unit has a nominal 35 MW capacity, resulting in a combined capacity of around 140 MW. In relation to the Valley Power plant in Victoria, the 300 MW plant was officially opened on 1 August 2002 and NEMMCO advises that all six units are fully operational.

2. Has the 220 MW of peaking capacity in South Australia—that is, both the AGL and Origin plants—proceeded and is it operational?

Certainly the plants are operational, but perhaps the leader's question relates to the 220 MW. In response, I advise that, in relation to the AGL plant at Hallett, five units are commercially operating now with a combined capacity of 90 MW. The advice received from AGL is that the remaining units will be up and running before the coming summer and currently are in varying stages of refurbishment. This will achieve a combined rating of 180 MW in summer (220 MW winter rating). The Origin quarantine plant (905 MW) has been commissioned and therefore is operational.

3. Does the government agree with the view that energy will be flowing from Murraylink this month or next month—200 MW of additional capacity?

My reply is that NEMMCO has advised that information received from Murraylink indicates that it is scheduled to begin transfer of power from next Monday, 2 September 2002. It is understood that the first active power flows will begin at 20 MW, building rapidly in steps over the following seven days to 200 MW, as part of its commissioning program. It is further understood that energising of high voltage equipment at the Red Cliffs converter station in Victoria was successfully completed last week, with the energisation of the Berri converter station in the South Australian Riverland continuing this week.

According to the recent NEMMCO Statement of Opportunities 2002 (released on 31 July this year), Murraylink was initially thought to have the potential to increase total supply capacity and therefore improve the reserve situation over the next few years. However further analysis, conducted as part of the assessments of the SNI and SNOVIC 400 interconnector projects, has shown that at times of peak summer loading, even without SNI being present, the additional capacity into the combined regions of Victoria and South Australia will be negligible.

4. In relation to AGL and Origin, the high capacity outlook scenario that IES looked at was 420 MW of peaking capacity in South Australia—AGL and Origin. My dim recollection is that this was probably an increase in the Origin project, but I seek advice from the minister in relation to that matter.

My response is that Intelligent Energy Systems (IES) based their study of future prices on three South Australian capacity assumptions. All these assumptions included 450 MW of additional capacity to be installed in Victoria (300 MW Edison Mission and 150 MW AGL). The capacity assumptions for South Australia are outlined below:

Low SA capacity outlook:

- 220 MW of peaking open cycle gas turbine (OCGT) in South Australia (AGL and Origin)

Medium SA capacity outlook:

- 220 MW of peaking open cycle gas turbine in South Australia (AGL and Origin)
- Murraylink (providing 200 MW of capacity)

High SA capacity outlook:

- 420 MW of peaking open cycle gas turbine in South Australia (AGL and Origin)
- Murraylink (providing 200 MW of capacity)
- 400 MW Snowy to Victoria interconnector capacity increase.

Members interjecting:

The CHAIRMAN: Order! There is too much audible conversation, and neither the Leader of the Opposition nor I can hear the minister.

The Hon. P. HOLLOWAY: Accordingly, the increased assumption from 220 MW newly installed capacity in South Australia to 420 MW appears to be due to extra capacity being assumed to come on line from AGL and/or Origin.

5. I refer to the prices that were quoted in the IES report to the former government—and I am going on memory here: I quoted from the second reading, and I think it was $45, $58 and $78. I raised the issue that the NECA prices that I pulled off the NECA web site were a different price series to the price series that IES had used for the former cabinet. I seek advice from the minister as to whether his advisers have some apples and apples figures, if I can put it that way, that they could bring back in relation to the most recent NECA prices, perhaps on an average, that existed here for the last 12 months. I think I quoted those figures.

The leader then asked: is it possible to do an apples and apples comparison with the figures that IES has produced? The information I am supplied with is that average spot prices in the National Electricity Market can be measured through the use of a time-weighted average price or a load-weighted average price. The time-weighted average price is a simple average of the sum of the prices in the individual 30-minute trading interval, divided by the number of intervals. The load-weighted average weights the price of each 30-minute trading interval by the demand for that interval. Accordingly, load-weighted averages are believed to more accurately reflect the real price outcome on the South Australian wholesale market.

Based on the capacity assumptions discussed here, IES developed estimates of future pool prices in South Australia for the 2003 calendar year. It is understood that these are time-weighted prices. I seek leave to incorporate in *Hansard* a table that demonstrates the IES-developed estimates of future pool prices in South Australia for the 2003 calendar year.

Leave granted.

Scenario	Average Annual Spot Price $/MWh
No development	58
Low SA capacity scenario	44
Low SA capacity scenario—hot summer	51
Medium SA capacity scenario	40
Medium SA capacity scenario—hot summer	45
High SA capacity scenario	36

The Hon. P. HOLLOWAY: In terms of a comparison, the time-weighted average price for the 12 months from 18 August 2001 to 18 August 2002 is $34/MWh. However, as noted previously, the time-weighted average is not considered to be a true reflection of the real price outcome on the South Australian market. The leader asked a number of other questions. In relation to clause 23 of the Essential Services Commission Bill and the suggested implications on the independence of the Regulator, section 18 of the Independent Industry Regulator Act 1999 currently provides as follows:

(1) The Industry Regulator must from time to time prepare and submit to the minister a budget showing estimates of the Industry Regulator's receipts and expenditures for the next financial year or for some period determined by the minister.

(2) The budget must conform with any requirements of the minister as to its form and the information it is to contain.

(3) The minister may approve a budget submitted under this section with or without modification.

The ESC Bill now includes a specific requirement to include the major projects, goals and priorities of the commission. Under any circumstances, and consistent with past practice, the Regulator relates expenditure to specific projects to be undertaken in his budget material. In this regard there will be no change. Hence the concerns raised in the question will have also applied under the provisions currently contained in the IIR Act, that is, the budget and related project could potentially be modified by the minister. I am not aware that this has ever occurred.

The principal change proposed in the ESC Bill is a specific requirement to indicate the goals and priorities of the Regulator over the year in the plan. It is reasonable and it is certainly not intrusive for the government to ask the Regulator to propose performance criteria to be included in the budget and business plan. It is simply good governance. The Essential Services Commission will continue to provide an annual report to the minister, and this will continue to be laid before both houses of parliament, as is currently the case.

The Regulator might determine that it is valuable to report against his performance plan in the annual report. The government believes that this is a transparent process that provides a distinct improvement over the current governance arrangements. The Regulator was consulted extensively on the bill and did not raise any concerns over this provision at the time. Having raised the issue again with the Regulator today, he did state that he would of course be concerned at any attempt by a minister to limit his regulatory functions. However, he noted that a minister cannot direct him on the exercise of his powers.

In relation to the coordination agreement question, I advise that the use of the word 'direct' might have led to this misinterpretation. The intent of the provision is that this is a matter that is to be determined by the commission. That is, if after 90 days the two parties fail to negotiate a commercial coordination agreement, the commission can deem a contract to exist between the two parties. The terms and conditions of this contract would be binding on both parties. Therefore, deeming it to exist and making a 'direction' on both parties is unnecessary. Once the deemed agreement is in place, it is up to the two parties to negotiate any further changes in their own time frame. Clearly, the ESC would be empowered to vary such a contract at a future time by dint of section 23(5b).

The retailer or distributor can continue to seek to vary the contract through commercial negotiation at any time. The purpose of the provision is to ensure that a basic coordination agreement is in place in a timely manner and not to impede the commercial negotiations between the parties. In relation to the question about the consultants appointed by the Regulator, the Independent Regulator has advised that he has engaged the following consultants to assist with the pricing

justification process: IES (Intelligent Energy Systems); CRA (Charles River Australia); and MCCA (Mal Campbell Consulting Associates). The Independent Regulator has also advised that he will be in a position to release a report on the work undertaken by these consultants in early September 2002. The consultants have been engaged on standard contractual terms, and these contractual details will be made available publicly in accordance with the State Supply Act, as is the current practice of the South Australian Independent Industry Regulator.

In relation to the question about whether any advice was sought from any legal adviser other than crown law in terms of the drafting of this and the electricity bill, I can advise that Treasury and Finance did not seek legal advice other than from the Crown Solicitor's Office. I believe that that answers adequately the questions that were raised by the leader yesterday. I know that the Hon. Terry Cameron and some other members are not here today for the debate. However, if there are any other issues that we could deal with under clause 1, I would be pleased to address them now so that we can expedite consideration of this bill over the remaining days of this week.

The Hon. R.I. LUCAS: I thank the Leader of the Government or, more particularly, the officers advising him at the moment, for the work they have undertaken since midnight last night and today. That will certainly assist the committee stage of the debate. At the end of last evening's proceedings I was prepared to move on to a clause-by-clause discussion of this bill and the next one but, as the leader has just outlined, we are a sadly depleted lot in the chamber this afternoon, with three or four key members unable to participate either this afternoon or this evening because of ill health. Therefore, I have offered, and I think that the leader, from what he has just said, has agreed, subject to your willingness, Mr Chairman, for us to continue the process that we started last night.

I will refer to particular questions that I have on specific clauses in both bills during this debate on clause 1. That way, the leader and I can resolve most of the issues, although probably not all, that we need to resolve and then, when the other members return for the committee stage, we can sort them out in their respective clauses, if that is what is required. With your agreement, Mr Chairman, I think the leader and I are happy.

The CHAIRMAN: We will proceed on that basis.

The Hon. R.I. LUCAS: In relation to the Essential Services Commission Bill, clause 3 under the definition of 'essential services' incorporates the existing responsibilities in terms of maritime services and rail services and adds to it what was intended in relation to gas services and water and sewerage services.

My question is in relation to maritime services and rail services. Has the Independent Regulator resolved the issue of cost recovery to his satisfaction in relation to the work that he and his officers currently undertake for those two services? One of the issues that the Independent Regulator discussed with me was that, clearly, it was unfair that the licence fees for the electricity industry would subsidise in any way the cost of regulatory oversight of rail services or maritime services, for example. Certainly, with my agreement the Independent Regulator discussed the issue with me, and I am sure there was agreement before the government changed that he move down that particular path. Has that been satisfactorily resolved, and are all the costs being recovered in some way from the other two industries; or, in those cases, are they being picked up by the taxpayer?

The Hon. P. HOLLOWAY: I am advised that it has not yet been fully resolved.

The Hon. R.I. LUCAS: Let us take them separately. In relation to rail services, is there any recovery, either from the Northern Territory government or industry in some way? If not, has the Independent Regulator worked out the costs of his regulatory oversight at the moment, and is that being currently subsidised by the taxpayer through Treasury allocation?

The Hon. P. HOLLOWAY: Obviously, that is a matter for the Industry Regulator's office. Obviously, the leader was asking about what was happening in the Northern Territory. I am sure that the Industry Regulator—I know from my observations of the job he has done over the past few years—is well aware of what is happening around the country. The regulators have regular meetings, and I am sure that he is keeping up with that. The honourable member will have to ask him about information he is aware of in relation to what happens interstate.

The Hon. R.I. LUCAS: The reason I raised the Northern Territory is that the Independent Regulator had a view, with which I was sympathetic, that, in relation to rail services being regulated, there was cost responsibility for the Northern Territory government, as well as the South Australian government. It does tie into the Adelaide to Darwin railway. Part of the argument was that the Northern Territory government in some way should be making some contribution, together, possibly, with industry in relation to it. If the advice available to the government at the moment is that that will have to be taken on notice, I am happy to accept that.

The Hon. P. HOLLOWAY: My advice is that it has been an ongoing problem. Perhaps we can get more information. Obviously, it is a matter which has some history and which is considerably detailed. I am not sure whether we will be able to get that advice before the bill needs to pass through, but possibly we can respond to the leader at some later date.

The Hon. R.I. LUCAS: These two issues do not impact on the opposition's position on the legislation in terms of whether or not it supports it, but I think it is important information in which a number of members would be interested. I am happy to accept that undertaking. Similarly, in relation to maritime services, that is, whether there has been progress by the Independent Regulator in terms of cost recovery; and, if so, what progress has been made. There are similar questions in relation to rail services.

Clause 6 provides one new objective for the Essential Services Commission. Again, I repeat the opposition's position, which was put by the shadow minister in another place, that this Essential Services Commission is a rebadged Independent Industry Regulator, and there is significant correspondence between this bill and the Independent Industry Regulator Act. In relation to the objectives, one new objective is to promote consistency in regulation with other jurisdictions. I think either the minister, or the Minister for Energy in another place, highlighted at the national ministers' forum that there has been support by the South Australian government for considering the possibility of a single national regulator. Is the minister able to provide any detail as to what the South Australian government is prepared to consider in terms of a single national regulator? At the national industry level, a number of models have been floated by people wanting to reduce the extent of regulatory overlap.

I guess the simpler model has been some sort of bringing together of sections of the ACCC and sections of NECA and referring to that as a single national regulator. There have been more radical models where the notion of having state-based regulators, such as the Independent Regulator in South Australia, ought to be replaced by a single national regulator, with all the powers that we are looking at here, and maybe with state-based representatives coming from that, which would be a much more radical model of a single national regulator and one which might not be supported by Mr Owens and local regulatory staff. When the government says that it is prepared to look at a single national regulator, has it progressed its thinking as to which of the two models it is considering; or is it considering all models, none of which it is prepared to rule in or out?

The Hon. P. HOLLOWAY: My advice is that the ministerial forum is looking at this matter only in terms of the national regulator for generation and transmission. It is not looking at distribution and retail. It is looking into the possibility of some sort of national arrangement in relation to regulating generation and transmission, but not distribution and retail. As I am advised, the position of the government is to consider it at this stage. Obviously, a lot of work needs to be done before positions could be finalised in relation to the matter. That is where discussions are at at the moment.

The Hon. R.I. LUCAS: Now is not the time to have a long debate about that, but I offer a quick comment. It would seem to be an unusual notion to have a single national regulator, in my view, on generation and transmission, but we will see how that particular debate develops.

I refer to the powers of the Independent Industry Regulator under existing legislation. A number of clauses deal with this matter, including an amendment to section 35 of the Electricity Act. Why did the government decide not to proclaim a class of non-contestable customers from 1 January—the remaining tranche 5 customers? Under the Independent Industry Regulator Act there is the power for the government to proclaim a class of customers that would have allowed the Independent Industry Regulator to commence work from 5 March if need be in relation to pricing issues. Then the government, with the new Essential Services Commission Bill, could have provided further powers and allowed the Independent Industry Regulator—then the Essential Services Commissioner—to continue the task with greater powers. Why did the government not allow this work to commence in March when it had the existing power to proclaim a class of customers?

The Hon. P. HOLLOWAY: The powers that will be contained under the Essential Services Commission Bill are prescriptive as to how the Regulator would carry out the functions. As I understand it, under the old IIR Act there were some general powers for the Regulator but they were not prescriptive in terms of what he could do. It would be wrong to suggest that no work is being done. We covered this matter last night. My understanding is that there has been considerable cooperation and voluntary agreement as one would hope and expect in relation to this matter. So, of course, work has been continuing on that basis. But the new act will prescribe in much more detail the functions of the Regulator in this regard.

The Hon. R.I. LUCAS: This is an important part of the committee stage of the debate. I refer the minister to section 35 of the Electricity Act, under the heading 'Price regulation', which provides:

> (1) the Industry Regulator may make a determination regulating prices, conditions relating to prices and price-fixing factors for—
>
> (a) the sale and supply of electricity to non-contestable customers or customers of a prescribed class.

So, under the existing legislation the government could have used that legislation to prescribe a class of customers—that is, tranche 5 customers—and the Industry Regulator could have used existing powers to commence the study into what the appropriate level of prices might be. Clause 15 of the Electricity (Miscellaneous) Amendment Bill amends section 35A, but it makes relatively minor changes to these powers. In essence, the only changes that are made are to replace non-contestable customers or customers of prescribed class with the words 'small customers'—that is, there is to be a new definition of 'small customers', which the minister in another place indicated broadly would be the tranche 5 customers, anyway. What other changes to this price regulation power is the government implementing in the electricity bill and the Essential Services Commission Bill?

The Hon. P. HOLLOWAY: Last night I referred to new division 3AA—'Special provisions relating to small customers' which was part of the electricity amendment bill.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, this is new clause 17. Essentially, this determines who is regulated, how they are regulated and when they are regulated. It inserts new division 3AA and new section 36AA. I am referring to page 7 of the Electricity (Miscellaneous) Amendment Bill. That essentially defines small customers.

The Hon. R.I. LUCAS: I understand that it defines small customers and the provisions that will relate to small customers. Is the minister arguing that the Independent Regulator could not have started a process of collecting information from AGL and other customers for his pricing determination under section 35A of the Electricity Act?

The Hon. P. HOLLOWAY: The Industry Regulator has powers under the current act to collect information. The question really is: what would he have done with it? That is where these new arrangements are more specific, in prescribing how the information is applied and used.

The Hon. R.I. LUCAS: I can understand the latter part of what the minister has just said. The point I make on behalf of the opposition—and the minister does not appear to be disagreeing—is that there was the capacity for the government to utilise the Independent Industry Regulator Act. It appears as though the minister is confirming that there is the power for the Independent Industry Regulator to have started this process. As the minister indicates, it is then a question of what you do with the information. That is, indeed, the point I am making.

We have heard the Minister for Energy and others in another place saying that it is essential that this legislation goes through so that this process can get under way because of the tight time lines before January. The point the opposition is making is that the government had the capacity in March to utilise section 35A of the Independent Industry Regulator Act and then at some stage, whether it be now or, we would have argued, two or three months ago, to amend the essential services commission legislation it was bringing in to provide the exact framework within which the Commissioner would operate to bring down his pricing determination. The minister has now confirmed that for me, so I will not pursue the matter any further.

In relation to ministerial responsibility, does the Independent Industry Regulator report to the Minister for Energy? If

that is the case, can the minister outline the reasons why it is the Minister for Energy, as opposed to the Treasurer?

The Hon. P. HOLLOWAY: I am advised that the Independent Industry Regulator reports to the Treasurer.

The Hon. R.I. LUCAS: Who was responsible for the legislation in the House of Assembly—the Treasurer or the Minister for Energy?

The Hon. P. HOLLOWAY: The Minister for Energy clearly moved the bill. I am advised that the Treasurer is responsible for the Essential Services Commission Bill, but the Minister for Energy is responsible for the Electricity Act.

The Hon. R.I. LUCAS: The minister has confirmed that the Independent Industry Regulator currently reports to the Treasurer and not the Minister for Energy.

The Hon. P. HOLLOWAY: Yes.

The Hon. R.I. LUCAS: Is it the intention that the Essential Services Commissioner will also report to the Treasurer?

The Hon. P. HOLLOWAY: Yes.

The Hon. R.I. LUCAS: I refer to clause 6 of the bill. The first objective, clause 6(1)(a), provides that the commission must have as its primary objective protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services. In relation to the reasons for the drafting in respect of the long-term interests (and, certainly, the opposition is not arguing against the drafting, just seeking to understand its impact) of South Australian consumers with respect to price, is it a reasonable interpretation of this objective of the commission that, for example, the Commissioner, in his determination, is looking at the long-term level of pricing as opposed to the short-term level of pricing?

An argument may well be that the long-term interests of consumers, in terms of price, are protected by, for example, perhaps short-term adjustments in price, which would attract investment into generation and interconnection as a result of increases in the short-term level in terms of price, and that that generation would then assist the development of a competitive market, which would, therefore, be a long-term benefit in terms of price and, therefore, in terms of the long-term interests of South Australian consumers?

This is a new provision and, clearly, a lot of thought has gone into the drafting of this primary objective. It has been redrafted to say that this is the primary objective—that is, the long-term interests of South Australian consumers. Is that the thinking of the government in relation to this; that the long-term interests, in terms of price stability, may well mean that the Commissioner would have to take into account short-term increases in price to help generate investment, as I have outlined?

The Hon. P. HOLLOWAY: I will obtain some advice in a moment in relation to the drafting instructions, and so on. But, as someone who has had a long-term interest in electricity, I indicate that, clearly, price is a key component in relation to the long-term stability of the electricity system. I think we have all seen what has happened. One of the things that has occurred (and I say this as an observer who is not the minister responsible for the system) is that we have seen, since the development of the National Electricity Market, considerable investment in short-term, high priced peaking power.

I can remember making the comment with respect to bills in the past that I always thought one of the true tests about whether or not this market ultimately would work was whether it would be able to deliver new base load plant, or whether the signals that this new market would give would distort it towards high cost peak loading generation, which, of course, appears to be one of the short-term operations. I make those comments as someone who has been observing the electricity market for some time, without having ministerial responsibility for it. Clearly, these matters are all interrelated. If one is to achieve long-term stability in investment, I guess, in economic terms, it will be the average long run costs or average long run benefits that the new proponents would foresee that will be the basis on which they make their decision.

In relation to the specific instructions, I will see whether the advisers have anything that they want to add. I think members can see that, under Part 2, there are the other items that have to be balanced. The price of electricity is a balancing act, and a number of factors have to be taken into consideration. If one looks at the objectives in clause 6(1)(b), one can see such things as the promotion of economic efficiency; ensuring consumers benefit from competition and efficiency; facilitating maintenance of the financial viability of regulated industries and the incentive for long-term investment; promoting consistency in regulation with other jurisdictions; preventing the misuse of monopoly or market power; facilitating entry into relevant markets; and promoting competitive and fair market conduct. I guess there are a number of objectives in that clause that, in a sense, require some balance by the industry regulator, and he obviously has to take that into consideration. When he sets the price, he obviously has to ensure that proper trade-offs are made between the various objectives.

The CHAIRMAN: I remind the Leader of the Opposition and the Leader of the Government that there is an amendment on file from the Hon. Mr Elliott in respect of this clause, and it is to insert a new paragraph (ai), 'minimise social and environmental costs'. I understand that the Hon. Mr Elliott is not here, and I know that we are not doing this step by step, but I indicate that it is proposed to insert that new paragraph at this point.

The Hon. R.I. LUCAS: Mr Chairman, I thank you for that. I was only just made aware of that matter. I have not had a chance to look at that amendment. I thank the leader for the explanation and the undertaking to see whether further information can be provided. As I said, this is an important clause, because it gives the primary objective; it is a new primary objective. As I said, the opposition is not disagreeing with the notion of long-term interests. However, I think it is important to outline that, obviously, the government has drafted this measure in this way to allow the flexibility for the Commissioner, as he looks at pricing, potentially to say, 'Okay, the long-term interests will be served by a significant price increase in the short term.'

This did not exist in the previous drafting; it is a new provision that has been included. It has been included, obviously, for a purpose. Whilst the other objectives are there they are at a lower level of importance because this one is given primary objective status in terms of the future, and it is important in terms of the task this government is asking of the Essential Services Commissioner. The government is obviously outlining a framework within which it expects the commissioner to operate, and that framework potentially does envisage the sorts of circumstances that I have just outlined.

The Hon. P. HOLLOWAY: Before we finish that point, the leader is trying to suggest that what we are doing is instructing the Essential Services Commissioner to increase electricity services in the short term. I do not believe that is necessarily the interpretation that comes out of clause 6(1)(a).

Certainly, we must consider the overall stability of the supply of the electricity system, but it is a balance. We are asking the Essential Services Commissioner to balance up all of these factors with respect to the price, quality and reliability of essential services.

The leader seems to be making the assumption that it is in the long-term interests of South Australia that we have short-term price rises. I do not necessarily concede that that is the case. I am giving my own personal view in relation to that.

The Hon. R.I. LUCAS: The minister is gracious enough to indicate that that is his own personal view, and I accept that. However, he has also acknowledged that he cannot rule out that the riding instructions that have been given to the commissioner—and these are new riding instructions—are such that the long-term issues must be taken into account. The scenario I have outlined is entirely plausible, where the Commissioner, in looking at the long-term interests, would need to see a significant increase in price in the short term. We have seen a significant investment in other electricity markets internationally and, indeed, in Australia as a result of significant price increases in the particular product, in this case electricity.

That has a long-term beneficial effect, and the minister, as I said, was gracious enough to indicate that he had a personal view, but it is not really his personal view that matters: it is what is in the legislation that will govern the operations of the Essential Services Commissioner. This is an important clause, which has been drafted specifically and, one would assume, carefully by the government. It is important that people understand the purpose and the flexibility that has been put into this clause by the government for the work of the Commissioner. In relation to the existing Independent Industry Regulator Act, the function of section 5(2)(f) is as follows:

> to protect the interests of consumers with respect to reliability, quality and safety of services and supply and regulated industries;

I have a concern that in the redrafting the government has approved clause 6(1)(a), the objectives of which we have just been talking about, which picks up the long-term interests in relation to quality and reliability. For some reason this government has removed from the objectives of the Independent Industry Regulator the critical issues of safety and supply. I do not know why the government would remove those provisions at a time when, certainly from the opposition's viewpoint, issues of safety and supply are important.

The Hon. P. HOLLOWAY: I thought that those matters were the responsibility of the Technical Regulator, but I will get some advice. While the advisers are looking into that matter, I just want to address the point that was made by the leader earlier when he was trying to suggest that, under the new terms of this bill, the government is supporting short-term price rises for electricity. If there are short-term rises in electricity we all know why that will occur, and that will be the structure of the electricity system which this government has inherited. There had already been huge price increases for electricity under the leader.

Last year we had, on average, 30 per cent increases for that tranche of customers below the 160 megawatt mark. There were huge price increases for those people. It may well be that already the price rises in the system are sufficient to provide the long-term stability that is required. I think that is the whole point: some price increase may well be deemed necessary by the regulator to secure the security of supply. Under the previous government we saw a massive increase in electricity prices and, of course, the Treasurer has been the one telling us, 'Yes, well, look, all that massive increase was necessary to bring forth supply security.'

So, what the leader is accusing this government of is essentially what happened over the past three or four years under his government. One would hope that, with the new measures in place, there has been a sufficient price rise in electricity over the past few years to ensure that long-term stability will be secured. I will obtain further advice in relation to that specific clause and, given the time, provide that to the honourable member at a later stage.

The Hon. R.I. LUCAS: I had concerns about a number of issues in relation to the drafting but, for the life of me, I cannot understand why the government has specifically removed safety and supply as an objective of the Essential Services Commissioner. As I said, clearly, reliability, price and quality issues are important but, as the lawyers will know, safety and supply add additional important elements in terms of the objectives of the Independent Industry Regulator. I would be interested to know, as the minister takes further advice, whether the Independent Industry Regulator sought to remove these particular objectives from the legislation.

If he did not, was this a decision of the government? If it was a decision of the government, as opposed to the Industry Regulator, why are we seeing these provisions removed? I place on notice that, should there not be a satisfactory response from the government, I would take up the issue with the shadow minister for energy who has carriage of the bill to see whether or not he would agree to the opposition's moving an amendment to ensure that critical issues of safety and supply continue to be objectives of the Independent Industry Regulator.

The Hon. P. HOLLOWAY: I take the point that the leader is making. It is important. We will see whether that previous clause has been elevated to the primary objective. It is something we will look at and we will address it after the dinner break. At this stage, I ask that progress be reported.

Progress reported; committee to sit again.

[Sitting suspended from 5.56 to 7.45 p.m.]

FISHERIES (CONTRAVENTION OF CORRESPONDING LAWS) AMENDMENT BILL

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

FISHERIES (VALIDATION OF ADMINISTRATIVE ACTS) BILL

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

STATUTES AMENDMENT (STRUCTURED SETTLEMENTS) BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 815.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank honourable members for their contribution to the debate. The Hon. Nick Xenophon, during his contribution, intimated that he would ask: will the minister undertake to provide feedback in terms of the number of structured settlements over a 12-month period, and

the nature of those settlements where possible, so that we can get some measure of the effectiveness of the amendment? I undertake to raise this matter with the Treasurer. However, of course, most cases settle out of court by an agreement between the parties recorded, for example, in a deed of release. The details of their settlement are not public; indeed they may be confidential. I expect that out of court settlements would continue to be the rule for structured settlements also.

This may well mean that the statistics that we might gather, for example from the court's records, would not be indicative of the uptake of these settlements and would not form a sound basis for any conclusion to be drawn about the effectiveness of the amendment. The Hon. Robert Lawson asked whether it is envisaged that the capacity to have a structured settlement will apply to judgments of the court. The intention is that the courts will be able to give judgments for periodic payments, but only by consent of the parties. This is not intended to be limited to the compromise of a minor's claim where a proposed settlement is approved by the court, but extends to any judgment for damages for bodily injury where both parties are consenting to the judgment. However, it is not intended that the court be able to impose a structured settlement without that consent.

The Hon. Angus Redford asked several questions of a broad nature as to the anticipated uptake of structured settlements and their likely effect on insurance premiums. He indicated that these questions may or may not be capable of being answered with any definition and that he did not require answers prior to the passage of this bill. I indicate that I will ask the Treasurer to respond to the honourable member on these matters.

So, in conclusion, I again thank honourable members for their contribution to the debate on this bill. It is, of course, one of a package of bills dealing with this vexed problem of public liability insurance, and I thank the members of the council for their indication of support.

Bill read a second time.

The Hon. CAROLINE SCHAEFER: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

In committee.

Clause 1.

The Hon. R.D. LAWSON: I indicate my support for this bill. I note from the minister's reply that certain information sought by members, in particular by the Hon. Nick Xenophon, will be answered in due course by the Treasurer. Several questions raised by the Hon. Angus Redford will similarly be responded to by the Treasurer. I am sure those honourable members look forward to those responses, which I ask the Treasurer to put on the public record in some way, because this is a reform measure which, in the fullness of time, will be judged for its effectiveness, and the responses of the Treasurer will be important for that purpose.

The Hon. P. HOLLOWAY: I understand the point the honourable member is making and, as I indicated during my second reading response, those matters will be referred on to the Treasurer for his reply.

Clause passed.

Remaining clauses (2 to 6) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

ESSENTIAL SERVICES COMMISSION BILL

In committee (resumed on motion).

(Continued from page 880.)

Clause 1.

The Hon. P. HOLLOWAY: Regarding the comments of the leader just before the dinner adjournment, safety is a very important issue, particularly in relation to electricity, but I just wish to make the following comments. Clause 6(1)(a) does not include a reference to safety because it is not a primary objective of the commission; it is the primary objective of the office of the Technical Regulator in electricity and gas, and it is the subject of other safety legislation in regard to other industries. I could make the same comments in relation to environmental and social issues which also impinge on the operation of regulated industries: they are important, but essentially they are the concern of other authorities or bodies.

The Essential Services Commission is an economic regulator and will have regard to the costs of safety, environmental and social legislation, and regulation, as it must, but in the context of whether the regulated industry has expended funds in meeting obligations in an efficient manner. The existing industry regulator act is a little strange in that the Regulator is to have regard to the 'interests of consumers with respect to. . . safety of services and supply in regulated industries'. In the first instance, consumers are only a subset of persons affected by safety issues in regulated industries. In the second instance, it is unclear as to how the Regulator fulfils any obligation—or even if there is one. Given that safety issues are managed by another agency, it is not clear what the addition of the word 'safety' achieves.

In summary, safety is the principal responsibility of the office of the Technical Regulator in the electricity and gas industries. I guess we have a problem that, if we have legislation which overlaps in relation to those industries, we run the risk of having some complications, but that should not in any way be taken as saying that safety is not a prime concern in relation to this industry.

The Hon. R.I. LUCAS: What is the government's response to the rationale for dropping supply as an objective of the Regulator?

The Hon. P. HOLLOWAY: For the benefit of the council, let me read out what the previous function said. Paragraph (f) was 'to promote the interests of consumers with respect to reliability, quality and safety of services and supply and regulated industries'. One point that needs to be made is that, as we are now setting up an Essential Services Commission, it does have functions in a broader range of areas than the initial Industry Regulator had. There is a significant range of those industries. Supply, of course, is specifically an electricity function. If one looks at the primary objectives, the bill provides:

> Has as its primary objective protection of the long-term interests of South Australian consumers with respect to price, quality and reliability of essential services.

Inasmuch as 'essential services' refers to electricity, I would have thought that quality and reliability in particular would cover those matters that might normally be considered to be supply.

The Hon. R.I. LUCAS: Might I say, no way in the world! The word 'supply' was deliberately placed in the legislation. The issue of supply for consumers is a critical issue. The former opposition spent 2½ years criticising the government

about issues of supply and criticising the government in relation in some cases—

The Hon. P. Holloway: They're in other parts of the act.

The Hon. R.I. LUCAS: No, what I am saying is that these were important issues that the then opposition maintained on behalf of consumers, it said. I am sure that the opposition members were not playing politics: they were obviously making representations to the government on behalf of consumers. Issues of supply to consumers of electricity was an important issue to them, even when on occasion, as you would know, Mr Chairman, supply had been interrupted not because of any decision of the government but because of Victorian power unions pulling the plug on the interconnector supplying power to South Australia.

Putting that specific issue aside, I am frankly amazed at the response from the leader of the government. He seems so sanguine about having deliberately removed, as an objective of the regulator of the Essential Services Commission, any reference to the issue of supply of electricity and is arguing that quality, price and reliability are sufficient. That was not the advice provided to the former government in relation to the drafting of the legislation, and safety and supply were critical issues to the former government.

The Hon. Diana Laidlaw: Certainly are to the consumers.

The Hon. R.I. LUCAS: And to the consumers, as my colleague says, and I will return to safety in a moment. But I am amazed that the leader of the government is arguing on behalf of the new government that, as a deliberate policy, taking safety and supply out of the objectives of the legislation is something that we should not be concerned about on behalf of consumers. The opposition is not arguing the issue in relation to whether or not it is a primary objective. It is not even a secondary objective in relation to the functions or the objectives of the Essential Services Commission. The whole purpose, one would have thought, of rebadging this body as the Essential Services Commission, is not just about price but about certainty of supply, and reliability and quality are other issues that are also important. I invite the leader to reflect on his first answer and perhaps provide further information to the parliament to justify why they have specifically excluded, by deliberate choice, issues of supply from the objectives of the Essential Services Commission.

The Hon. P. HOLLOWAY: Previously, the reference to both safety and supply appears as a function of the Independent Industry Regulator under section 5 of the existing act. Under clause 5(b) there is still a reference, as follows:

> (b) to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation acts;

In terms of functions, it is still there. What was section 6(f) will be still there as a function in the new legislation. The other point that needs to be made is that the Essential Services Commission has increased functions in relation to not just electricity but also gas, ports, rail access and, potentially, other areas. When one is considering matters such as supply, changes have been made to the appropriate industry acts and the Electricity (Miscellaneous) Amendment Bill, which we will consider later. New part 3, to which I have referred a number of times in this debate, specifically relates to the supply to small customers. Because we now have an Essential Services Commission with increasing functions, these sorts of provisions are provided for under the legislation specific to the particular industry. In any case, the functions under clause 5(b) still refer to service and supply, as was the case previously under a different provision.

The Hon. R.I. LUCAS: The opposition and the government will have to agree to disagree on this. It is the significant removal of an objective and something on which I strongly disagree with the Leader of the Government. If one can summarise the reasons why safety has been removed—again, an extraordinary removal—the minister's response was that that was the role of the Technical Regulator. Clauses 9 and 10 of the Electricity (Miscellaneous) Amendment Bill amend sections 22 and 23 of the principal act. To refresh the minister's memory in relation to this, these clauses give the Industry Regulator the power to issue licences subject to various conditions determined by the Industry Regulator.

One of the conditions is that it requires the electricity entity to prepare and periodically revise a safety and technical management plan dealing with matters prescribed by regulation to obtain the approval of the Industry Regulator and which may be given by the Industry Regulator only on the recommendation of the Technical Regulator to the plan and any revision and to comply with the plan as approved from time to time, and to audit from time to time the entity's compliance with the plan and report the results of those audits to the Technical Regulator. The Electricity Act gives the Independent Industry Regulator the specific power to monitor the electricity company's compliance with its safety plan and to report the results of those audits to the Technical Regulator. I invite the minister to reconcile his earlier explanation that the Industry Regulator has no role in relation to safety issues, that is, with the Technical Regulator, with sections 22 and 23 of the Electricity Act, which are not changed by way of this bill in relation to this issue.

The Hon. P. HOLLOWAY: I do not believe that I said that the Essential Services Commissioner has no role in relation to safety. Quite clearly, that is not the case. We are talking about the actual role of the Essential Services Commissioner. Clearly, the Technical Regulator's primary objective is to look at the safety of systems. The Essential Services Commissioner will be heavily reliant on the advice, I would imagine, of the Technical Regulator. I come back to the point that the leader is skipping over. The current Independent Industry Regulator Act does not list objectives: it does not have objectives. Under section 5 it has functions.

The Hon. R.I. Lucas: I won't ask you to explain the difference.

The Hon. P. HOLLOWAY: Section 5(b) of the Essential Services Commission Act provides:

> to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation acts.

The leader does not seem to appreciate that some details have been put in specific industry acts to reflect the fact that the Essential Services Commission has a role over a broader range of functions, but if one looks at the total package, that is, the Essential Services Commission Bill and the Electricity (Miscellaneous) Amendment Bill, I believe all those issues are more than adequately covered. Indeed, the whole purpose of this bill is to provide the additional functions it contains. The government does not accept that there are omissions in relation to this area.

The Hon. R.I. LUCAS: I invite the Leader of the Government to look at section 22(1)(c)(iv) of the Electricity Act which provides for the Industry Regulator:

> to audit from time to time the entity's—

which is the electricity company's—

> compliance with the plan—

which is the safety and technical management plan—

and report the results of those audits to the Technical Regulator.

That is completely contrary to what the Leader of the Government has just said.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, the honourable member might not believe so, but it is completely contrary to what the Leader of the Government has just said. This section provides a safety and management plan and it is the responsibility of the Independent Industry Regulator (now the Essential Services Commissioner) to audit whether or not that company has complied with the safety and management plan, and to report the results of those audits to the Technical Regulator.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, why is he looking at safety, given what the Leader of the Government said in response to the first question after the dinner break? The Leader of the Government said that the responsibility for safety did not rest with the Industry Regulator but, rather, with the Technical Regulator. That is why safety had been taken out of the objectives and/or functions of the Essential Services Commission Bill. The Electricity Act, which is the industry act to which the minister has been referring, retains a pre-eminent responsibility to the Essential Services Commissioner to do the continual auditing of the electricity company's compliance with the safety and management plan.

I invite the Leader of the Government to look at subparagraph (iv) and then reconcile that provision, which remains in the legislation under the government's proposals, with his proposition that the prime responsibility in this area rests with the Technical Regulator, and there is not a critical role for the Independent Industry Regulator or Essential Services Commissioner in this area of safety.

The Hon. P. HOLLOWAY: Surely there is a difference between 'technical compliance' and 'economic compliance'. Essentially, it is the role of the Essential Services Commission to look at that economic compliance, if I can put it that way, and that is why the Essential Services Commissioner would report to the Technical Regulator. If one looks at sections 7 and 8 of the Electricity Act, which refer to the Technical Regulator, you can see the functions of the Technical Regulator are as follows:

(a) the monitoring and regulation of safety and technical standards in the electricity supply industry; and
(b) the monitoring and regulation of safety and technical standards with respect to electrical installations; and
(c) the administration of the provisions of this act relating to the clearance of vegetation from powerlines; and
(d) any other functions assigned to the Technical Regulator under this act.

Clearly, it is appropriate that the Essential Services Commission should audit that, as is required under the Electricity Act and the section the honourable member mentioned earlier, and, of course, report to the Technical Regulator, whose function, as I just read out, is to do with the regulation of safety and technical standards in the industry. I think that the leader is trying to create a problem where none exists. As I said, as we are expanding the functions of the Essential Services Commission and more industries are involved in the areas that he regulates, there is a need to make some changes to the industry acts and the basic core act—the Essential Services Commission Act, as it will become—to allow for that fact. What I challenge the leader to do is to suggest how there is some omission in relation to the functions of the Essential Services Commission.

The Hon. R.I. LUCAS: I readily respond to that challenge. It is quite simple: this government has specifically excluded from either the functions or the objectives a reference to safety. It is as simple as that. What I challenge the Leader of the Government—and so far we have not had a response and I am not expecting one—to provide is a satisfactory explanation as to why, on an important issue such as safety, the government has taken it out of the functions and/or the objectives of the Essential Services Commission. Safety remains an important issue for the opposition in relation to electricity as, indeed, does supply. If the government wanted to be consistent with its views, that is, the Technical Regulator should be responsible in these areas, then what it would have done is amended sections 22 and 23 and taken the Industry Regulator out of the role of safety. Indeed, some of the electricity companies have put the point of view—I think they oppose the Technical Regulator as well—that the Independent Industry Regulator is not equipped to second guess them in relation to issues of the technical management of, in particular, power plants and generators.

That has not been a view that the former government agreed with and clearly is not a view that the current government agrees with. That is why for the life of me—and we will not get a satisfactory response, so I will not persist—I cannot understand and the people of South Australia will struggle to understand why this government has deliberately taken out of the functions and/or objectives of the commission reference to safety and supply as a function or objective, as I said, particularly when one looks at sections 22 and 23 of the Electricity Act as well.

The Hon. P. HOLLOWAY: Again I refer to the fact that subsection (5b) does refer to supply. In that sense, the functions of the bill do refer to service and supply under (5b), as they did in the past. Just to correct what we were saying earlier in relation to section 22, let us be clear what section 22 of the Electricity Act currently says. Section 22(1) states:

The Industry Regulator must, on the issue of a licence authorising the generation of electricity, make the licence subject to conditions determined by the Industry Regulator. . .
(c) requiring the electricity entity. . .
(iv) to audit from time to time.

So, the Industry Regulator is not actually auditing the entity's compliance. However, it requires the electricity entity to audit from time to time its compliance with the plan and report the results of those audits to the Technical Regulator. Section 22 does not quite have the effect that the leader was earlier suggesting it had. However, perhaps we can move on to something more productive.

The Hon. R.I. Lucas: You mean something you can answer?

The Hon. P. HOLLOWAY: I did answer it. The Industry Regulator must require it.

The Hon. Diana Laidlaw: It would be much tougher in the rail industry and other industries. It is so inconsistent.

The Hon. P. HOLLOWAY: What is inconsistent?

The Hon. Diana Laidlaw: This position on safety.

The CHAIRMAN: Order! The Leader of the Opposition has the floor.

The Hon. P. HOLLOWAY: This is your bill. This is the current bill. This is the new thing. This was your original bill.

The Hon. R.I. LUCAS: The Essential Services Commission is not a new aspect of the umbrella legislation to which specific industry acts would apply. The Independent Industry Regulator Act was already constructed in that fashion. The

Independent Industry Regulator is already monitoring and regulating maritime, transport and electricity. The leader has been responding and saying, 'Because this is now something—'

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It's not really any broader. I challenge that. It was deliberately structured as overarching legislation to which there would have been the power to commit gas and water even under the old arrangements through changes to the respective acts. Whilst I understand that that might have been the advice given to the minister, I assure him that it is not correct. The Independent Industry Regulator Act was structured to be overarching legislation.

Given that we are talking about the interrelationship between the Essential Services Commission and the Technical Regulator, has a memorandum of understanding been reached between the Independent Industry Regulator and the Technical Regulator regarding their areas of responsibility and interaction?

The Hon. P. HOLLOWAY: My advice is that there probably is a memorandum of understanding involving the office of Technical Regulator, but we have not seen one. I understand that the current act does not require it to be produced. Under clause 11 of the Essential Services Commission Bill, it is envisaged that the prescribed body would include the Technical Regulator and, as one can see from clause 11(4), the commissioner must ensure that a memorandum of understanding is published in the *Gazette* and on the internet.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: We will have to check it but we believe to the best of our advice that that is the case. We have not sighted it but we believe there is one in existence.

The Hon. R.I. LUCAS: This is a sensible provision in the legislation. Whether or not it is required by existing legislation, it was certainly a regulatory best practice that the former government, together with the various regulators, was seeking as far back as 1999 or 2000, to try to work out the demarcation disputes between the Technical Regulator and others within government. Whilst I do not seek this information before the passage of the bill, if the minister would be able to provide information as to whether or not he can confirm the advice that he has had this evening, that a memorandum of understanding has definitely been entered into between the regulator and the Technical Regulator, I would be pleased to receive that confirmation. In relation to prescribed agencies, what does the government currently have in mind in relation to which entities would become prescribed agencies and, therefore, potentially the subject of MOUs with the Essential Services Commissioner, other than the Technical Regulator?

The Hon. P. HOLLOWAY: At this stage, all that is envisaged would be the Department of Human Services and the EPA, but beyond that we are not looking. My advice is that we are not looking at other agencies but those two and the planning council come to mind.

The Hon. R.I. LUCAS: I accept what the minister has said. Is there capacity through this to have MOUs between the Essential Services Commissioner and other national regulatory authorities, or is it limited to state based and state controlled bodies and agencies?

The Hon. P. HOLLOWAY: My advice is that we could not compel bodies under another jurisdiction to enter into a memorandum of understanding.

The Hon. R.I. LUCAS: I accept that advice from the minister. Clause 13 refers to the appointment of commissioners and indicates that a commissioner will be appointed, in the case of a chairperson, for a term of five years. Can the minister indicate what are the current arrangements entered into with the current Independent Regulator, Mr Lew Owens, who, I am guessing, is probably three years or so into his five or six-year contract. I cannot remember now. What are the arrangements with the Independent Regulator? Will he be reappointed as a new Essential Services Commissioner and given a fresh five-year term or is there a provision which allows him to serve out his term from the current appointment and then either the existing government or a new government would make a decision as to whether he would be reappointed?

The Hon. P. HOLLOWAY: My advice is that the current Independent Industry Regulator had his contract renewed under the previous government. It was fairly recently. It was a five-year term, as I understand it, and under the transitional—

The Hon. R.I. Lucas: Wasn't it a six-year term the first time? I think he's just had one; it hasn't been renewed—not by us.

The Hon. P. HOLLOWAY: The member might be correct. I will withdraw that advice. I refer to schedule 2 of the Essential Services Commission Bill. Under the transitional provisions, clause 2(3) provides:

> A delegation, appointment, determination, requirement, decision, order, code or rule—

I guess 'appointment' is the relevant one here—

> made under a provision of the Independent Industry Regulator Act 1999 and in force under that act immediately before the commencement of this clause continues subject to this act. . .

Clause 2(4) provides:

> Subject to this act, the person immediately before the commencement of this clause holding the office of the South Australian Independent Industry Regulator is to be taken to have been appointed as the Chairperson of the Commission until—
>
> (a) the end of the period when the person's term of appointment as the Independent Industry Regulator would have expired; or
>
> (b) if the Governor extends the period under this clause, the end of the period as so extended.

I think that clarifies that situation.

The Hon. R.I. LUCAS: It does in part. Has the government indicated to the Independent Industry Regulator the second part of that clause—that is, unless the Governor extends the appointment it will be so extended? Has the government taken a decision in relation to that?

The Hon. P. HOLLOWAY: My advice is that it is the existing contract. By default, it is the existing contract, because no decision has been taken.

The Hon. R.I. LUCAS: I think I referred to clause 23 of the Essential Services Commission Bill during the second reading debate. I thank the minister for the reply that was provided this afternoon. I wish to work my way quickly through the minister's reply. As I indicated before, I have no concerns in relation to the budget issues. Clearly, in the past, the regulator has had to propose a budget, and it has either been approved or not approved. What I would disagree with—unless this was being done at officer level, but certainly I do not recall this having occurred specifically with me as the treasurer—is the advice that the minister has given the committee, as follows:

> The ESC bill now includes a specific requirement to include the major projects, goals and priorities of the commission. Under any circumstances, and consistent with past practice, the regulator relates expenditure to specific projects to be undertaken in his budget

material. In this regard there will be no change. Hence the concerns raised in the question will have also applied under the provisions currently contained in the Independent Industry Regulator Act, that is, the budget and related projects could potentially be modified by the minister. I am not aware that this has ever occurred.

The principal change proposed in the ESC bill is a specific requirement to indicate the goals and priorities of the regulator over the year in the plan. It is reasonable and it is certainly not intrusive for the government to ask the regulator to propose performance criteria to be included in the budget and business plan. It is simply good governance.

The minister continues:

The regulator was consulted extensively on the bill and did not raise any concerns over this provision at the time. Having raised the issue again with the regulator today, he did state that he would of course be concerned at any attempt by a minister to limit his regulatory functions, however he noted that a minister cannot direct him on the exercise of his powers.

I guess that is the point that I raised during the second reading debate—that is, the Independent Industry Regulator, having had this issue raised with him today, has confirmed that he would be concerned at any attempt by a minister to limit his regulatory functions.

The Hon. P. Holloway: We're not proposing that that happen.

The Hon. R.I. LUCAS: What we have here is a framework in which that could happen. Clause 23 provides that the commission must prepare and submit a performance plan. Let us leave the budget issues aside, because the budget is a budget and even the commission will have to abide by one. The performance plan must set out the commission's major projects, goals and priorities with respect to the full range of the commission's functions. One only has to go back to the clauses in relation to the functions to see all the detail involving the commission's functions. Then, subclause (4) provides that the plan must conform to any requirements of the minister as to the form of the plan or the matters to be addressed by the plan or budget.

Subclause (5) provides that the minister may approve a plan, with or without modification. So, clearly, the framework that this government has established with the Independent Industry Regulator is explicitly the power for a minister to require the Essential Services Commission to conform with any requirement of the minister as to the form of the plan or matters to be addressed by the plan, and the minister then has the final authority to approve the plan, with or without modification.

I would like to enlighten the committee as to some of the activities that the Commissioner has undertaken and may undertake. The Commissioner may well decide to enter into an agreement with one of the electricity companies to do a major study on the reliability of the system, and may well look at how the distribution system compares nationally and internationally. It may well look at what is required in the distribution system 10 years down the track. That may well be a modest part of the commission's budget.

Something like that would not have been explicitly identified to me as the former minister in the commission's budget. With something as big as, for example, full retail contestability, where the Independent Regulator says, 'My existing budget doesn't allow me to do what I need to do for full retail contestability. I need more money,' then that clearly and specifically identifies an extra budget bid, which I understand has now been either wholly or partly confirmed by the new government. In relation to the existing budget arrangements, a specific plan for an undertaking like that would not have been put to me as a minister or treasurer—whatever hat I was wearing—for me to potentially approve or not approve in relation to the workload of the Regulator.

The Independent Regulator has done and may well want to continue to do a variety of other things. I assure the government that it may well be that on the odd occasion, as with other independent bodies and individuals, the Regulator might want to do things that the government and minister of the day are not mightily pleased with. That might only be on the odd occasion, where an independent regulator decides to adopt a position on the basis of a particular study that he wants to undertake.

Let us say that prior to the next election the Independent Regulator decided he wanted to undertake a program to compare the performance of the system in a particularly crucial area of public interest, or compare a particular measure with four, 10 or 15 years ago, or compare it with other states. If the minister of the day decided that he did not want that part of the plan to be undertaken by the commission, the structure under this arrangement is that the minister of this government would be able to say, 'Under subclause (4), no, you must conform with any requirement that I indicate and, if you do not, I will submit the plan with or without modification.' One would hope that this government would not approach its oversight of the Independent Regulator that way, but I think that the minister earlier indicated that the minister who will have oversight of this agency will be the Treasurer, and that does not automatically fill everyone within the parliament with a great deal of confidence on these issues.

The Hon. R.K. SNEATH: I rise on a point of order, Mr Chairman. The Leader of the Opposition tends to be getting back to where he was last night: making speeches and answering his own questions. Surely in committee it is the leader's responsibility to ask questions on the bill and to have the Leader of the Government answer those questions. The leader is making statements and getting long-winded argument printed in *Hansard*.

The Hon. R.I. LUCAS: The honourable member should look at the standing orders.

The CHAIRMAN: The Leader of the Opposition is allowed to make statements. It is not normal practice to debate issues that ought to be discussed during the second reading, and that is more to the point. The leader has not named anyone at the moment. I ask all members to confine their remarks to the substance of the bill, and I call on the forbearance of all members of the committee to try to get this bill through. The Leader of the Opposition.

The Hon. R.I. LUCAS: We are looking at clause 23 of the bill, and I am outlining to the Leader of the Government the concerns raised with me by people about the capacity of ministers of this government to interfere with the independence of the Independent Industry Regulator. I remind the Hon. Mr Sneath—and we welcome his incisive contributions to the debate—that the minister this evening provided the following response from the Independent Industry Regulator:

Having raised the issue again with the regulator today he [that is, the regulator] did state that he would, of course, be concerned at any attempt by a minister to limit his regulatory functions. However, he noted that a minister cannot direct him on the exercise of his powers.

I can assure the Hon. Mr Sneath that I am not making statements here that are not related to the bill. We are talking about clause 23 of a bill that is being introduced by his government. I am seeking from the Leader of the Government a further explanation as to why the government has sought to introduce this particular clause in the way that it has when he

has now received this particular advice from the Independent Regulator.

The Hon. P. HOLLOWAY: It is worth pointing out to the committee that, under the title 'Budget', section 18 of the Independent Industry Regulator Act states:

> (1) The Industry Regulator must, from time to time, prepare and submit to the minister a budget showing estimates of the Industry Regulator's receipts and expenditures for the next financial year or for some other period determined by the minister.
>
> (2) The budget must conform with any requirements of the minister as to its form and the information that it is to contain.
>
> (3) The minister may approve a budget submitted under this section with or without modification.

They are the current clauses under the Independent Industry Regulator Act as relate to budget. The leader in his earlier comments pointed out how under the new Essential Services Commission Bill the minister may approve a plan or budget submitted under this section with or without modification. Essentially, that is the same as the provision in the current act. It does refer to a plan. That is the only difference.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Here we are talking about plan and budget, so the new Essential Services Bill talks about a plan and budget, but the essential point is that if a minister of the day were foolish enough to cut the budget back to a point where the Essential Services Commissioner, or under the current situation the Independent Industry Regulator, could not do their job, I am sure they would be capable of letting everybody know about it. I do not believe that Lew Owens is a shrinking violet, and I am sure he would be quite capable of expressing the view, if some government was restraining through budgets, or plan and budget if you like to put it that way, his capacity to do his job. I believe that nothing essentially changes between the current act and the new bill.

The Hon. R.I. LUCAS: We will have to agree to disagree on that. I think the Independent Industry Regulator's response that the minister has quoted tonight is fair evidence that there is a change. The Independent Industry Regulator has recognised that there is a change in relation to this provision. The Independent Industry Regulator will need to speak for himself. I will disagree with the Leader of the Government in relation to this issue.

The Hon. P. HOLLOWAY: I will address that point. The Industry Regulator was approached today in relation to the concerns raised by the leader. It is my understanding that he did not raise any concerns during the consultation phase of the bill. Clearly, the Leader of the Opposition is taking out of context the comments made by the Industry Regulator. He was specifically approached on this matter and he has been very helpful. I have always found Lew Owens to be very frank and helpful in relation to his comments. I think the leader is trying to take that point out of context.

The Hon. R.I. LUCAS: As I said, we will agree to disagree. In relation to clause 26 of the Essential Services Commission Bill, I note that, before making a price determination, the commission can send a copy of the draft of the determination to the minister and the industry minister, to each regulated entity to which the determination will apply, and to any other person whom the commission considers appropriate. This is an issue that we will take up directly with the Essential Services Commissioner. Given that I am sure he is reading or monitoring the debates, I place him on notice that we would invite the commissioner to use subclause (c) in a spirit of bipartisanship and send a copy to the shadow treasurer at the time he sends a copy to the Treasurer. As I said, that is an issue that will be left to the discretion of the Essential Services Commissioner.

Obviously, the issue of the prices determination coming up on 1 January will be a potentially huge economic and social issue as well as a political issue. I note on the public record that I invite the commissioner to use that particular provision to ensure that the opposition is equally well informed with the Treasurer of the draft determination that the Essential Services Commissioner involved might be issuing, particularly, as I said, given the very strong views that I and other opposition speakers have put in relation to the advice that had been provided to the former government about what level of price increase might be justified for tranche five customers post 1 January 2003.

One of the issues which relates to both bills, particularly the electricity bill, is the reason for the introduction of the new definition of 'small customer'. Certainly, the definition is covered in section 3 of the Electricity (Miscellaneous) Bill, which provides:

> 'small customer' means a customer with an annual electricity consumption level less than the number of MWh per year specified by regulation for that purpose, or any customer classified by regulation as a small customer.

If, as the Minister for Energy indicated, the intention was that regulation would specify 160 megawatt hours per year, it would appear that this change in definition serves no purpose. I do not believe that that would be the case. There must be some reason why the government and its advisers have specifically introduced the new definition of 'small customer', as opposed to the existing arrangements for tranche 5 customers. Can the leader of the government indicate why the specific new definition has been introduced and what other group is covered by the phrase 'or any customer classified by regulation as a small customer'?

The Hon. P. HOLLOWAY: This matter was addressed in the committee stages of the bill in the House of Assembly. The minister there pointed out how the provision allows the flexibility to protect customers also in the future. I am not sure that we can add anything further to the answer that was given by the minister in another place.

The Hon. R.I. LUCAS: I am not sure whether the minister will pursue that. I have seen the reply from the minister in the other place and that is why I have asked the question. All the minister in another place says is that it provides flexibility, but I am not sure what flexibility it provides. What other customer might be envisaged to be classified by regulation as a small customer? Specifically, can it be confirmed that the government's current intention is that the regulation will specify 160 megawatts per hour?

The Hon. P. HOLLOWAY: For the benefit of other members of the council, let me read the minister's answer in another place:

> There is no forecast group at present. To allow ourselves flexibility into the future, nothing is identified at present. It may be that we do not want to regulate everything according to some 160 megawatt customers at some point into the future. It may be that one day, with hope in our hearts, full retail contestability will start to deliver some benefits for customers. All it does is allow us flexibility into the future.

It may be that we do not want to regulate everything according to some 160 megawatt customers at some point in the future. Surely that implies that, although that is the situation now, in the future we may want to use some other benchmark.

The Hon. R.I. LUCAS: One can understand that if you wanted to change the benchmark from 160 megawatts, it is my understanding—and correct me if I am wrong—that there was the capacity under the existing arrangements for that to occur anyway. Section 35A of the Electricity Act allowed the government to proclaim a class of customers.

The Hon. P. Holloway: Section 35A, was it?

The Hon. R.I. LUCAS: Yes. As I said earlier, the government could, under section 35A, prescribe a class of customers to which these prices justification powers could apply. Earlier today I argued—though not, in the end, convincing the government—that the government could have proclaimed a class of customers, being all customers with a usage of 160/MWh per annum and under: it had the existing power. If it wanted to, the government could proclaim a class of customers with a lower usage than that. I think the government's team has, at varying stages, considered various definitions—100 megawatts, 40 megawatts, or whatever else it is. As I understand it from the minister's reply in another place and from this answer, you are looking at 160/MWh per annum as the cut off. On my reading, that power already existed under the current legislation. Is that correct?

The Hon. P. HOLLOWAY: I point out for the benefit of the committee that under section 35A 'small customer' is defined as 'a customer with electricity consumption levels (in respect of a single site) of less than 160/MWh per year.' So, that is the current definition. Including it in the bill does allow some flexibility, as the minister pointed out.

The Hon. R.I. Lucas: What are you reading from?

The Hon. P. HOLLOWAY: This is section 35A(4) of the current Electricity Act, which provides a definition of 'small customer' for that particular section. It is defined as someone with electricity consumption of less than 160/MWh per year. It is my understanding, and I guess it is a drafting issue, that throughout this bill there are a number of definitions of 'customers'. I imagine that the drafting people, after some five years of operation, have taken the opportunity to try to rationalise that. Essentially, we are just talking about drafting improvements. There is no hidden message.

The Hon. R.I. LUCAS: In the '160/MWh per annum or under' tranche 5 customers there are not only households but very small businesses. Can I seek confirmation that it is not the government's intention to remove the prices justification provisions for small businesses and limit them solely to households?

The Hon. P. HOLLOWAY: My advice is no.

The Hon. R.I. LUCAS: In relation to small businesses, one of the problems regulators have had—and will continue to have—is that small businesses might be on multisites, contiguous or not. Can I clarify whether this definitional change will impact in any way on how the regulator might apply prices justification protections for small businesses on multisites, whether they happen to be contiguous or not.

The Hon. P. HOLLOWAY: My advice is that the current regulations, 5A and 5B, are unworkable and that they need to be redrafted in any case.

The Hon. R.I. LUCAS: What are those current regulations, 5A and 5B, that are unworkable?

The Hon. P. HOLLOWAY: I am advised that they define the different usages. They determine the original tranches by usage levels. So, they are the ones that set out the whole regulation program.

The Hon. R.I. LUCAS: Can the minister indicate why those regulations were unworkable?

The Hon. P. HOLLOWAY: It appears to depend on who determines whether a customer is in a particular tranche.

The Hon. R.I. LUCAS: Is that not a decision for the Regulator?

The Hon. P. HOLLOWAY: If there is a problem with the determination, I guess it is whoever determines the issue. We could formally come back with something; otherwise, alternatively, I suggest that the leader should have a discussion afterwards with my adviser about this technicality. Unless it is essential to the passage of the bill this evening—and I doubt whether it is—perhaps we could use our time more productively.

The Hon. R.I. LUCAS: I would be happy to receive considered advice from the minister's advisers. I do not see it holding up the passage of the bill. I am trying to confirm why the government has made the change to the definition of 'prescribed class of customer' and inserted 'small customer', and I seek an assurance from the minister that, in some way, an existing group of small businesses—because of definition problems perhaps raised by regulations 5A and 5B, which may prove to be unworkable—will no longer be covered by the prices definition when, under the old definition, they might have been covered. I am well aware of the definition problems that existed with the earlier tranches.

We had major problems with multi-site businesses; we had major problems with—I forget the technical term—the entry points or the connection points when some businesses had more than one connection point, and with whether or not you aggregated them. So, I accept that there are some very complicated issues and it may well be that Mr Robinson's advice to the minister refers to those sorts of definition problems that I would be familiar with. If that is the case, that clarifies it for me. But I am seeking an assurance, without getting into the technical detail, whether as a result of the definition change some customers will not be excluded from the protection that is now being given in relation to prices justification for contracts.

The Hon. P. HOLLOWAY: I am advised that it is not the government's intention that that should happen. Indeed, the purpose of making the definition more flexible is to enable us to more effectively deal with those sorts of issues and provide protection for small customers.

The Hon. R.I. LUCAS: I am encouraged that it is not the government's intention. I would hope, on reflection—and we are obviously not going to be able to vote on this measure tonight—that by tomorrow the minister might be able to firm it up and say that the exclusion to which I have referred is not only not the intention but it is also not the impact of the changes being made here.

The Hon. P. HOLLOWAY: I am sure that the regulations will normally be looked at as a whole.

The Hon. R.I. LUCAS: It may well be, but in relation to this I think it would be possible on advice to give an assurance to the committee that not only is it not the intention but it will not be the impact or the effect, either. As I said, we are not voting on these clauses tonight, so—

The Hon. P. HOLLOWAY: No; on advice, I can give that assurance now.

The Hon. R.I. LUCAS: You can give it now?

The Hon. P. HOLLOWAY: Yes, that is my advice.

The Hon. R.I. LUCAS: In regard to clause 32 of the Essential Services Commission Bill, I invite the minister and his advisers to look at section 27(2) of the existing Independent Industry Regulator Act. The existing act says that for an appeal, except on an appeal limited to a question of law, the

court must sit with experts selected in accordance with the schedule. Under the new appeal provisions, as I read them, the government has determined that in all cases:

The court must sit with experts selected in accordance with schedule 1.

In the original drafting of this the advice was given that one would use experts when they were required. These experts were to be electricity experts, economic experts, etc., but, limited to a question of law, it was not our intention to use these highly priced experts for that requirement. I seek advice from the government as to why there is a mandatory requirement now saying that the court must in all circumstances sit with experts selected in accordance with schedule 1?

The Hon. P. HOLLOWAY: Could the leader point out where the difference is? Section 27(2) of the Independent Industry Regulator Act provides:

The court must sit with experts selected—

The Hon. R.I. LUCAS: No—except on an appeal limited to a question of law.

The Hon. P. HOLLOWAY: I refer the leader to schedule 1 of the Essential Services Commission Bill, clause (4), which provides:

Subject to subclause (5) and except in the case of an appeal limited to a question of law, a judicial officer of the court must select two members from the panel to sit with the court on an appeal.

The Hon. R.I. LUCAS: How does that reconcile with the act?

The Hon. P. HOLLOWAY: Under the appeals section of the bill, clause 32(2) provides:

The court must sit with experts selected in accordance with schedule 1.

The Hon. R.I. LUCAS: I am not a lawyer, but can the minister give us an assurance, through him from parliamentary counsel, I guess. One could interpret that as being that you have to have experts and the experts you pick will be those selected in accordance with schedule 1, which are the experts 'with knowledge of, or experience in, a regulated industry or in the fields of commerce or economics'. So on that reading, which was my reading, it says that on all issues you would have to. The minister's advice is that, because of subclause (4), if it is a question of law this 'selected in accordance with schedule 1' will mean that you will not need experts to sit on them. So if I can have an assurance through the minister that that is how a court of law would rule I do not have a problem with it.

The Hon. P. HOLLOWAY: I am advised that, effectively, the provisions are exactly the same in the new bill as they are in the current act.

The Hon. R.I. LUCAS: I will not argue with lawyers; time will tell. The Electricity Act refers to the Ombudsman scheme. Under the current arrangements all retailers have to be a member of the Ombudsman scheme. I understand that, under the new package of amendments, compulsory membership of the scheme will now be limited to retailers who sell electricity to customers with an electricity consumption of less than 750 megawatt hours per annum. What is the background to this recommendation? I am aware that, in the past, there was a dispute between the Regulator and at least one retailer in relation to membership of the Ombudsman scheme. Has this provision come about as a result of a recommendation from the Industry Regulator and, should this amendment be passed, how many current retailers would be excluded from the operation of the current Ombudsman scheme?

The Hon. P. HOLLOWAY: Obviously, this matter is fairly complicated. My advice is that an exemption was granted to one electricity entity. Clearly, consideration of the granting of that exemption has led to a reassessment of the rules—if I can call them that—that could or should apply in such situations. So, to that extent, I suppose it has resulted in this particular reassessment. I think the second part of the leader's question was about the number of entities that might be affected by it. We cannot be positive as to what that number might be.

The Hon. R.I. LUCAS: From my discussions with the Regulator, I cannot remember what power if any I had in relation to this issue other than that it was an issue that he raised with me. My recollection of the discussions, and I will have to go back to my notes, was of expressing some concern about having retailers opting out of the ombudsman scheme, even though I could understand the Regulator's views and the retailers' views on the issue. The only concern I have about this, and I understand that the minister does not have an answer, is that if, potentially, all retailers other than AGL drop out of the ombudsman scheme, we may well have an ombudsman scheme in South Australia that has only one retailer as a member of it, which is AGL, which is then responsible for the operations of the ombudsman scheme. From the opposition's viewpoint, it would not be an entirely positive development that there would be only one electricity retailer in South Australia linked to the protections of the ombudsman scheme.

The Hon. P. HOLLOWAY: Obviously, customers that are using 750 megawatt hours a year or more are very large consumers of electricity, and I guess that in the marketplace they have some substance, if I can call it that. To suggest that the existence of the jurisdiction of an ombudsman in such cases might determine behaviour is probably a little fanciful, given the significance of customers of this size.

The Hon. R.I. LUCAS: To move on to clause 5 of the Electricity (Miscellaneous) Amendment Bill, this provision gives the planning council power to require information. My understanding is that the licence conditions already require generation, transmission and distribution licensees to provide information to the planning council as required. Therefore, I am assuming that this provision is to require information from bodies or individuals that are not licensees that might have information that the planning council requires. If my assumption is correct, will the minister indicate what non-licensed bodies or individuals are envisaged by the government to come within the ambit of this new power for the planning council?

The Hon. P. HOLLOWAY: I understand that at present the only way that the planning council could enforce the provision is by licence condition or removal of a licence. I guess we are talking of a pretty severe penalty threshold, and that is the point that we are making here. What the amendment does is to allow a fine, which is more appropriate, perhaps, to give the planning council a more appropriate penalty in relation to enforcing the information, rather than the very severe penalty that would exist by removal of a licence.

The Hon. R.I. LUCAS: If the minister is arguing that this provision is only to provide a more appropriate penalty, is he therefore indicating that it is not the intention of the government to require the planning council to seek information using this power from anybody other than a licensed electricity entity?

The Hon. P. HOLLOWAY: In general terms, this power is determined by people who would reasonably be expected to have the information, which are the relevant electricity entities. If one thought long and hard enough, one might be able to construct a scenario where it might apply to some other person. Clearly, in most reasonable situations that one could envisage, this would refer to the electricity entities.

The Hon. R.I. LUCAS: I am seeking simple clarification. Does this power give the planning council the capacity to require information from bodies other than licensed electricity entities? As I said at the outset, my reading was that it did. The minister came back, did not answer but said that the purpose of this amendment was really only to give a reasonable penalty to the Electricity Planning Council. The question still remains and I do not need to repeat it.

The Hon. P. HOLLOWAY: In theory it does broaden that. In the situations that one would normally envisage, the people who would be required to give power to the planning council would be licensed entities. That is what one would expect in the vast majority of cases, but in theory it could be other people if for some reason they had information that was reasonably required by the planning council.

The Hon. R.I. LUCAS: I can think of a significant number of other bodies and individuals that might have information: consultants, advisers and a range of other groups who would work with electricity companies and entities who would not be licensed but who might have information that the planning council required. If the minister is confirming that this gives the planning council power by written notice to require it to hand over information, as I understand he has just confirmed, I put on the record that it is not just licensed entities that would have information of interest to the planning council. There are many others, other than licensed entities, who would have information of interest to the planning council. This power could be applied to them with a penalty of $20 000 if they did not provide the information.

The Hon. P. HOLLOWAY: The relevant part of the clause is that it is information in a person's possession that the planning council reasonably requires for the performance of the planning council's functions under this or any other act. I guess one could construct all sorts of scenarios, but the practice will be that the information that the planning council will require in most, if not all, situations will be to reasonably fulfil the performance of the planning council's functions and will be in the hands of those licensed entities.

The Hon. R.I. LUCAS: I can give the example of TransEnergie, which is successfully bringing to conclusion the major interconnector MurrayLink through the Riverland. Prior to its being a licensed entity—at least licensed in South Australia on my recollection—the planning council at the time might have been interested in the information that TransEnergie had compiled for a variety of reasons. I repeat that a number of companies or individuals may have information; it may be that, as in the case of TransEnergie, they may become a licensed entity eventually, but this would appear to give power to the planning council prior to their being a licensed entity and requiring information of them.

In relation to the insertion of new section 6O in the Electricity (Miscellaneous) Amendment Bill, namely, the obligation to preserve confidentiality, one of the problems with the planning council, as the former minister responsible for the planning council, is the varied views as to who should be on the planning council. There is the problem of wanting people who know something about the situation and, equally, the problem of potential conflicts of interest and people knowing something about someone else's business. It is an ongoing, and almost unresolvable, issue in relation to the selection of appropriate people for the planning council.

In relation to new section 6O, dealing with an obligation to preserve confidentiality of information, a point of view has been put to me that the question ought to be asked whether or not this would impede the planning council in the performance of its functions, that is, reporting on forecast loads, the performance of future capacity and reliability of the power system. I am assuming the answer is that it would not because these judgments would be taken by the planning council on an aggregated basis rather than an individual basis of, say, NRG being the Port Augusta power station operator or TXU being the Torrens Island power station operator. My view is that probably this concern is not something about which we have to worry too much. My question is: has this issue been raised with the planning council? Is it comfortable that this obligation to preserve confidentiality clause will not impede its capacity to perform its functions?

The Hon. P. HOLLOWAY: The government did consult with the planning council in relation to this matter and it is comfortable with this arrangement.

The Hon. R.I. LUCAS: I refer the minister and his team to section 91 of the Electricity Act, 'Statutory declarations'. Section 91 provides:

> If a person is required by or under this act to furnish information to the Industry Regulator or Technical Regulator. . . may require that the information be verified by statutory declaration. . .

My question is: why would the provision not be amended in relation to the planning council? The planning council will require information. Why should section 91 not be amended in the same way as the existing provisions for the Industry Regulator and the Technical Regulator may require that information by statutory declaration? It would seem to be a sensible amendment to the regulatory oversight that the planning council should also be given the option of a statutory declaration under section 91 of the Electricity Act.

The Hon. P. HOLLOWAY: I am advised that the sort of information that is required to be provided to the Industry Regulator or Technical Regulator will not be different from that provided by the council—a different nature.

The Hon. R.I. LUCAS: I invite the minister to reflect on this issue. I do not think it will significantly impact on the government's proposed regulatory regime, but can I rebut the point that he has just made? The planning council is critical in terms of future planning needs for the state's power system, and information that it requires should be capable, if so required by the planning council, to be provided by way of statutory declaration so that the planning council can be assured of the act—

The Hon. P. HOLLOWAY: I can short-circuit that and say that we will look at it and, if it needs a consequential amendment, we will seek to do that before we come back.

The Hon. R.I. LUCAS: I thank the minister. In relation to one of the other issues I raised last evening in relation to coordination agreements and whether or not the Essential Services Commission shall have the power to direct a recalcitrant retailer to enter into such an agreement, page 5 of the minister's reply states:

> In relation to the coordination agreement question I can advise that:
>
> The use of the word 'direct' might have led to this misinterpretation. The intent of the provision is that this is a matter that is to be determined by the Commission, that is, if after 90 days the two parties fail to negotiate a commercial coordination agreement, the Commission can deem a contract to exist between the two parties.

The terms and conditions of this contract would be binding on both parties. Therefore deeming it to exist and making a 'direction' on both parties is unnecessary. Once the deemed agreement is in place, it is up to the two parties to negotiate any further changes in their own time frame. Clearly the ESC would be empowered to vary such a contract at a future time by dint of section 23(5b). The retailer or distributor can continue to seek to vary the contract through commercial negotiation at any time.

The purpose of the provision is to ensure that a basic coordination agreement is in place in a timely manner and not to impede the commercial negotiations between the parties.

I thank the minister for that response. I turn to clause 9 of the Electricity (Miscellaneous) Amendment Bill. Will the minister indicate whether generators in South Australia were consulted about the proposed changes to the licensed conditions? If so, what were the responses from the generators to the proposed changes?

The Hon. P. HOLLOWAY: I am advised that the changes in this particular section were part of the government's policy before the election. Obviously the electricity generators were certainly well aware of that policy and there was certainly ample opportunity in discussions with them to raise matters. They were not consulted during the drafting of the bill, but the matter had been widely canvassed through the government's policy position before that.

The Hon. R.I. LUCAS: I assume, therefore, that the answer is the same in relation to clause 10 regarding the transmission and distribution companies, and clause 11 regarding the retail companies in South Australia. Were they consulted prior to the amendments that related to their operations?

The Hon. P. HOLLOWAY: Some of the provisions are just drafting changes, and those which related to the Ombudsman's scheme were part of a discussion paper that was obviously fairly widely circulated in the industry.

The Hon. R.I. LUCAS: I find it extraordinary. Sadly—and it is becoming commonplace with debate in other bills such as shop trading hours (but I will not go into that this evening)—the minister has just said that the key electricity companies in South Australia—in generation, transmission, distribution and retailing—were not consulted at all about this legislation prior to its introduction—

The Hon. P. Holloway: They were well aware of the policy of the government and they had plenty of opportunity to have input.

The Hon. R.I. LUCAS: As I demonstrated last evening, anyone who tried to follow the government's policies would not know where they were going—and neither did you last night, when questions were put to you about whether you would implement the policy. The record will show that, of the many commitments that were made by the government prior to the election, all with the exception of two were not implemented in the package of bills that we have before us. If anyone was to try to follow the Labor Party's policy commitments, they would well and truly get lost as, indeed, did the leader of the government and other ministers on this package. It is no defence to be saying, 'They could have read our policies and made up their own minds.' This government's refusal to consult with key groups impacted by legislation it is introducing (even if in the end they disagree with aspects of that legislation) is sadly symptomatic of the way in which it and, in particular, its ministers are treating key industry and consumer groups.

The Hon. Diana Laidlaw: Hardly an honest and open government.

The Hon. R.I. LUCAS: As my colleague says, hardly an open and honest government.

The Hon. R.K. SNEATH: I rise on a point of order. The Leader of the Opposition is making statements, again, off the track, and he is certainly not treating these bills as they should be treated in committee.

The CHAIRMAN: The whole debate has been one of exceptional circumstances, but there is an agreement between the Leader of the Opposition and the Leader of the Government that we are going to proceed along these lines. Unless anyone makes offensive remarks, I am afraid that the debate will be drawn out. I am hopeful that we are getting close to the end of tonight's proceedings.

The Hon. R.I. LUCAS: Thank you, Mr Chairman. From the opposition's viewpoint, we are seeking to expedite the government's program. It is not the opposition that is sick and missing in action. We are happy to try to expedite the government's program.

The Hon. R.K. Sneath interjecting:

The Hon. R.I. LUCAS: That is what we are doing. I will not repeat what I have just indicated. Sadly, it is symptomatic of the government's attitude to consultation with key industry and consumer groups on important legislation such as the electricity and essential services commission bills that are before the parliament at the moment.

In relation to the operations of clause 10 of the Electricity (Miscellaneous) Amendment Bill, as I understand the new framework that has been implemented, when taken in conjunction with other changed provisions, there is the capacity for the Essential Services Commission to implement fines of up to $1 million should there be breaches of reliability and maintenance conditions. I seek clarification of whether that is a correct interpretation of clause 10, which amends section 23 of the Electricity Act, and the others.

The Hon. P. HOLLOWAY: Breach of a licence condition can attract a fine of up to $1 million.

The Hon. R.I. LUCAS: The former government was the first government to introduce a performance incentive scheme for the distribution company. Under that scheme, because of the problems with reliability experienced two years ago in the hottest summer in 96 years, my recollection is that the Independent Industry Regulator used that scheme, and the impact was a penalty of up to possibly three-quarters of a million dollars, or something of that order. Can the minister indicate how that scheme and the penalties under clause 10 might operate? In other words, should there be lack of performance, can the company be penalised under the performance incentive scheme and also penalised up to $1 million under this scheme for what in essence would be the same poor performance?

The Hon. P. HOLLOWAY: Technically that might be the case, but I think that we all know the principle of double jeopardy in terms of penalties, and I need say no more than that.

The Hon. R.I. LUCAS: I assume from what the minister is saying that there would not be a second penalty.

The Hon. P. HOLLOWAY: Technically there could be, but I would imagine that it would be up to the prosecutor. I am no lawyer, either, but I would assume that, under that concept of double jeopardy, that would be unlikely to happen. Prosecutorial discretion, I am sure, would be exercised.

The Hon. R.I. LUCAS: In relation to the distribution company, just to take that as an example, what would be the process in relation to, say, a penalty under the maximum penalty of $1 million? Is it that they have submitted a plan,

for example, in relation to reliability and maintenance about the expenditure of moneys and that they did not follow that through and that they might therefore be penalised for that; or is it that, for example, the average minutes lost per customer in blackouts is higher than a set level—which is, in essence, the measure in the performance incentive scheme—that is (I am again working from memory), the average power loss per customer has been 115 to 120 minute blackouts, and if it is worse than that there will be certain penalties?

The Hon. P. HOLLOWAY: I am advised that it is not intended that any plan submitted under that provision would conflict with the requirements. I am advised that the content of the plans would be determined by regulation. It is not intended that they would conflict.

The Hon. R.I. LUCAS: To help me to understand, is the minister saying that a plan would be determined by regulation for, let us say, the distribution company, which would say that it had to undertake certain maintenance and spend a certain amount of money within a 12-month period? Is that a reasonable description of the sort of plan that is intended to be approved for a distribution company?

The Hon. P. HOLLOWAY: All I can say is that it is not the government's intention to duplicate any plans currently in place.

The Hon. R.I. LUCAS: I think it is a reasonable question. In essence, an existing performance incentive scheme governs issues that are important to consumers, such as how well the distribution company has performed and simple measures such as the average minutes lost per customer; and, if it does not meet a certain standard, it gets penalised. It lost money two years ago; it was penalised two years ago because it was the hottest summer in 96 years, transformers blew their fuses all over the place and the distribution company was penalised. So, an existing plan already handles that. If it was not the intention to duplicate those plans, I want to know what is in this plan.

We have a safety and technical management plan which already has to be implemented, and you are adding to that the requirement for a reliability and maintenance plan. It is relatively simple and reasonable question to ask what you will require. You did not consult the companies. Some of the companies have advised me that they are not aware of the detail in relation to this. It is a reasonable question to ask what the government is intending. The minister said we should have read their policy and that everyone knew. That is not the case. There is no detail in the policy as to what is intended to be in these plans. Given that it is already complying with all these requirements in the performance incentive scheme and is already being penalised up to $1 million in relation to that, it is a reasonable question for a distribution company to ask what is intended to be put into this plan subject to which they face penalties of up to $1 million.

The Hon. P. HOLLOWAY: As the leader himself says, existing plans are in place. It is my understanding that the government does not duplicate those. This provides us with the ability to fill in any gaps that we may find. It simply gives flexibility to the provision if other standards are required.

The Hon. R.I. LUCAS: The minister is saying that what goes into this plan is a decision for the government in executive council and not the Regulator. So, is he now saying that what goes into the safety, reliability, maintenance and technical management plan, which will be required as a licence provision, is a decision for the government?

The Hon. P. HOLLOWAY: I advise that the Office of the Technical Regulator sets the plan through regulation.

The Hon. R.I. LUCAS: That is the third answer we have had in two minutes. First the minister says it is the Industry Regulator, then he says it is the government and now he says it is the Office of the Technical Regulator. I am hoping that the Office of the Technical Regulator is the final answer as to who sets out what is in this plan. Assuming that the final and settled answer is that it is the Office of the Technical Regulator, has this government or the Office of the Technical Regulator determined what is to go into these plans? Does the government, for example, have the right to change—given that it must be the one, I assume, that issues the regulation—the recommendations of the Office of Technical Regulator in relation to what goes into these plans?

The Hon. P. HOLLOWAY: There are no amendments to change the Office of Technical Regulator Act. So, what stands would be the same as it was when the Leader of the Opposition introduced this bill three years ago.

The Hon. R.I. LUCAS: The former government did not require reliability and maintenance to be part of these plans: this is the new government's policy in relation to reliability and maintenance. The Leader of the Government has said that he will not replicate the existing plans. We are trying to establish whether this is really just a public relations facade. This particular provision either does nothing because there are already existing plans; or, if it is intended to do something, a reasonable question is: what is it intended to do? What is it intended to cover? I will make the question even more explicit: is it the intention of the government or the Technical Regulator to require maintenance schedules to be approved in the plans, as well as explicit commitments in terms of expenditure?

The Hon. P. HOLLOWAY: I understand that currently, with respect to the generators, there is no requirement for reliability and maintenance. That is one area.

The Hon. R.I. LUCAS: One area in what?

The Hon. P. HOLLOWAY: It is one area in which there is currently a deficiency. It is one area where the new provisions might apply.

The Hon. R.I. LUCAS: The minister is saying that the Technical Regulator will now be issuing specific requirements of reliability and maintenance schedules for generators in South Australia under these provisions.

The Hon. P. HOLLOWAY: He has that capacity and, I am sure if he did, he would consult.

The Hon. R.I. LUCAS: If he is like the government he will not consult: he will say, 'You should have been aware of this and let the operator beware.'

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Well, he does not have a very good role model to follow in relation to consultation. That concludes most of the detailed questions with respect to the clauses. When the other members return to the debate we can go through the bill clause by clause. I might raise the odd question but that is the bulk of them. Again, I thank the minister and his advisers for the five pages of information they provided in response to the questions I raised last evening. Can I very quickly clarify two or three issues of detail? It will not take long, I can assure the committee.

Does the advice provided by the minister confirm the difference between the calculations—the load-weighted average and the time-weighted average—for electricity prices? Can the minister confirm that load weighted and volume weighted averages—volume weighted being the definition that NECA's web site confirms—are one and the same?

The Hon. P. HOLLOWAY: I am advised that there are only time weighted or load weighted figures.

The Hon. R.I. LUCAS: For example, if I take the most recent pool prices for each of the states pulled off the NECA website provided by ESAA (Electricity Supply Association of Australia), the South Australian pool price for the 52 weeks up to 10 August this year had a time weighted average price of $34.04 for South Australia and a volume weighted price of $36.54. I am just confirming that this volume weighted price is exactly the same measure as the load weighted price.

The Hon. P. HOLLOWAY: I am advised that perhaps we should have some technical advice on that. We believe it is the case, but I would have to make that subject to some sort of confirmation from a technical expert. Perhaps we can do that.

The Hon. R.I. LUCAS: I will not hold up the committee. I will provide this information to the minister's advisers. I am fairly sure, given the way this is structured, that load weighted and volume weighted must be just different ways of describing the same series.

The Hon. P. HOLLOWAY: That is our understanding. We can confirm that.

The Hon. R.I. LUCAS: I also thank the minister for the information provided in relation to the supply issues. I note that the minister has indicated that IES has been retained by the Industry Regulator together with Charles River Associates to provide advice on pricing. Having looked at the information provided by the minister which indicates that Murraylink is about to be operational, that the 450 megawatts in Victoria at Edison Mission and AGL will be operational by the end of this year, it appears as though the 220 megawatts that was listed by IES at AGL and Origin South Australia might be more than that; that is 270 or 280 megawatts, so that is exceeded. The 400 megawatts Snowy to Victoria interconnector is operational this year, but it looks like the expected 420 megawatts in South Australia will be down to about 270 megawatts at peaking capacity at AGL and Origin.

On the basis of the advice provided to the former government with respect to the supply scenario that IES has looked at in terms of the variety of scenarios, we are looking at the moment at a supply scenario of between medium SA capacity outlook, which was 220 megawatts of peaking in South Australia plus Murraylink, and high SA capacity outlook, which was 420 megawatts in South Australia and Murraylink, and 400 megawatts of SNOVIC. It would seem that the scenario would be somewhere between medium and high SA capacity. Therefore, given the table that the minister incorporated in *Hansard* (and I do not have it with me), I ask whether the minister is prepared to indicate, based on advice, if that is a reasonable assumption—that on the IES scenarios we are somewhere between the medium and high capacity judgments that they put to the former government.

The Hon. P. HOLLOWAY: I will have to take that question on notice. It is something on which we will have to check. I do not think we have the IES report here, and I am not sure whether the advisers have that in their memory. So we will come back to that question. If the leader has finished, I thank the advisers, John Robinson and Mark Hancock, for their assistance. Again, I make the point that this is not the ideal way in which we would normally deal with the committee stage.

It is unfortunate that we have had to deal with everything under clause 1. It would have been much more preferable if we had sequentially worked through most of the debate in the committee stage, as is normally done with the clauses. It would certainly have made it easier for me and the advisers for it to have been dealt with in that way. Unfortunately, we have had to do it this way because of the absence of a number of other members of the council through illness and other reasons. Again, I thank the council for its forbearance and I thank the advisers for coping so well in very difficult circumstances that were outside the control of the council.

Progress reported; committee to sit again.

APPROPRIATION BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 811.)

The Hon. R.K. SNEATH: I find myself starting this contribution by agreeing with something the Leader of the Opposition in this council said in his speech on the Appropriation Bill. He said that health and education were to be the claimed priorities of this government but that those members of the community who believed the pledge card (which the Leader of the Opposition keeps close to his heart, I understand) had been sold a pup.

I believe that 'pup' may be appropriate for this budget because a pup, of course, grows into a working dog, and this budget is certainly a working dog budget. We all know that a working dog is a man's best friend and, if you have studied this budget, I am sure you will have no problem at all seeing that this budget, in fact, is a man and woman's best friend.

I congratulate the Treasurer on his first budget. It has been a long time since a Treasurer has got it right, but the Treasurer of this government got it right the first time—from its colour to its contents.

The Hon. T.J. Stephens: Mr Acting President, it's scandalous!

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.K. SNEATH: The Treasurer says:

> This budget delivers relief to health, education and infrastructure, not soccer stadiums, rose gardens or white elephants. Not only that, this budget results in a surplus of $92 million, which is not a one-off surplus. It will be followed by surpluses of $98 million, $48 million and $83 million over the four years. South Australians must be shaking their head at the previous Liberal government's priorities.

It put massive amounts of money into white elephants while health, education and the other important issues affecting South Australians were being ignored. South Australians have been crying out for help for the past eight years. They have been crying out for improved health services, enhanced education facilities for their children and a better way of life.

The last government turned a deaf ear to what South Australians wanted. It looked after a few, caved in to pressure and struck deals: deals that saw soccer stadiums built and privately owned casinos given exemptions from tax rises for 15 years, resulting in less funds for important South Australian issues. It also struck deals with private enterprise, such as the ferry which operates between Kangaroo Island and the mainland.

In her contribution to the Appropriation Bill, the Hon. Diana Laidlaw raised the issue of Transport SA and the Far North roads and Labor's apparent lack of concern for country communities. On behalf of all those people who live and travel to Kangaroo Island, I would like to raise some grave concerns about the deal that was struck with the Sealink ferry operators. It costs the local people of Kangaroo Island a large amount of money to travel back and forth to the mainland for

holidays, business and schooling. The expense is also a deterrent for tourists visiting the island.

I understand that there is a syndicate that would like to start a ferry service that would cut the cost to the islanders and tourists quite significantly. However, because of a deal that was put in place when the Hon. Diana Laidlaw was minister—a deal that I understand grants Sealink sole access to the wharves for 25 years—this syndicate is unable to do business. This is a disgrace and certainly something that the Kangaroo Island community is up in arms about. I thought the Hon. Diana Laidlaw was a supporter of private enterprise and of competition. I wonder what the Hon. Terry Stephens would think about a deal that disallows country people access to cheaper fares. The Hon. Diana Laidlaw must have already forgotten the effect some of her decisions have had on country people.

Let us look at what is left of the Department of Road Transport operations in country areas. There used to be fully operated depots in Mount Gambier, Millicent, Penola, Naracoorte, Lucindale, Kingston, Bordertown, Keith, Coonalpyn, Meningie and Tailem Bend—and that is just in the South-East. Now and during the reign of the cut and slash of the Hon. Diana Laidlaw, as minister for transport, most of these towns have seen their road gangs and maintenance gangs disappear. Those which have not disappeared now have only skeleton crews. This has happened all over the state, not just in the South-East. We have seen the wonderful Department of Road Transport construction gangs totally disappear, leaving behind only the monuments that they built as the proof of their skills. We have seen a halving—or more—of metropolitan department maintenance gangs since the Hon. Diana Laidlaw's reign of cut and slash. We have also seen the Contracts Consultative Committee abolished: it was made up of industry members and designed to keep an eye on contractors and put a case forward for Department of Road Transport full-time employees.

While attacking me for not raising with the current minister issues with regard to the road gangs in the north of the state, the Hon. Diana Laidlaw mentioned the ferries and how we negotiated various issues when I was secretary of the Australian Workers Union. It is true that we did, on a number of occasions, negotiate the outsourcing of ferry operations. It was a success until the past couple of years when the Hon. Diana Laidlaw allowed the department to call for tenders without award protection. By not having an award as security for the workers, as was agreed to in the first negotiations, contractors were allowed to undercut many of the original successful tenderers, resulting in ex-departmental workers losing their jobs.

I would also like to take this opportunity to express my disappointment in the Hon. Diana Laidlaw's personal references to me in her speech. She implied that I am sitting in this house putting on weight and not helping the members of the AWU in the north. I will always assist members of the AWU, as I have done on a number of occasions, and all working-class people in their ongoing battle for fair and reasonable wages and conditions.

I am sure that the Hon. Diana Laidlaw is an admirer of Sir Winston Churchill, but I would be interested to know whether the honourable member is aware—and she might want to let us know—of Sir Winston Churchill's response to an opposition member who remarked on his being overweight. Unless the member would like me to tell her, I will leave it for her to find out.

The PRESIDENT: I am sure the Hon. Mr Sneath would not be crass enough to go into that.

The Hon. R.K. SNEATH: I certainly will not, but I will if the honourable member would like me to inform her what the Hon. Mr Churchill said in response to a suggestion and comment similar to that which the Hon. Diana Laidlaw made to me during her speech. I do not look upon the Hon. Diana Laidlaw in the same way as Sir Winston Churchill looked upon the person who called him overweight, but I encourage her to look up his response, because I would not put those sentiments in *Hansard*.

The Hon. R.I. Lucas: What's this got to do with appropriation?

The Hon. R.K. SNEATH: It is a reply to the contribution that the Hon. Diana Laidlaw made to the Appropriation Bill. The Hon. Diana Laidlaw also called me lazy. I can assure the honourable member—and I hope members listen to this because I know that a few old shearers will hear about it—that an old shearer does not have a lazy bone in his body: only aching ones, something that the honourable member could only dream of. I am also sure that the honourable member is aware that shearers are seldom blessed with having a silver spoon in their mouth.

It surprises me that the previous government would have the audacity to accuse the new Labor government of neglecting the bush in this budget, especially after the Hon. Diana Laidlaw ran it down as she did in the Department of Transport. The jobs of workers on the northern road might have been saved if some of the transport budget money had not disappeared into the arts. I will read an answer by the Hon. Mr Foley to a question asked in the other house by the member for Torrens:

> . . . the former minister for the arts would have funding shortfalls in the arts department that she met by transferring money from the transport portfolio. Money that I assume was there for roads. . . The Premier will have to be patient, because I am going to walk from the smallest to the largest. I am advised that $18 000 was transferred from the Department of Transport's budget to the arts department to pay for a contemporary music officer for Arts SA to attend a contemporary music festival. The sum of $45 000 was transferred to the [South Australian] Museum for e-glazing of the Natural Science Building. I understand that the former government transferred $60 000—

Members interjecting:

The Hon. R.K. SNEATH: Don't they respond well when they find out they are not so honest!

The PRESIDENT: Order! The Hon. Diana Laidlaw will come to order. Members of Her Majesty's loyal opposition will come to order when a member is debating a matter in an orderly fashion.

The Hon. R.K. SNEATH: Thank you for your protection, Mr President.

The Hon. T.J. Stephens interjecting:

The PRESIDENT: The Hon. Mr Stephens should not interject in his place, let alone out of his place.

The Hon. R.K. SNEATH: The former government transferred $60 000 to upgrade the sound system at the Festival Centre for the screening of films as part of the 2002 Adelaide Festival. A further $100 000 was used to complete the funding for work in the State Library and associated works, and a further $100 000 was used to complete funding for the Cabaret Festival.

Mr Foley also said—and this is important—that the former minister for the arts took $110 000 from the transport portfolio to purchase the Tiffany windows from Prince Alfred College. She bought the Tiffany windows from Prince Alfred

College for $110 000 with Department of Transport money. I suppose they were sent up north for the workers to look through the windows! It was their money that was used to purchase them so they should have gone up north. Perhaps they are in the potholes up there! I have been told that these important windows are exquisite, but they were purchased with money from the Department of Transport budget.

The Adelaide Festival Trust received $500 000 as working capital. Boy! More workers could have been employed up north with all that money if it had not been transferred to the arts. Actually, they could have all been trained as artists so that they could sketch the Flinders Ranges if all this transport money had not been spent elsewhere.

The Hon. Diana Laidlaw: They were great singers.

The Hon. R.K. SNEATH: They would have to be. Perhaps some money could have been spent on voice training or something. This is money that should have gone to bush roads, but it went to the arts instead, although none to bush art. None of the money for country roads transferred from the transport portfolio went to bush art. What a shocker! In his speech, the Hon. Terry Stephens touched on the honest, hardworking hotel families who borrowed money to renovate their businesses and the effect the pokies tax will have on them. He said that, unless these families purchase huge businesses with a pokies turnover in the state's top percentage, there would be no adverse effect on them. In fact, a majority of country hoteliers will obtain a benefit from this budget. However, I do not recall any of this mentioned by members opposite—people who say they care about the country. They did not once mention that in the budget the Treasurer provided a benefit to country hoteliers. However, I am sure they are out there telling the small country hoteliers that the new Labor government has passed savings on to them in this budget.

The Hon. Diana Laidlaw: Excuse me, but have you finished with me, because I wouldn't want not to be here—

The Hon. R.K. SNEATH: I don't have much longer to go, so don't miss any of it.

Members interjecting:

The PRESIDENT: The honourable member will return to his contribution.

The Hon. R.K. SNEATH: For an opposition that goes crook at this government for not looking after the bush, that is unbelievable. The opposition in government knew that the bush represented safe seats for them. They absolutely ignored the bush, because they knew they were safe seats. In government—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.K. SNEATH: —they sold the TAB.

The Hon. T.J. Stephens interjecting:

The PRESIDENT: The Leader of the Opposition should put a guiding hand on his apprentice's shoulder—or across his throat, one of the two.

The Hon. R.K. SNEATH: I was wrong when I said the opposition sold the TAB: they gave it away. If you read the papers, the Queensland TAB has returned a record profit.

Regarding electricity, they say that they will look after the bush. The bush has been given enormous rises in the price of electricity. With this private provider of electricity, people in the bush will be those who suffer. Opposition members support their federal mates on the sale of Telstra: they want to sell Telstra and, again, this will affect the bush. They do not care whether the bush gets a telephone or any other services. As long as their big corporate mates in the city get these services, they do not care because they know they are safe in the bush. Well, they might not be safe for much longer. They have taken these seats for granted and the bush has started to wake up. I spend a lot of time in the bush, and people tell me that they are starting to wake up to this mob. Soon they will start to lose some of these bush seats.

This is truly a budget of which government members can be proud. This budget was prepared by the government in extremely difficult circumstances because of the large black hole left by the previous government, which they continually deny. Unfortunately, cuts had to be made in respect of some of the smaller issues raised by opposition members, but if we look at the contributions made by members opposite we see that those small cuts to small projects were necessary because the last government did not make allowances for continued funding in its forward estimates. There is very little that the opposition has been able to condemn in this budget, and that speaks volumes for the budget. In fact, the whingeing, whining, moaning, nitpicking opposition are frustrated at being unable to find faults in this budget.

In the contributions of the Hon. Caroline Schaefer, the Hon. Terry Stephens, the Hon. Mr Ridgway, the Hon. Diana Laidlaw and even the Leader of the Opposition himself there were very few criticisms. I think the Hon. Diana Laidlaw's contribution went for four or five pages and all she could criticise was a few cuts in the northern roadworks program—very little else. Even the Hon. Robert Lucas found it hard to criticise this budget, and that is pretty remarkable. Once again, I congratulate the Treasurer on a marvellous budget. I am sure that the colours will be flying high at the end of September, and we could probably put the budget papers themselves up the flagpole. I fully support the bill.

The Hon. G.E. GAGO secured the adjournment of the debate.

STAMP DUTIES (RENTAL BUSINESS AND CONVEYANCE RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 August. Page 694.)

The Hon. R.I. LUCAS (Leader of the Opposition): The opposition in the House of Assembly and the Legislative Council express their strong opposition to this broken promise which is encapsulated in the bill. However, consistent with the position that has been adopted in past years, as this is part of the government's budget measures, the opposition will not vote against the particular provisions in the bill.

That being said, I indicate in the strongest possible terms that the opposition believes this is a fundamental breach of a specific election commitment given by Mr Rann and Mr Foley in the period prior to and during the election campaign. It was quite clear that the Labor Party in opposition had promised that it would not increase existing taxes and would not introduce new taxes. I note that the member for West Torrens, who is affectionately known to us all as the welsher, although I will not refer to him in those terms—

The PRESIDENT: Order! The Leader of the Opposition knows that he should not do that. He should withdraw that.

The Hon. R.I. LUCAS: I would certainly withdraw referring to the member for West Torrens as the welsher. He knows—

The PRESIDENT: Unqualified withdrawal would be appropriate, I believe.

The Hon. R.I. LUCAS: Absolutely unqualified.

The PRESIDENT: Continue with your speech.

The Hon. R.I. LUCAS: He knows that he made a bet and did not pay up.

The PRESIDENT: Order! The honourable member is defying the chair at the moment.

The Hon. R.I. LUCAS: No, I am not calling him a welsher.

The PRESIDENT: Order! You are defying my ruling at the moment.

The Hon. R.I. LUCAS: I'm just defining his sin. The member for West Torrens or Torrens in another place—

The Hon. T.J. Stephens: The one who owes you 50 bucks?

The Hon. R.I. LUCAS: That's the one.

The Hon. T.G. Roberts: Not the member for Torrens.

The Hon. R.I. LUCAS: West Torrens. What's he called? The member for West Torrens. I know what he's called but what's his electorate? The member for West Torrens in another place sought to defend the government and the Treasurer, in particular, by referring to an *Advertiser* story of some 12 months ago that had a headline to the effect that Mr Foley would not rule out tax increases. I remind the member for West Torrens that, soon after that, the then Leader of the Opposition and the then shadow treasurer came out with explicit commitments—and headlines in the *Advertiser* in the case of the Leader of the Opposition—that indicated that there would be no increase in taxes and no new taxes under any elected Labor government.

So, the member for West Torrens was deceptive, if I am allowed to use that word about him—and it is a particularly understated description of the member's behaviour—when he referred to that headline in the *Advertiser* and then ruled out dozens of other statements, commitments and promises leading up to the specific promise included in the Labor costings document. Anyone who heard the contribution of the member for West Torrens would understand why my opinion of the honourable member remains at the level where it has been for a number of years. It certainly has not moved upwards as a result of his contribution during the debate on the budget measures.

This is a clear, explicit, broken promise. That is not an issue that appears to be of concern to the current Premier and Treasurer, even though we are about to debate in this place three supposed bills—Public Finance and Audit Act amendments and two accountability measures—that allegedly were to usher in a new era of openness, honesty and accountability in relation to budget matters and matters of governance. It is clear that this government, this Premier and this Treasurer will not be bound by any promises that they have given.

When we come to debate the gaming machines legislation we will place on record explicit written guarantees that the Treasurer gave. He has said that at least he had the moral fibre to break his promises and why did the Leader of the Opposition (Mr Kerin) not have the moral fibre to break his promises as well?

In relation to debates on stamp duties and gaming machines, it has become a joke in business and community circles when dealing with the Treasurer and the Premier, when people have been asked, 'Would you like to get that in writing?', the business and community groups have said, 'We are not really sure that it is worthwhile getting that undertaking in writing from this government, this Treasurer and this Premier—just ask the hoteliers what a commitment, a guarantee in writing, from the Treasurer means in relation to gaming tax rates.'

It is sad to see how soon leading industry groups and commentators have adopted that cynical attitude in relation to this Treasurer and Premier in respect of the worth of the promises and guarantees they have given. Those people are saying that it is worthless getting something verbal or in writing from this Premier and this Treasurer. You only have to talk to the hoteliers to know that a written guarantee means nothing to this Treasurer and to this Premier. We will have more of that when we come to the gaming machine debate, but this debate on stamp duties is in exactly the same context.

We see a significant increase in stamp duties on property conveyances and the introduction of a new rental duty arrangement in relation to commercial equipment hire using hire purchase arrangements. To deal quickly with the second issue, the Australian Finance Conference and the Australian Equipment Lessors Association have lobbied for many years for what they argued was equity in relation to commercial equipment hire through hire purchase as opposed to commercial equipment hire through lease finance. They argue, with some justification, that it was inequitable that one form of commercial hire attracted rental duty and another form did not.

I assure members that the two groups—the Australian Finance Conference and the Australian Equipment Lessors Association—were strongly arguing that any change for equity purposes ought to be done in a revenue neutral way. The former government was looking at various options of being able to introduce such a change in a revenue neutral way. It is possible to introduce equity in relation to both forms of commercial equipment hire but to do it in a revenue neutral way, that is, by striking a different rental duty rate and recouping approximately the same amount of revenue, but nevertheless having equity in respect of commercial equipment hire, whether through hire purchase or lease finance.

So, it is disingenuous at best for the Treasurer and the government apologists on the backbench to argue that this was being supported by industry lobby groups and associations. Yes, they were looking for equity, but they were not looking for a double slug but for some form of revenue neutral approach. Clearly this is a new duty, a new tax, and clearly and explicitly a broken promise.

I turn to the other aspect of the bill in relation to the stamp duty on property conveyances. I have been intrigued at the defences being mounted, under increasing attack from some talk-back callers, by the Premier and Treasurer in defending their budget by saying, broadly, that these were carefully targeted taxation measures which only hit the pokie barons and the rich and wealthy; and the impact of stamp duty on conveyances was targeted at only those who could afford to pay it.

The clear inference is that anyone who could afford to purchase a home of $200 000 or more was wealthy and had the capacity to be able to afford the heavy increase in stamp duty that was going to be whacked on them. I refer to one of many such statements made by the Premier and the Treasurer. On 5DN on 12 July, Mr Cordeaux put questions to Mr Foley on the issue of stamp duty on homes over $200 000. Mr Cordeaux said:

> They say that we've got the highest stamp duty in the country now. You might hit this industry on the head to the detriment—

Mr Foley said:

Don't have the highest. Victoria is still higher, around the mark of Western Australia or a little higher. We had a choice. Either hit people unfairly by increasing emergency services tax $100 a year, or we do a discretionary, carefully targeted, one-off small impost.

That is the sort of language and rhetoric that the Treasurer has been using.

The Hon. J.F. Stefani: The emergency services levy has already gone up 10 per cent.

The Hon. R.I. LUCAS: The Hon. Mr Stefani has highlighted an issue. It is intriguing to see the government through ministers criticising councils for taking advantage of property valuation increases through local council rates and not adjusting the rate in the dollar downwards, when indeed this government has done exactly the same in relation to the emergency services levy.

The Hon. J.F. Stefani: And sewer rates.

The Hon. R.I. LUCAS: Again, the Hon. Mr Stefani is accurate in his interjection. Let me return to the issue of stamp duty on property conveyances. The notion that has been perpetrated by the Premier and the Treasurer is that it will impact only on the wealthy. I want to give the lie to that by indicating, from the property price guide in the *Advertiser* this month, the suburbs where the median price value was greater than $200 000 in the June quarter this year. I hope that Labor members on the backbench can stay awake long enough to be aware that their constituents—working-class South Australian families—are about to be slugged by their government and its decisions in relation to property conveyances. Let me run through some of these suburbs: Mile End, the median value is $238 000 in the last quarter.

The Hon. J.F. Stefani: Is Salisbury in there?

The Hon. R.I. LUCAS: I will run through them: Semaphore, $241 000; Semaphore Park, $238 000; Semaphore South, $262 000; St Morris, $250 000; Mile End, $238 000; Magill, $215 000; Felixstow, $208 000; Forestville $225 000; Fulham, $255 000; Glandore, $241 000; Allenby Gardens, $262 000; Ashford, $250 000; Black Forest, $325 000; Broadview, $240 000; Clarence Park, $261 000; Clapham, $266 000; Croydon, $237 000; Cumberland Park, $275 000; Darlington, $225 000; Hectorville, $208 000; Hilton, $225 000; Kidman Park, $250 000; Panorama, $225 000; Payneham, $225 000; Payneham South $237 000; and Port Adelaide $225 000.

The Hon. J.F. Stefani: Isn't Port Adelaide the Treasurer's seat?

The Hon. R.I. LUCAS: It is the Treasurer's seat and I am pleased to see the Hon. Mr Sneath rising from slothful inactivity—

The PRESIDENT: Order!

The Hon. R.I. LUCAS: He was talking about the good burghers of Port Adelaide in his Appropriation Bill contribution. These are the people who will be whacked by his government's increase in stamp duty on property conveyances—

The Hon. J.F. Stefani interjecting:

The Hon. R.I. LUCAS: Looking after his constituents. The list continues: Prospect, $248 000; Thebarton, $216 000; Torrensville, $225 000; West Croydon, $216 000; Woodville—probably pretty close to the Attorney-General's seat—$264 000 median price value; Woodville Park, $216 000 median price value—

The Hon. P. Holloway: They like it so much, they won't be moving!

The Hon. R.I. LUCAS: The Leader of the Government makes light of it by saying, 'They like it so much, they won't be moving.' That is the sort of response from this arrogant and out of touch government. They will not be able to afford to move, these working class South Australian families. Thank goodness there is an opposition looking after the workers of South Australia and that it is prepared to stand up for the workers in Port Adelaide, Croydon, Thebarton, Mile End—

The Hon. Carmel Zollo interjecting:

The Hon. R.I. LUCAS: No, that is the point: the Hon. Carmel Zollo says, 'In Burnside'. We are not talking about where Labor members of the caucus live—and the Hon. Terry Roberts has a quiet chuckle. We are talking about where the workers in South Australia live and who this government is meant to represent. Thank goodness that there is an opposition party in this parliament prepared to speak up on behalf of the constituents and the workers in those suburbs that I have indicated.

What that indicates is that this Treasurer, this government, is sadly out of touch with the working class suburbs, the values within the suburbs that, in the past, have been represented by Labor. This was a mistake that Labor governments in New South Wales and Western Australia have made, this sort of class warfare mentality that, sadly, the Attorney-General and the Treasurer are afflicted with and have been for many years; that is, it is only the wealthy in Burnside, as the Hon. Carmel Zollo interjected, who will be impacted by these sorts of measures.

That is how out of touch members of this government's caucus are. I have listed the sorts of suburbs which have nothing to do with Burnside and which are a long way away from Burnside. These are the families and the suburbs that will be whacked by this government through this savage increase in stamp duty. I again indicate the Liberal Party's strong opposition to these measures and repeat again that it is only the Liberal Party that has been prepared to speak up on behalf of the workers of South Australia, working class families and unionists in South Australia, who live and work in these suburbs and areas. Thankfully, we do have a Liberal Party in opposition who is prepared to speak on behalf of these workers and families in South Australia.

The Hon. R.K. SNEATH secured the adjournment of the debate.

CONSTITUTION (PARLIAMENTARY SECRETARIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 831.)

The Hon. R.D. LAWSON: The Liberal opposition will support the bill. On my own behalf and that of my colleagues, I warmly congratulate the Hon. Carmel Zollo on her nomination to this position yet to be created. However, it is worthy of note that this measure is not introduced for the best of constitutional reasons but is being presented by the government in order to meet some arrangements apparently made by the Premier at the time of the appointment of the new Labor ministry.

It would appear that the government was unaware of the fact that the Constitution Act provides only for the appointment of a parliamentary secretary to the Premier, and one only. That was done deliberately in 1997, when the Constitution Act was amended to allow for the appointment of

ministers who were not also members of the Executive Council.

At that time, the Labor opposition savaged the government for that proposal, which was designed solely to facilitate the arrangements of the government in relation to the ministry at that time, and it did allow for the formalisation of the practice that had previously existed of appointing parliamentary secretaries.

Parliamentary secretaries were first appointed in Australia in the federal parliament first without any statutory force but subsequently as a result of the exercise of executive power. Subsequently, the practice was authorised by federal statute. Similarly in South Australia, parliamentary secretaries were appointed, and I think the Hon. Julian Stefani, who is present in the chamber, was appointed parliamentary secretary to the premier in 1993, an office which he filled with great distinction.

The Hon. J.F. Stefani: And without pay!

The Hon. R.D. LAWSON: And without pay, as he says. Notwithstanding the lack of pay, he worked with great diligence and distinction, and his contribution to the government, headed by Premier Dean Brown, was a singular contribution to our community. Subsequently, a number of other parliamentary secretaries were appointed—again unpaid—but without any formal statutory authorisation. In 1997, the Constitution Act was amended to facilitate, as I said, the appointment of one parliamentary secretary. Notwithstanding the circumstances in which the Premier found himself, in the present case, having to meet the exigencies of the internecine arrangements of the Australian Labor Party to accommodate all interests—

Members interjecting:

The Hon. R.D. LAWSON: It is not fiction; it is faction, Bob. Notwithstanding the fact that the motivation for this amendment is not the noble administration of the state but, rather, meeting some deal that the Premier and others had entered into, the Liberal opposition is prepared to support the bill, once again reminding the opposition of the attack that it made upon the Liberal government at the time when a similar measure was introduced by us.

The Hon. R.I. LUCAS secured the adjournment of the debate.

ADJOURNMENT

At 11.02 p.m. the council adjourned until Wednesday 28 August at 2.15 p.m.