LEGISLATIVE COUNCIL

Thursday 29 August 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 11 a.m. and read prayers.

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

PITJANTJATJARA COUNCIL

Adjourned debate on motion of Hon. R.D. Lawson:

1. That a select committee of the Legislative Council be appointed to investigate and report upon—
   (a) the operation of the Pitjantjatjara Land Rights Act 1981;
   (b) opportunities for, and impediments to, enhancement of the cultural life and the economic and social development of the traditional owners of the lands;
   (c) the past activities of the Pitjantjatjara Council in relation to the lands.
2. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
4. Standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses, unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 22 August. Page 777.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I indicate that we support the setting up of a committee. We have for some considerable time been interested in getting a bipartisan approach to solving the many problems that people face in the remote regions of the North East of the state. The select committee approach is one which will expose as many members of the council as possible, those back in the party rooms and the Independents as well, to the problems that are faced by those people who live in remote regions and who tend to be neglected from time to time in the administration of government policy. South Australia is a city oriented state and a lot of attention is paid to areas below the Goyder line. In this case—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: No. I am a little bit more generous in the government's approach to development. When it comes to the remote regions I think there has to be a better approach, in a bipartisan way, to some of the problems. We would all like to see put in place human services and development measures to arrest the problems associated with poverty, drug and alcohol abuse, petrol sniffing and the collapse of some communities in the North East—

The Hon. Diana Laidlaw: Domestic violence.

The Hon. T.G. ROBERTS: and domestic violence. We certainly need to be working together at a commonwealth/state level and in a bipartisan way to get the best possible outcomes for the moneys that are committed. Governments have a responsibility for putting into place the infrastructure and human services required to provide choice and opportunity for people in these regions, to enable them to take up opportunities that the rest of the community sees as a right.

Having said that, and I do not want to hold the council up as we have a very busy program today, I would like to thank the mover of the motion, but I also indicate that I have some amendments in relation to the motion that have been discussed. I have circulated them privately and I understand there is general agreement for acceptance. I have indicated, by way of amendment, that we support part 1 of the motion, that is:

That a select committee of the Legislative Council be appointed to investigate and report [by 16 October 2002] on—
   (a) The operation of the Pitjantjatjara Land Rights Act 1981;
   (b) Opportunities for, and impediments to, enhancement of the cultural life and the economic and social development of the traditional owners of the lands; and
   (c) The past activities of the Pitjantjatjara Council in relation to the lands.

I move to amend the motion as follows:

Paragraph 1(c)—after 'Pitjantjatjara Council' insert 'and Anangu Pitjantjatjara Council.'

After paragraph 1(c) insert—
   (d) Future governments required to manage lands and ensure efficient effective delivery of human services and infrastructure; and
   (e) Any other matters.

That gives us the flexibility to pick up those issues that the select committee finds once the investigatory part of the committee's evidence takes place. We then have the flexibility to use a slightly different approach in terms of how we gather evidence in relation to dealing with traditional people in remote areas.

I indicate that we will be putting the committee together with haste, with the cooperation of all parties, so as to get our first meeting underway in order that the necessary administrative requirements of the select committee may be put in place as soon as possible. We will then be able to take evidence during the break in the metropolitan area, probably in Alice Springs and certainly in the lands. We support the motion, with some addenda and some changes and hope that the committee can be set up as soon as possible.

The Hon. R.D. LAWSON: I thank all honourable members for their contribution to the debate on this motion. I thank the minister for his indication of support for the establishment of this select committee. I indicate that I will be supporting the amendments proposed by the minister to the terms of reference of the select committee. I thank him for providing me with a copy of a letter of 15 August from Dr Michael Dodson concerning his attempts to mediate the dispute between Pitjantjatjara Council and the Anangu Pitjantjatjara Executive Board. I have not yet had an opportunity to study that letter but I do thank the minister for making it available.

There is a very substantial amount of both commonwealth and state moneys invested in the people of the Pitjantjatjara Lands and it behoves us, as members of the state parliament, to ensure that the governance of the lands is managed in a way which operates to the benefit of the traditional owners

and the community who live there. I look forward to this select committee which I do hope will bring back to the parliament recommendations for a significant improvement in governance.

Amendments carried; motion as amended carried.

The council appointed a select committee consisting of The Hons J. Gazzola, Sandra Kanck, R.D. Lawson, T.G. Roberts, Caroline Schaefer and Nick Xenophon; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee have the power to sit during the recess; the committee to report on 16 October 2002.

ANANGU PITJANTJATJARA LANDS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I seek leave to table a report from the government's mediator, who reported recently to the government in relation to the AP Lands. I will circulate the report.

Leave granted.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 872.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): While the discussion is continuing about the formation of the select committee, I will take this opportunity to close the debate in relation to shop trading hours. It has been a contentious issue, as debate in the lower house has indicated. The general themes being adopted to oppose the government's position to open up debate in relation to shop trading hours boil down to the issue of notification; the consultation processes, which most members of the opposition have used in argument; the implications associated with changes to shop trading hours, that is, award and industrial relations implications, and the relationship between large and small business; retail commercial leases, and the relationship between small and big business in the way in which that power is used, and, in some cases, as indicated by other bills in this council, abused; and unregulated hours in the country, in some cases, and, in other cases, proclaimed areas of regulation.

I think in each contribution, each member indicated the legislation has grown like Topsy so that we do not have a consistent approach to shop trading hours. I believe that using legislation to regulate is an interventionary approach. I think each member acknowledges that, but the acknowledgment over the years by parliaments is that there must be some sort of regulatory approach.

The PRESIDENT: Order! It is extremely difficult. I cannot hear, basically, a word that the minister is saying. I remind members of their responsibilities under standing order 165 about standing around the chamber and engaging in audible conversation. I am particularly concerned about members' talking to people in the gallery, especially when I cannot hear the speaker.

The Hon. T.G. ROBERTS: Thank you, Mr President, and I am sure you will be educated at the end of the day, after you take into account the contribution that I am making! I understand the keen interest that you have in shop trading hours, Mr President, living in a community such as Port Pirie. In fact, in country areas you do notice very quickly the changes brought about by legislative change, and the impacts that legislative change brings are probably more noticeable than any change incorporated into legislation or regulation in the metropolitan area. Having said that, the impact is still the same.

The interventionist approach to regulation and legislation does bring with it anomalous situations when we have some shop trading premises that are divided off into different sections, where some products can be sold and others cannot. We have the anomalous situation of the same sorts of products being able to be bought from some premises and not from others because of the way in which the premises are structured, and the impact that we have on small business must be considered when changes to the act are made. The two contingent notices of motion that are to be moved in relation to shop trading hours to set up select committees have two different defined outcomes, which will be debated vigorously, I suspect, by the authors of those motions, and I will not comment on them other than to say that they have two different approaches to what a government should be looking for in relation to change.

As a result of the approach that I have taken in relation to replying to some of the questions that have been posed in the second reading contributions, I will keep my contribution to a minimum and allow the debate to flow around the setting up and structure of the two select committees. I am sure that the choice between the select committees will be made and that members will vigorously defend the reasons why they are being set up. The government opposes the setting up of both committees. We are sticking to our position in relation to our legislation, but we will of course accept the outcome of the democratic processes within the chamber.

The Hon. A.J. Redford: You haven't got a choice!

The Hon. T.G. ROBERTS: As the honourable member says, we have no choice, and we will work within the bounds of the motion that succeeds.

Bill read a second time.

The Hon. R.D. LAWSON: I seek leave to amend my contingent notice of motion as it appears on the *Notice Paper* by deleting all words in the first sentence of paragraph 3, down to and including the words 'four members and'.

Leave granted.

The Hon. R.D. LAWSON: I move:

1. That this bill be referred to a select committee;
2. That it be an instruction of the select committee that it have power to consider new clauses in relation to amendment of the Industrial and Employee Relations Act 1994 and the Retail and Commercial Leases Act 1995 and to report on the economic and industrial impact of the bill on both employees and employers;
3. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only;
4. That this council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the council; and
5. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

The amended motion reduces from six to five the number of members of the committee. In speaking to this bill I indicated that the Liberal opposition took the view that it is appropriate before this change is made that a select committee examine certain industrial implications of it and that certain matters pertaining to retail and commercial leases be examined, they both being questions that, in the view of the opposition, have

not been adequately addressed in the proposal that the government has put forward. It is of the essence of this particular select committee that it focuses on these issues and that it report back to the council at the earliest opportunity, and that date is Wednesday 16 October.

I have had discussions with the Hon. Michael Elliott, who also has on the *Notice Paper* a contingent notice of motion in relation to this bill. The Hon. Mr Elliott wanted to have a select committee that would examine not only the issues raised in my motion but also wider matters, such as the likely effect on competition in the longer term of what the Hon. Mr Elliott considers to be the market domination by a small number of retailers and the competition effects generally, as well as the long-term impact on prices. We were not prepared to have the select committee we seek to establish examine those issues, on the ground that to do so is a very complex matter and would require much more time than that permitted in my motion. However, we believe that it is important for the community generally that competition effects and the long-term impact on prices be examined by the parliament.

It is very clear from the letter that was read into the record from Mr Graeme Samuel of the competition council that the competition council is not satisfied with the changes which are being proposed by the government, and which are proposed in this bill in the longer term. It is clear that the competition council wishes to see the process of deregulation continue into the future. It is appropriate that, before that happens—if, indeed, it does happen—the matters raised by the Hon. Michael Elliott be examined.

In relation to my contingent motion, it is proposed that the select committee will meet quickly and reach a conclusion on these discrete issues of the industrial implications as well as the implications for tenants (particularly in enclosed shopping centres) of these changes. It is appropriate that these issues be identified and put on the public record by means of a select committee. The purpose of this committee is not, as has been alleged by some, simply to delay the implementation of this measure: it is to ascertain the facts in relation to very important issues, to lay them before the parliament before this bill comes into operation and to suggest amendments—and it is very likely that amendments on these two matters will be moved. But that is to pre-empt the considerations of the select committee. I urge support for my contingent motion.

The Hon. M.J. ELLIOTT: I move:

1. That this bill be referred to a select committee;

2. That it be an instruction to the select committee that it have power to—

   (a) Inquire into the likely impact of changed trading hours on the level of market domination by a small number of retailers, and the consequent effect on their competitors and suppliers, in particular—

      (i) Is it likely to be anti-competitive in the longer term?

      (ii) What is the likely long-term impact on prices?

   (b) Consider new clauses in relation to amendments to this bill, the Industrial and Employee Relations Act 1994 and the Retail and Commercial Leases Act 1995 and to report on the economic, industrial and social impact of the bill on both employees (including their families) and employers;

   (c) Inquire into any other related matter.

3. That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only;

4. That this council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the council; and

5. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

I know already, on the basis of indications from the Labor Party and the Liberal Party, that this motion will not succeed. But I think that, for the record, it is important that I still move it and have a chance to again speak to the matter. With respect to the motion that has been moved by the Hon. Robert Lawson, I have a problem with what is not in it rather than what is in it. I am deeply concerned about the role played by the competition council and Graeme Samuel and the way in which this state is being dictated to regarding matters that have more than just an economic effect.

As I said the other night, we do not live just in an economy, we live in a society where we live as human beings and where money is important. We can have arguments about the role of competition, but there are other impacts of decisions which, if we make them solely on the basis of economy, we are choosing to ignore. Unfortunately, I think, the bill before us ignores the social consequences, and the select committee motion moved by the Hon. Robert Lawson, effectively, ignores social matters. It talks about the industrial impact on employees and employers, but that is still pretty narrow, and it is really as much an economic matter as anything else.

We cannot ignore the fact that the changes in shop trading hours are not just about competition—in fact, I think a strong argument could be mounted that the decision will be anti-competitive in the longer term. As I said in speaking to the second reading, a likely consequence is that the already dominant retailers will become more dominant and the level of competition will, in fact, decrease as they crush their competitors. The small competitors will have to compete, with rents which are significantly higher, with labour costs which are effectively higher, and with significantly higher wholesale prices. At the moment there is no competition, there is not a level playing field, and the change in the trading hours will make the playing field even less level and we will have even less competition.

Despite all the advantages that Coles and Woolworths enjoy, we are not seeing a price benefit to consumers. As I said in the second reading, it is no accident that South Australia, of all the mainland states, enjoys the lowest prices for baskets of goods, and has done for a long time, because in South Australia we have had more genuine competition than has been the case in the other states. There I focus on an economic issue, I suppose, but it is an economic issue which is ignored by the bill and which is ignored by the select committee motion of the Hon. Robert Lawson.

Then there is the impact upon human beings. The owners of small businesses do have the choice to just work the hours that they work now but, if they choose to do so, they know that they will lose market share; that is an inevitability. Economically they might decide that they have to do that, because they cannot afford the extra costs of being open longer; or those people who are already working 60 hours a week in their small businesses could be asked to work an extra 10 hours a week. They are damned if they do and damned if they do not. They will certainly not get an increased market share. They will either have to be open longer, with increased costs—both to them personally and in a financial sense—or they will have to shorten their hours or

keep the hours that they are currently working and lose market share. They cannot win either way.

The Hon. J.F. Stefani: For the same number of clients, or fewer.

The Hon. M.J. ELLIOTT: That is right. And once they do go as I predicted, there are the other consequences in terms of competition. Then we have to look at the employees. I have had a lot of contact over the last couple of days with people who are currently working in retail. They tell stories about people who are on a salary being called in to work at 2 a.m. to do certain work in the supermarkets for a couple of hours; they then go back home and come back in at 6 a.m. and work. Because they are on a salary they are not paid anything extra. But, of course, some people would argue, 'Well, they don't have to have the job.' That seems to be the argument that comes up all the time from people: 'You can choose not to do this.'

The problem is that, because of the way in which our economy is developing at this stage, people do not have those choices. There are not heaps of jobs lying around that allow people to work decent hours—the sorts of hours that allow them to spend a reasonable amount of time with their spouses and children. There is no choice here: they either take the job with all the negatives or they do not take the job, and they do not have one. It is true that there are jobs out there but, increasingly in the Australian community, the jobs out there are worse and worse. They have worse effects upon individuals and their families than was the case some time ago. I am glad that the media has picked up this issue over the last couple of days. I must say, it has been at some personal cost, but I am glad that at last the issue is being talked about.

It really distresses me that this parliament is choosing to say, 'We will have a select committee. We will ignore these issues. We will then debate the bill when parliament resumes,' and an indication of the opposition, at least, is, 'We will then support a select committee that will look at these other matters,' after the horse has bolted. Already we are being told that Graeme Samuel is indicating that even this is not enough; that he wants still more. Whatever happened to our tier of government, that we can be dictated to by competition policy?

An honourable member: By one man.

The Hon. M.J. ELLIOTT: By one man. Unfortunately, governments are prepared to use that as an excuse to do things that perhaps it claims it would rather not do. Where have I seen resistance on the part of the government? The government has rolled over on its back and let Graeme Samuel tickle it on the belly and said, 'We've got no choice. We've got to do this.' I do not believe that that is right. I would like the government to tell us that it has approached the federal government, which has to make the ultimate decision (it is not Samuel's decision; ultimately it is a federal government matter), and said, 'In this matter we believe Samuel is wrong. We don't believe the threat of loss of moneys should be used to force us to do something that we believe is not in the best interests of the people of this state.' I have seen no evidence whatsoever that the government has in any way resisted what Samuel is doing to us.

The Hon. T.G. Cameron: How much money have you got?

The Hon. M.J. ELLIOTT: I think about $55 million, if I recall correctly.

An honourable member: It's $57 million.

The Hon. M.J. ELLIOTT: I was out by $2 million. That's not too bad. As I said, I know that the numbers are not here. We know that this will impact on individuals and on families in a very real way. I suppose we could now have a hypothetical argument as to how great the impact will be. We know that there will be negative competition effects, and people in small business know that. However, it seems that this council will choose to simply ignore that. I do not know how long it will take—it might be another decade—before members of our community stop and ask, 'What have we done to ourselves? Why is it that we have soaring divorce rates, drug use and all the other social dysfunctions that are starting to show up?'

It is too easy. Some people's moral arguments are far too narrow. Some people think that talking about morality is talking just about sex. Morality is talking about the way individuals—humans—treat each other. We are treating the human beings out there in an abominable fashion. I believe this parliament is acting immorally because in our hearts we should know that our actions will have negative impacts, yet we are just rolling over and saying, 'Graeme Samuel said we have to do it.'

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: As I said, there are major moral issues involved in this matter, and the parliament has just ducked it. If I lose this motion—and the indications already are that I will—when question time comes I will move a motion which is effectively the same as the one before us, except for subclause (b), so that these other questions will be addressed. However, it still causes me great distress that it appears that the trading hours will be changed before those important matters are even debated. That will be a great shame on us. In years to come—and, as I said, I do not know how long it will be; it might be another decade—social researchers will look at what we did and ask why we did it. We collectively will be judged negatively for that.

The Hon. A.L. EVANS: I rise to speak to the bill. I have consulted many people concerning the proposed amendments. I have spoken to the government, members of the opposition, representatives of small business and some small business retailers. Employment will suffer if our trading hours are changed as proposed by the government, and I do not want to be part of something that in the long term will lead to people losing their jobs.

Figures released by the Australian Bureau of Statistics for the period February 1995 to February 2000 show that Tasmania, Western Australia and Queensland, which are regulated states, actually experienced higher employment growth than Victoria and New South Wales, which are two deregulated states. In fact, for that period New South Wales recorded employment growth of 11.6 per cent compared to Tasmania's recorded growth of 23 per cent.

In the regional city of Port Pirie, a town which has deregulated its shopping hours, for every job that the major supermarkets created, 1.4 jobs were lost. I understand that the National Competition Council is insisting that trading hours be extended, because it is good for competition, and steps towards deregulation allow more choice for consumers. Based on the evidence available, I beg to differ.

Figures released by Foodweek and other sources show that deregulation has not ushered in a brave new world of healthy competition. Rather, it is leading to the demise of food speciality stores such as delicatessens, takeaway outlets, independent supermarkets and grocery stores. In 1992, Australia had 51 950 businesses of this nature. Seven years

later, with the introduction of deregulation, the number has fallen to 32 569—a drop of 37 per cent. What follows is greater market domination by the larger retailers. That in turn means less choice and less competition.

This bill will do exactly what it is supposed to avoid, that is, reduce competition rather than enhance it. What is more, South Australia is already a highly competitive state when compared with other states. I note in figures provided to me that in South Australia our groceries on average are 5.5 per cent cheaper compared with those of other states. I understand that we are in jeopardy of losing funding of some $52 million from the National Competition Council if these amendments are not passed by parliament. I would like to see an unequivocal statement from the NCC indicating that these proposed changes will guarantee continued funding. I have not seen anything like this to date, and that is of some concern to me. I am even more reluctant to agree to a change in shopping hours when there is no real evidence of any tangible benefits in doing so.

A large number of South Australians invest in and operate small retail businesses. The businesses form part of their retirement package. Changes to shopping hours may threaten their financial future. As well, many of these businesses employ members of the same family. The danger that such members of our community could suffer financial detriment has been an important consideration in my deliberations. I spoke to my local delicatessen owner about this bill to extend shopping hours, and he virtually pleaded with me to oppose this bill. He said that he had no doubt that changes to shopping hours will sound a death knell to his business in the long term.

There is a certain threshold in spending power. Increased shopping hours will not attract more spending power. The only clause that I see as having any merit is the extension of shopping hours during the Christmas period. If we are going to have that, let us be commercially realistic and give consideration to other calendar periods when we know Adelaide experiences high visitor numbers, such as during WOMAD and the Adelaide Festival.

I realise that extended shopping hours will allow workers greater flexibility to shop after they finish work. However, I cannot see the reasonableness of extending shopping hours across the full working week to accommodate this convenience. If we are going to be accommodating to full-time workers, let the banks open for longer hours; in fact, let us have parliament and our electorate offices open longer. I believe that our state has a lifestyle—

The Hon. J.F. Stefani: Government offices should be open, too, 24 hours a day, seven days a week.

The Hon. A.L. EVANS: Put that in *Hansard*. I believe our state has a lifestyle that is the envy of other states. We can go to the local deli to buy the paper on Sunday or pop into the local newsagency at the last minute to buy a birthday card. We will often get a smile from the owner because it is a family owned business: they care about treating their customers well. In a society that is fast becoming devoid of the human touch, we should avoid these laws. South Australia simply does not need them. If our trading hours are extended, all that will happen is that the big retailers will rejoice over increased profits, small retailers will suffer and competition will be reduced.

The Hon. T.G. CAMERON: I will be brief; we have a lot of business to get through today. I support the resolution standing in the name of the Hon. Robert Lawson, but I indicate to the council that I also intend to vote for the resolution standing in the name of the Hon. Mike Elliott. There has been enough evidence, I think, put before this chamber during the two debates on these resolutions to convince me that only good will come out of a select committee. I am a little concerned about the terms of reference of both the resolutions before the council. However, I will be supporting the resolution standing in the name of the Hon. Robert Lawson and the resolution standing in the name of the Hon. Mike Elliot, although I understand—

The Hon. M.J. Elliott: Only one can get up.

The Hon. T.G. CAMERON: I understand that. Well, I understand that the honourable member does not have the numbers for his resolution. That is the indication I have been given. That is all I wanted to say.

The PRESIDENT: The Hon. Mr Elliott has indicated that he would like to make a contribution and, in the spirit of cooperation, I will allow him to do that, but I do not want it to be seen as a precedent.

The Hon. M.J. ELLIOTT: The reason I am speaking in conclusion is that, largely, not much of a contribution has been made since I last spoke. The government has just sat pat. It has said absolutely nothing. It has not justified its position in relation to one or other of the motions. As I said, it is quite clear that the government has rolled over to Samuel and had its tummy tickled. It does not even have the guts to put on the record in this place why it is not prepared to look at the issues that I put forward in my motion. By its silence, the government has said, either, 'We are deeply ashamed of what we are doing', or, 'We do not have the courage of our own convictions to get up and justify it.'

I want the record to note that not one government member spoke in defence of their position on their bill and in relation to these two motions. That is absolutely damning. That shows incredible contempt, I think, for this parliament and to the people of South Australia. What on earth is going on here? Government members have sat and said absolutely nothing in relation to these two motions.

The Hon. T.G. Cameron: They've obviously got nothing to say.

The Hon. M.J. ELLIOTT: They do not have anything to say. As I said, they have just rolled over to Graeme Samuel. They have made decisions that will have a profound impact upon people. Issues are put before them and they do not even have the courage and guts to get up and defend themselves. It is an absolute disgrace.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition does not support the Hon. Michael Elliott's motion to have this bill referred to a select committee with wide terms of reference. However, as I indicated in speaking in favour of my motion, we will support the establishment—after the select committee on the narrow issues reports—of the select committee the Hon. Mr Elliott foreshadows in relation to the wider issues of competition, prices and a number of social and other issues. I urge members to support the motion standing in my name, namely, that a select committee of five be established to report by 16 October on the discrete issues of industrial impact and the impact upon retail tenants of the bill, which was read a second time today.

The PRESIDENT: For the clarification of the council, if the motion moved by the Hon. Mr Lawson is agreed to we will proceed to set up the select committee as proposed by the Hon. Mr Lawson. If his motion fails, we would then proceed

to set up a select committee if the Hon. Mr Elliott's motion was put and carried. The question is that the motion—

The Hon. M.J. ELLIOTT: Mr President, as a point of clarification in relation to your ruling, if I understand correctly, you are saying that if the Hon. Mr Lawson's motion succeeds my motion will not be put?

The PRESIDENT: That is right. That will be the procedure. I am trying to make it clear to the—

The Hon. M.J. ELLIOTT: I want it clarified that if the Hon. Mr Lawson's motion is passed my motion will not even be put?

The PRESIDENT: That is the clear position of the standing orders and the procedures. That the motion moved by the Hon. R.D. Lawson be agreed to is the question before the council.

The council divided on the motion:

AYES (11)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Laidlaw, D. V.
Lawson, R. D.(teller)	Lucas, R. I.
Redford, A. J.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

NOES (8)

Elliott, M.J.(teller)	Gago, G. E.
Gazzola, J.	Holloway, P.
Kanck, S. M.	Roberts, T. G.
Sneath, R. K.	Zollo, C.

PAIR(S)

Xenophon, N.	Gilfillan, I.

Majority of 3 for the ayes.

Motion thus carried.

The council appointed a select committee consisting of the Hons M.J. Elliott, R.D. Lawson, T.G Roberts, T.J. Stephens and Carmel Zollo; the committee to have power to send for persons, papers and records, to adjourn from place to place; and to report on Wednesday 16 October 2002.

SEXUAL OFFENCES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I seek leave to amend my proposed motion as follows:

1. That, in the opinion of this council, a joint committee be appointed to inquire into and report on the question whether the immunity from prosecution for certain sexual offences committed before 1 December 1982 conferred by the former section 76A of the Criminal Law Consolidation Act 1935 remaining after its repeal by the Criminal Law Consolidation Amendment Act 1985 should be removed in whole or in part ('the removal of immunity') and, in particular, to consider and report on:
   (a) the Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Bill 2002;
   (b) whether it is right, in principle and in policy, that a legislative immunity from prosecution, once conferred upon a person, should be retrospectively removed by act of parliament;
   (c) whether the importance of bringing alleged offenders to the attention of the criminal justice system should override the difficulties (if any) of the removal of immunity;
   (d) whether the removal of immunity should be limited to offences allegedly committed against children under the age of 12 years; and
   (e) the relevance (if any) of the issues of contaminated or repressed memory in determining the question of the removal of immunity.
2. That, in the event of a joint committee being appointed, the Legislative Council be represented thereon by three members, of whom two shall form a quorum of council members necessary to be present at all sittings of the committee.
3. That a message be sent to the House of Assembly transmitting the foregoing resolution and requesting its concurrence thereto.

Leave granted; proposed motion amended.

The Hon. P. HOLLOWAY: I move that motion, and I will give some background to it. The Hon. Andrew Evans introduced the Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Bill. There was some debate on that bill yesterday but, after some discussion with the Attorney-General's office, the shadow attorney and others, it was agreed that a select committee would be formed to consider the matters contained in the bill, and yesterday we withdrew that bill to enable this motion to be introduced. I think my colleague the Hon. Gail Gago will briefly reiterate some of the issues that will be covered by the committee, so I will speak very briefly and call on the council to support this motion so that we can send it to the House of Assembly and, hopefully, have this committee set up before we adjourn later today.

The Hon. G.E. GAGO: I rise to support this motion that allows for a joint select committee of the parliament to be appointed to inquire into and report on the question of whether the immunity from prosecution for certain sexual offences committed before 1 December 1982 should be removed, in part or in whole. Given the fact that I spoke on this issue last night, I intend to make just a few brief comments. The government certainly welcomes this opportunity and, clearly, as parliamentarians, we have many responsibilities. One of the most important of these is to ensure that we afford protection for those who cannot protect themselves and ensure justice for all, in particular for those who have been wronged.

Public concern has been raised about the remnant immunity for child sexual offences committed before 1 December 1982, in particular because, as I mentioned last night, it may not have been until the child victim reached adulthood that he or she might have been able to report the offences. Also, there may have been family or domestic situations where an adult was not available, prepared or able to report the offence within three years of the offence occurring and which resulted in the offence going unpunished.

On the other hand, we must also consider that it can be argued that, as a matter of legal policy, we need to be very cautious about reviving liability to criminal prosecution where in law that liability is being extinguished. In general, the legislature has been very reluctant to legalise so as to abolish retrospectively the legal rights or protections of any citizen. So we need to be very cautious of those sorts of issues. One relevant consideration is that parliament is a democratic institution and reflects the needs and aspirations of society at the time. We therefore need to be cautious and ask ourselves how appropriate it is to retrospectively undo decisions made by a parliament.

The Attorney-General has raised issues of concern, particularly in relation to this matter. Some of those concerns have been about the long delays that could occur in prosecutions as well as the difficulties of proof, given the reliance on memories—often of children—that may actually be 20 years old. A number of important issues need to be examined very

carefully in an informed and unemotional way if we are to make changes, and there needs to be a comprehensive and informed understanding of all the potential consequences.

It is indeed appropriate that this matter go to a joint select committee of the parliament to consider and report back to this parliament on the merits of the bill. We thank the Hon. Andrew Evans for his cooperation in the management of this bill and look forward to working with him to expedite the work of the select committee, which, I am sure, will report back to parliament as soon as practicable.

Motion carried.

LEGAL SERVICES COMMISSION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 854.)

The Hon. R.K. SNEATH: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The Hon. T.G. CAMERON: SA First supports this legislation, which seeks to update the Legal Services Commission Act 1977. This bill was passed in the last parliament but not proclaimed and thus lapsed. The provisions it contains removes gender specific terms and the requirement that the two people appointed to the commission must be nominated by the commonwealth Attorney-General. It also makes consequential amendments that remove the requirement that the commission establish the Legal Services Office, and it removes the requirement that the commission establish local offices.

It also removes the requirement that the commission must cooperate with commonwealth legal aid bodies to provide statistical or other information. The bill also amends the principles on which the commission operates so that having regard to decisions of commonwealth bodies becomes a funding issue. It enables the delegation of authority by the commission to spend money from the Legal Services Fund. The director may delegate any powers in writing conditionally and is able to revoke the delegation at will. The requirement that the commission make arrangements for other legal aid bodies for the purpose of the transfer of staff is removed and such arrangements are permitted but not required.

One concern that I have is the removal of the requirement to establish and maintain local offices. While this would benefit the commission through flexibility, could it adversely affect the provision of services? And how will this impact on the rural areas? I seek a response from the minister to those two questions.

The Hon. R.D. LAWSON secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 August. Page 862.)

The Hon. T.G. CAMERON: In December 1995, the Model Criminal Code Officers Committee made recommendations regarding dishonesty, drawing from the English experience in law reform in this area. Although the drafting style is different, the effects are similar. The laws have been in force in England for 28 years, and in three Australian jurisdictions for shorter periods. The general offences of larceny, and specific larceny cases, will now be replaced with a single general charge of theft. Theft is now defined as, 'the dishonest taking, retaining, dealing or disposing of another's property without their consent, while intending a serious encroachment on the victim's property rights.'

'Dishonest' is a general community standard and what is dishonest is a matter for a jury to decide. Receiving will still be an offence under the crime of theft. Robbery and aggravated robbery are maintained as separate offences. The various fraud and deception offences are combined into a single offence of deception. There will no longer be a distinction between 'obtaining' and 'attempting to obtain.' The act of deception, and not the end result, is enough. Conspiracy to defraud remains as a fall-back for those innovative cases when the deception law does not adequately cover such attempts. Forgery now comes under the offence of dishonest dealing with documents and includes such offences as, 'destroying, concealing or suppressing a document dishonestly where a duty to produce the document exists.'

A strict liability offence exists for 'possession without lawful excuse of an article for creating a false document or falsifying a document.' 'Document', of course, includes electronic information. Dishonest manipulation of machines is now an offence: that deals with electronic dishonesty and fraud. The law of larceny requires that goods need to be taken and moved before they can be regarded as stolen. However, this was inadequate and the concept of conversion was invented because goods may come into one's possession lawfully, but then something unlawful is done with them, such as label swapping.

The bill returns to the concepts of dishonest taking, retaining and dealing with or disposing of property, including the notion of conversion, and supplements them with supplementary offences that specifically cover the margins of appropriation. It also now includes a generalised offence of 'making off without payment.' This, of course, will cover the recent spate of petrol station drive-off situations that we have had in South Australia. Current nocturnal preparatory offences such as being in disguise at night with intent and being armed at night are replaced with generalised offences and dealt with under provisions such as home invasion offences and possession of any article with intent to commit a dishonest act at any time—not just at night—in suspicious circumstances.

The offence of piracy is retained and updated as is our requirement under international law. Maximum penalties have been changed as outlined in the legislation. SA First supports the second reading of this bill. It provides a far less archaic scheme of offences of dishonesty and seems far less anachronistic than the current law.

The Hon. R.D. LAWSON secured the adjournment of the debate.

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

Adjourned debate on second reading.

(Continued from August 27. Page 864.)

The Hon. T.G. CAMERON: This bill seeks to resolve the issue of how an interstate crime involving some connection with South Australia can be prosecuted under South Australian law. Again, this bill was introduced by the previous attorney-general. The general rule is that there needs to be territorial nexus, that is, that some element of the offence is or includes an event occurring in South Australia; or an external event, where the person alleged to have committed the offence was in South Australia at the time. An example of these cases might be where the accused, standing on our side of the South Australian border, shoots a person standing on the Victorian side, or vice versa. There is a territorial nexus between the event and the jurisdiction in both cases.

However, several technical and legal difficulties have emerged from the current law which this bill seeks to address. The bill extends the territorial reach of state offences outside the state in relevant cases. It defines the commission of the offence as 'the act alone' rather than where it occurs. It provides for jurisdiction in the following cases:

- where the act occurred wholly or partly in South Australia;
- where the act caused or threatened harm within South Australia, if it cannot be ascertained that the offence occurred in South Australia or not;
- where the act caused or threatened harm within South Australia and it did not occur in South Australia, but it was an offence in the state in which it occurred;
- where the accused is in South Australia at the time of the offence;
- where it is legal in the other state but causes criminal harm or threat of harm in South Australia;
- in cases of conspiracy, where the offence has the appropriate nexus for the offence of conspiracy against the laws of another state, while they may not been in force in South Australia.

SA First supports this bill. It helps close legal loopholes with regard to the territorial jurisdiction of South Australia.

The Hon. R.D. LAWSON secured the adjournment of the debate.

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

Adjourned debate on second reading.

(Continued from August 27. Page 865.)

The Hon. T.G. CAMERON: This bill was introduced to allow survival of wrongs claims in law for the deceased plaintiff after their death. It was passed by the Legislative Council prior to the election, and is unchanged. This bill allows the court to award damages on behalf of a deceased person, in certain cases involving unreasonable delay in the resolution of a personal injury case. An 'unreasonable delay' exists if a person attempts or actually delays a case because they believe the plaintiff will die before the resolution of the case. The court will take into account the extent of the unreasonable delay and issue exemplary damages as punishment for the action. SA First supports this bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 27. Page 866.)

The Hon. T.G. CAMERON: This bill is one of three bills presented by the government as part of its 10-point plan for honesty and accountability in government. The bill will amend the Ombudsman's Act of 1972 and have the effect of broadening the powers of the Ombudsman. The bill broadens the Ombudsman's powers regarding privatised or outsourced areas of government to investigate an act done in the performance of functions conferred under a contract for services with the Crown, or an agency to which the Ombudsman's Act applies.

The Ombudsman Act will now apply to all persons holding an office established by an act, and bodies established for a public purpose by or under an act, including the following:

- 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 the act;
- a body established for a public purpose under an act other than an act providing for the incorporation of companies or associations, cooperatives, 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.

The Ombudsman will have the power to investigate and initiate an administrative order. This power is currently implied, based on patterns of complaints received, and does not need an initial complaint, but this bill gives legislative force to this power. This power can now be exercised if the Ombudsman considers it to be in the public interest to conduct an audit.

The Statutory Officers Committee will have its function to consider matters in relation to the general operation of the Ombudsman Act restored. These functions were removed when the Ombudsman Parliamentary Committee was replaced by the Statutory Officers Committee. The Statutory Officers Committee will be required to produce an annual report on the work of the committee, relevant to the Ombudsman Act. In addition to the above provisions, the bill will prevent an agency within the Ombudsman's jurisdiction from using the title 'ombudsman' to refer to internal complaint procedures. My question in relation to the bill is: how many agencies have used the terminology 'ombudsman' to refer to their internal complaints procedure?

The Hon. R.D. LAWSON secured the adjournment of the debate.

APPROPRIATION BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I wish to use this opportunity to respond to questions asked by the Hon. Diana Laidlaw in her second reading speech. The Hon. Diana Laidlaw asked:

In terms of the Barossa Music Festival, I think it is important (and I place on notice now and look forward to an answer to my questions) to know how much the ticket subsidy is for a range of arts organisations in this state, and whether the Premier and Minister for the Arts will use the ticket subsidy as a basis for the future funding of the State Opera, the State Theatre, the Australian Dance Theatre, the Adelaide Symphony Orchestra, the Adelaide Festival Centre Trust, Vitalstatistix, Doppio Parallelo, Junction Theatre (although I think that has been defunded by this government), Leigh Warren Dancers, the Australian String Quartet, Brink Productions, Mainstreet Theatre, Feast Festival and Country Arts. I name not only the performing arts but also, for instance, the visual arts.

The decision to cease funding for the Barossa Music Festival was based on the recommendation of the Arts Industry Assessment Panel, which raised a range of concerns about the festival. The Arts Industry Assessment Panel in its assessment of the Barossa Music Festival stated the following:

In reviewing the festival's performance over the past two years, it was evident that the organisation had failed to respond to the conditions attached to its funding in a timely and adequate manner. The panel expressed serious concerns about the Barossa Music Festival, which had continually failed to meet funding requirements. The panel recommends the discontinuation of funding to the BMF, with the provision of six months notice and the equivalent of 50 per cent of current funding (i.e. is no more than $80 000) to assist the board in resolving outstanding liabilities.

The decline in attendances and the degree to which tickets were being subsidised were only two of the factors that were taken into account. Ticket subsidy in itself will not be the basis of future funding decisions. However, it should be noted that it was the previous Liberal government which defunded the Junction Theatre Company. The Hon. Diana Laidlaw also asked:

The Premier and Minister for the Arts, in the arts estimates, indicated that Arts SA had been required to make a savings target of $3.249 million for 2002-03 compared with 2001-02, and, again, I would like the minister to specifically list all the areas, projects or programs that have been cut, and the amount in each instance, to make up that total of $3.249 million.

The savings target of $3.249 million for 2002-03 for Arts SA is comprised as follows:

- Arts SA infrastructure, $1 864 000.
- Programs—Arts Industry Development, $470 000; lead agencies, $300 000; live music fund, $200 000.
- Lead agency grants, $415 000.

That totals $3 249 000. Despite the requirement to deliver this savings target, it is important to note that operating funding for Arts SA is increased by 0.6 per cent in real terms over the 2001-02 level. Overall operating grants to lead agencies increased by 2.3 per cent in real terms, and operating grants for small to medium companies increased by 5.6 per cent in real terms.

Progress reported; committee to sit again.

STAMP DUTIES (GAMING MACHINE SURCHARGE) AMENDMENT BILL

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

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.

As Parliament is aware, the government announced amendments to the taxation of gaming machine licensees as part of the 2002-03 Budget. Those changes included the introduction of 'super tax' rates on the largest gaming machine venues.

Subsequent to the Budget and following consultation with the hotel industry, the government agreed to make some changes to its gaming tax proposals.

The government will adopt alternative thresholds and rates but also put in place a surcharge on the sale or transfer of ownership of gaming machine businesses. These changes are designed to address industry concerns whilst maintaining the government's budget bottom line.

The revised tax structure is implemented through amendments to the *Gaming Machines (Gaming Tax) Amendment Bill (No. 36) 2002*. To provide certainty to the industry and its employees, the new tax structure will remain unchanged for the life of this Parliament.

The *Stamp Duties (Gaming Machine Surcharge) Amendment Bill 2002* amends the *Stamp Duties Act 1923* to introduce the gaming machine surcharge on the transfer of the ownership of a gaming machine business. This includes the transfer of an underlying interest in a gaming business (for example, shareholding transfers in a private company holding a gaming machine licence). In the case of a partial transfer of ownership, the surcharge would apply only to the proportion of ownership transferred.

The surcharge will not apply to venues being granted new licences or increases in machine numbers (which, in any event, are not currently permitted given the freeze on gaming machine licences). It will also not apply to not-for-profit businesses (mainly clubs) by virtue of the fact that they cannot transfer ownership.

The surcharge is based on the proportion of the gaming machine business transferred and will be charged at the rate of 5 per cent of the net gambling revenue (NGR) (as defined in the *Gaming Machines Act 1992*) of the gaming venue. Annual NGR will be calculated for this purpose as the sum of the NGR for the last 12 completed months immediately preceding the licence transfer. Where a licensee has not carried on business for the whole of that period, the Liquor and Gambling Commissioner will determine an amount of NGR having regard to the NGR derived during that period from similar businesses.

It is estimated that the surcharge will raise $5 million in a full year. The actual revenue raised in any given year will, of course, be influenced by the number of transfers occurring in that year and the NGR of the venues changing hands.

The surcharge will be administered by RevenueSA.

The surcharge will not apply to transactions entered into before the commencement of the Amending Act.

I commend the Bill to the House.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This provides for the commencement of the new legislation on proclamation.

Clause 3: Insertion of ss 71EA to 71EJ

This clause provides for the insertion of the operative clauses into the principal Act.

71EA. Interpretation

New section 71EA contains definitions that are necessary for the purpose of the new surcharge provisions.

71EB. Direct interests

New section 71EB defines what is meant by a 'direct interest' in a private entity and provides for the expression of an interest as a proportion.

71EC. Related entities

New section 71EC defines a related entity as a private entity that has a direct interest in another. It also provides for the quantification of this interest.

71ED. Indirect interests

New section 71ED defines an indirect interest and provides for the quantification of the interest.

71EE. Notional interests

New section 71EE provides that a person who has a direct or indirect interest in a private entity that owns a gaming machine business or an interest in a gaming machine business is taken to have a notional interest in the business. The new section also provides for the valuation of a notional interest.

71EF. Application of this Division

New section 71EF provides that the new Division applies to a transaction that results in a complete or partial transfer of an interest or a notional interest in a gaming machine business.

71EG. Imposition of surcharge

New section 71EG provides for the imposition of a gaming machine surcharge on a transaction to which the new division applies. If the whole of the business is transferred the surcharge will amount to 5 per cent of the net gambling revenue for the last 12 calendar months. If a lesser interest is transferred, the amount of the surcharge reduces accordingly.

71EH. Exempt transactions

New section 71EH provides that if a transaction is effected by a conveyance that is exempt from ad valorem duty, it is also exempt from the gaming machine surcharge. Hence (for example) the transfer of shares belonging to a deceased estate in accordance with a will or an intestacy will not attract the gaming machine surcharge.

71EI. Notice of transaction to which this Division applies

New section 71EI requires the parties to a transaction to which the new provisions apply to lodge a return containing the information necessary for calculation of the surcharge and to pay the duty on lodgement of the return.

71EJ. Recovery of duty

New section 71EJ provides that in the event of the parties failing to pay duty as required under the previous section, it may be recovered as a debt from the parties or, if a private entity is involved, from the private entity.

Clause 4: Application of amendments

This clause is inserted to make it clear that the new provisions only apply to transactions entered into after the commencement of the amending Act.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

[Sitting suspended from 12.53 to 2.15 p.m.]

TEEN CHALLENGE SA INC.

A petition signed by 26 residents of South Australia concerning Teen Challenge SA Inc. and praying that this council will:

1. Amend the Retail and Commercial Leases Act so as to limit the circumstances in which landlords may claim additional rent, not previously claimed, where to do so is unfair or unreasonable in all the circumstances of the particular case, if the demand is not made within 12 months;
2. Alternatively, urge the state government to provide financial support to Teen Challenge SA Inc. in relation to the claim made by the landlord;

was presented by the Hon. A.L. Evans.

Petition received.

PORT ADELAIDE WATERFRONT PROJECT

The PRESIDENT: I lay upon the table the Auditor-General's final report on the Port Adelaide Waterfront Redevelopment Project: Misdirection of Bid Documents.

PAPER TABLED

The following paper was laid on the table:

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

Review of the Delivery of Services to people with Disabilities on the Anangu Pitjantjatjara Lands.

KYOTO PROTOCOL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement in relation to South Australia's support of the Kyoto protocol made in the House of Assembly today by the Premier.

WEST LAKES, NOXIOUS WEED

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I also lay on the table a copy of a ministerial statement by the Premier updating the house on caulerpa taxifolia.

LOCAL GOVERNMENT FORUM

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement by the Hon. Jay Weatherill, Minister for Urban Development and Planning, on the establishment of a ministers' local government forum.

HOSPITALS, PRIVATE PATIENTS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement by the Hon. Lea Stevens on allegations of private patient discrimination.

QUESTION TIME

WESTERN CONNECTOR ROAD

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, a question about the western connector road.

Leave granted.

The Hon. R.D. LAWSON: Recent announcements have been made about the western connector road at Mile End, which will provide a continuation to James Congdon Road through to South Road. The connector road will run immediately to the west of the well known Bunnings site at Mile End. A number of businesses occupy premises which abut the alignment of this new connector road, in particular, the alignment at Scotland Road between Scotland Road and South Road. Those businesses have been left in great uncertainty and their work force is uncertain about the future existence of those businesses. Indeed, I am informed that the viability of a number of businesses is in jeopardy unless they can be provided with secure tenure on the sites they now occupy. I am advised that these businesses have not seen the complete plans. My questions to the Minister for Transport are:

1. What steps will the government take to protect these tenants from unnecessary disturbance and disruption to their business?

2. Will the minister agree to consult with all adjoining businesses about the plans for the connector and also the government's plans for their businesses?

3. Will the minister ensure that only such land as is necessary for the road widening is taken for this purpose?

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

PROPERTY RIGHTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about property rights.

The PRESIDENT: Is this matter before the council?

The Hon. CAROLINE SCHAEFER: Mr President, I seek your guidance. I will not use any direct quotes or anything from last night's proceedings. However, the matter does involve a fishing property.

The PRESIDENT: Property rights?

The Hon. CAROLINE SCHAEFER: Yes.

The PRESIDENT: It is not about gill net regulations?

The Hon. CAROLINE SCHAEFER: No. It is about property rights.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have a letter from Revenue SA to a Mr A. Smith of Berri with regard to the transfer of his fishery licence R54. In part, the letter states:

> Our records indicate that you were the purchaser of a river fishery licence R54 from your father-in-law on or about 22 June 1999. As such transactions result in a change in the ownership of legal equitable interest in property, stamp duty is payable on the transfer irrespective of being a family transfer.

The valuation for that reach from Revenue SA was $90 000 and stamp duty was $2 480. Does the minister believe that this establishes that this is a property right rather than an annual renewable licence and if he does not agree will he take steps to see that that stamp duty is duly refunded?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The issue of property rights has, I believe, been discussed at some length in question time earlier this week or last week. It is an issue that, as it relates to the fishing industry, is yet to be settled. I am sure that the shadow minister would be well aware of the debate that occurred even in the time that she was the minister for fisheries in relation to marine protected areas. Questions in relation to property rights and the fishing industry need to be addressed under that subject. Also, I announced in this council that a review of the Fisheries Act is currently under way, and this whole question needs to be addressed in that context as well.

In relation to the inland fishery, I answered questions with respect to property rights the other day. However, I again make the point that, in relation to the government's offering an ex gratia payment to fishers in the inland fishery, there is, I guess, an implicit acknowledgment that if there is not an actual in law property right then certainly there is an expectation from those people involved—and, I guess, the financial institutions with which they deal—that there is a property right. I do not think it is very helpful to discuss whether or not property rights exist in law in relation to this: it is a matter, clearly, that should be addressed within the review of the Fisheries Act, and also in negotiations in relation to marine protected areas and other issues.

Of course, this debate is being conducted not only in this state or, indeed, in this country, but also around the world. I believe that a particular ex gratia offer that was made by the government in relation to the inland fishery does have a neutrality, if I can call it that, in relation to this question. Certainly, it has been my intention that that should be the case. The honourable member did raise a case with respect to a particular fisher. That matter was recently brought to my attention by the member for Chaffey and, currently, I am having the circumstances of that case examined.

Let me say that I believe that the documents that were just brought to my attention indicate that there is a value on that fishery of $90 000. It is my understanding that, with respect to that particular case, it was less than that. I am asking my department to examine that case urgently. If any anomalous situations arise in relation to that case, I will have them examined. In fact, I am having them examined.

The Hon. CAROLINE SCHAEFER: As a supplementary question, if the minister agrees that there is an expectation and/or an assumption of a property right, why has the compensation package been assessed on income and not on licence value?

The Hon. P. HOLLOWAY: The package that was offered to inland fishers has a total value, if all entitlements are taken into account, of $2.7 million. On average, if one divides that figure by 30 fishers, that is about $90 000 per fisher. That, I think, as I have made the point on other occasions, would accord approximately with the market value for licences in the current fishery. That is the information that has been provided to me. I know that other information has been given. For example, I think it was the Hon. David Ridgway last night who used a figure given by PIRSA, and I pointed out at the time by interjection that that figure included the Coorong and Lakes fishery, which I understand would have a slightly higher value than the river fishery.

The point is that the average value that was offered is roughly in accord with the market value for that fishery. I indicated yesterday that the information that the department provided to me in relation to the market value of licences that were traded since 1997 was that they were worth considerably less than that $90 000 figure—although, there is the case which the honourable member mentioned today which appears to be equal to that figure. Anyway, that is a matter that I am having examined, but I again make the point that the average value of ex gratia payments, or the total package, was roughly in accord with market value.

The Hon. A.J. REDFORD: I have a supplementary question. Has cabinet given the minister a ceiling within which he can negotiate, and does he have to go back to cabinet to exceed that ceiling? I refer to the compensation package.

The Hon. P. HOLLOWAY: We have gone through a fairly exhaustive process of working out a compensation package for inland fishers. There are 30 fishers involved and each case is completely different from the others—they are all different reaches. This fishery is unique in terms of this state because, of course, in ocean fisheries the fishers have access to effectively the same area. That is not the case in a river fishery, and that makes the valuation of licences somewhat more complex than in an ocean fishery. I have attempted to be fair in that regard in trying to get a figure that balances the fact that there are reaches involved in the fishery.

The Hon. A.J. Redford: That has absolutely nothing to do with the question I asked.

The Hon. P. HOLLOWAY: Well, I again make the point that in the river fishery there are separate reaches, and the value for ex gratia payments therefore differs. It has to differ,

and that is what makes it significantly more complex than for any other fishery.

The Hon. A.J. REDFORD: I have a further supplementary question. Has cabinet given the minister a ceiling within which he can negotiate, and does he have to go back to cabinet to exceed it?

The PRESIDENT: That is exactly the same question so, technically, it is not another supplementary question. However, it may have prompted the minister's memory.

The Hon. P. HOLLOWAY: What I was going through before the honourable member interrupted is that it was a very complicated and involved process to try to be fair to all 30 people, given their individual situations. That lengthy process resulted in the final package which I took to cabinet and for which I sought and received approval, based on information given by the financial analyst and the structural adjustment committee.

The Hon. CAROLINE SCHAEFER: I have a further supplementary question. Is it true that the assessments of the independent assessor, Dr Julian Morison, were not, in a number of cases, used as the final figure to be offered to these fishers? Was there some alteration after the recommendations of Dr Julian Morison were made?

The Hon. P. HOLLOWAY: Dr Morison provided the structural adjustment committee with a report. That report was provided to me. My copy had particular comments on individual cases for my consideration and I took into account all of the information that was provided to me in the recommendations that I took to cabinet.

WORKERS COMPENSATION

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industrial Relations, a question about workers compensation and occupational health, safety and welfare.

Leave granted.

The Hon. A.J. REDFORD: Last week, the Minister for Industrial Relations (Hon. Michael Wright), Labor leader in waiting, announced the release of the issues paper for the review of workers compensation and occupational health, safety and welfare—

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: It is an opinion increasingly held amongst a wide circle of people. The terms of reference state that the review is not limited and will develop recommendations for legislative change. The review is to be completed by 20 December 2002, and I am informed that the cost is estimated to be in the vicinity of $400 000—or $100 000 per month or $25 000 per week. The review will involve three people: Frances Meredith on workers compensation issues; Rod Bishop on occupational health and safety issues; and Mr Brian Stanley—

An honourable member: Is that in reference to the recent judicial appointments?

The Hon. A.J. REDFORD: Yes, it is—a former judge of the Industrial Court. Indeed, he is the father-in-law of a recently appointed District Court judge and the father of an ALP candidate for the seat of Adelaide. I understand that the campaign was run by the member for West Torrens in a spectacularly unsuccessful fashion.

Members interjecting:

The PRESIDENT: Order! The Hon. Angus Redford knows that he is introducing opinion into his question, even though it may well be in a humorous way. The honourable member will return to his question and comply with standing orders.

The Hon. A.J. REDFORD: I apologise deeply and sincerely for that, Mr President, but I was led astray by someone else. In any event, in recent evidence given to a parliamentary committee, the chief executive officer of the WorkCover Corporation, Mr Brown, a man for whom I have the highest regard, gave evidence to the effect that it was clear from discussions with the minister that the best support that WorkCover Corporation could provide would be to give financial as well as in kind assistance in terms of seconding one or two people as researchers to help the reviewers, so those additional costs (that is, review fees, accommodation and infrastructure support) are to be paid for by WorkCover Corporation.

I understand that this whole inquiry will deal with WorkCover issues. It is not a confined or enclosed inquiry, in accordance with the paper issued by the minister. I also understand that WorkCover Corporation will be a significant subject of that inquiry. Indeed, I have been approached by industrial groups concerned about the appearance of conflict and the fact that the reviewer will be funded by the people who are being reviewed. In light of the concerns regarding the closeness of the chair of the review to political interests in this government, my questions are:

1. What was the process that led to Mr Stanley's appointment?

2. Were there any other applicants or was anyone else considered for the position?

3. Does the minister agree that there can be some criticism that this whole process may well be tainted from the very beginning?

4. Could the minister provide a breakdown of the cost of between $380 000 and $400 000 that has been mentioned, and how much of that will Mr Stanley get?

5. How much of that remuneration will affect Mr Stanley's judicial pension?

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

ANANGU PITJANTJANTJARA LANDS

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about Dr Dodson's mediation on the AP Lands.

Leave granted.

The Hon. G.E. GAGO: We have heard much debate in this chamber over the past few months about what has occurred with different groups on the AP Lands. Earlier today, the minister tabled Dr Mick Dodson's report in relation to attempted mediation. Can the minister outline what this report found and what action is now being taken in relation to this issue?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her question and her interest in this quite complicated subject matter that does need a bipartisan approach and bipartisan answers, as well as ownership by the communities in the lands. For some time now, both in opposition and now in government, I have been concerned about conditions faced

by people living on the AP Lands. I have just tabled a report that is a review into the delivery of services to people with disabilities on the AP Lands. That report described the general condition being faced by all people living on the lands and, in particular, on page 12 of the report it is stated:

> On the AP Lands patterns of poverty, ill health and entrenched unemployment cycle from generation to generation.

In the next paragraph it states:

> They do not have food security on a daily basis, nor ongoing access to the basic necessities of life.

The Hon. Diana Laidlaw: Is this a ministerial statement?

The Hon. T.G. ROBERTS: No, it is a reply to a question.

The Hon. Diana Laidlaw: I just was mistaken because you are reading every word.

The Hon. Sandra Kanck: And you never did that, Di!

The Hon. T.G. ROBERTS: No, I have taken a leaf out of previous ministers' book, and I am making sure that the whole story gets in. The delivery of services to people living on the lands has to be of primary concern to all levels of government, all bodies that make decisions on the lands, and to all of us here in this chamber. There also has to be a workable form of governance on the lands that allows for the efficient delivery of services. It is of grave concern to me that disputes between individuals and organisations on the lands can interfere with good governance and service delivery.

For a considerable period of time there have been disputes between the Executive Board of the Anangu Pitjantjatjara and the Pitjantjatjara Council. In July of this year I engaged the services of Dr Mick Dodson to attempt to bring the Executive Board of the Anangu Pitjantjatjara and the Pitjantjatjara Council's executive together to resolve their differences.

Earlier today I tabled Dr Dodson's report in relation to his attempt to mediate in this dispute. Dr Dodson's report highlights his and the government's serious concerns about future governance and service delivery on the lands. Dr Dodson's report draws attention to serious concerns he has in relation to the governance and administration of the lands and, on page 4 of his report, Dr Dodson states:

> I think there are some serious governance issues that need to be addressed. At the moment it is my strong view that the AP Executive Board is unrepresentative, undemocratic, unaccountable and seriously confused about its role and future role. I also have had—

The Hon. A.J. Redford: That is not their fault though.

The Hon. T.G. ROBERTS: I am not apportioning blame. The report is making a statement, and certainly I would hope that the select committee that is being set up will, in its inquisitorial role and in the cross-questioning of witnesses, be able to determine a way to proceed and go forward. It is not my intention to lay blame. It is a problem that has existed for some considerable time and we—

The Hon. R.D. Lawson: Then why are you singling out AP?

The Hon. T.G. ROBERTS: I am not singling out AP; I am singling out that there is a report that indicates that there are problems in relation to the executive administration. And there will be other problems that we will find as a select committee that are interfering with the proper delivery of human services within the lands. Dr Dodson continues:

> I have also had numerous anecdotal commentaries on the possible misuse of board funds to suggest, at the very least, it should be explored. From what I have been told I suspect the problem is a systemic one.

I have asked the Auditor-General, Ken MacPherson, for his formal advice on how the government should handle allegations of the possible misuse of board funds. Dr Dodson has also expressed 'distress' as a result of breaches of confidentiality resulting from his mediation processes and things he has said privately to one of the parties in the process being used inaccurately. Dr Dodson states:

> For me there is no clearer illustration of the way in which the parties have conducted themselves through the dispute, almost no tactic including breach of trust is discarded.

I am pleased that today the council has set up a select committee to inquire into problems that are occurring on the lands, and I welcome the bipartisan approach we are taking to look at these complex and, often, very extensive issues. I look forward to continuing to work constructively with the shadow minister, the opposition, the Democrats and the Independents to try to resolve the problems that we all face in dealing with the serious matters with which the people on the AP lands find themselves having to deal.

The Hon. R.D. LAWSON: I have a supplementary question. In view of the report tabled today by John Tregenza relating to the delivery of services to people with disabilities in the Anangu Pitjantjatjara lands, what commitment does the government make to providing the resources, which are identified as being required in that report?

The Hon. T.G. ROBERTS: The Tregenza report not only describes the situation in relation to people with disabilities in the area, and the non-existence, in many cases, of any indicated support for people with disabilities in the lands, but it also describes, very graphically, the circumstances in which the majority of people in those communities find themselves. The government is doing a number of things, including working with the programming that was put in place by the previous government in relation to tier one and tier two.

At the moment, I am trying to put together legislation for the reintroduction of the standing committee in the lower house to ensure that the circumstances of monitoring the deterioration and/or improvement of programming within the communities takes place in a bipartisan way. The allocation of resources will be a part of an assessment that will be made in due course, as well as dealing with the problems of petrol sniffing, alcohol and drug abuse, and other substance abuse.

It will take a suite of remedial programs, and, in this case, we will be working with the commonwealth to try to work through the difficulties that service providers have, given the remoteness of the region, and the difficulty we have in holding professional people within the region to deliver those services. For too long training programs and ownership of programming for the prevention and treatment of a range of health and servicing problems have been left to governments that, in the main, design programs to be administered but do not take ownership of them. The challenge for us is to provide the leadership that enables education and training and the collection of information for appropriate service delivery, plus education and training programs for the continuing services.

The assessments are being done. The report recommendations probably do not accurately reflect the information in the body of the report, but I think we have to pull together a complete picture of the situation up there and then make recommendations on priority spending programs for both the state and commonwealth governments.

PORT STANVAC

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the minister representing the Minister for Transport a question about the proposal for a deep sea port facility at Port Stanvac.

Leave granted.

The Hon. SANDRA KANCK: The front page of today's *Advertiser* carries a story about a proposed $100 million deep sea port project at Port Stanvac. The report states:

> Mobil, the Australian Wheat Board and the Australian Barley Board say 'Project Southern Growth' will boost oil refinery operations, protect grain exports, and give Southern Vales wine producers greater access to overseas markets.

The report claims:

> The longer jetty would be in sea water 17 metres deep and would remove any need for dredging.

I have had specific concerns drawn to my attention about the lack of protection from the south-west. In fact, the *Port Stanvac Marine Terminal Information Book 1992* states:

> The terminal berths are open and unprotected. Consequently, at all times a vessel must be in a suitable condition with sufficient dead weight and personnel to vacate the berth immediately on short notice.

The same book also states:

> From December to May, the prevailing winds are south-south-east to east. During the remainder of the year, winds are generally from north-west to south-west. At times winds may reach gale force.

My questions are:

1. Can the minister give an example of any multiuser wharf facility that involves an oil refinery loading terminal?
2. If this proposed facility were to go ahead, what additional safety arrangements would be required?
3. Considering the effects of local weather conditions, is there evidence that 17 metres will provide clearance to the keel of large panamax-type vessels, even when the weather is rough?
4. Is there any risk of contamination of grain or other commodities from airborne hydrocarbons?
5. What role will the government play in either facilitating or impeding plans for this project, given that agreements were reached under the previous government to further develop Outer Harbor?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): If I may have the indulgence, I will seek to give some information on this project because I am a member of the relevant infrastructure committee of cabinet that looked at this matter. It is the preferred view of the government that an Outer Harbor site be the choice, as far as grain exports are concerned, but a number of issues need to be addressed in relation to that matter. It would be fair to say that the ports sale process and the negotiations entered into by the previous government in relation to that sale were somewhat of a shambles. It would be very kind to describe it in that way.

Obviously, a number of loose ends were left in relation to that process. There has been that announcement today on behalf of AWB, although I would have thought that there were a number of impediments in the way of its project, but it is a matter on which I hope the government will be in a position to make some announcements fairly soon. As to the details about the suitability of Port Stanvac, that is not a matter on which I have particular knowledge and I will take that back to the relevant minister for his response. I believe it is actually the Minister for Government Enterprises who is responsible for ports development.

The Hon. DIANA LAIDLAW: As a supplementary question, I would be very keen to receive the answers to all the questions asked by the Hon. Sandra Kanck, but I would like the minister also to convey questions that I have relating to government assessment of the cost of standardising the track, the weight required for track and sleepers for heavy freight rail compared to light suburban rail vehicles, noise impact, suburban disturbance and the effect on suburban train timetables and road rail crossings.

The Hon. P. HOLLOWAY: I thank the honourable member for her supplementary questions. I think that the points she raised really highlight some of the problems associated with any port development in the southern area. Of course, the matters raised by the Hon. Sandra Kanck in relation to the exposure of the port are, I guess, other problems. But I make the point that, unfortunately, there are also some unresolved issues in relation to Outer Harbor, and they are matters that the government is working through. I will take those questions on notice.

EUROPEAN CARP

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 European carp.

Leave granted.

The Hon. D.W. RIDGWAY: The minister has said on several occasions that existing river fishermen are the preferred entrants into a new licence regime to harvest European carp. These now unemployed fishermen need as much information as possible to make an important business decision on whether or not to enter the carp fishery by 30 September, which is just four weeks away.

The Hon. CARMEL ZOLLO: Sir, I rise on a point of order.

The PRESIDENT: It is getting very close to opinion. Is that the point that the member was going to make?

The Hon. CARMEL ZOLLO: I believe that this motion is before the council.

The Hon. T.G. Cameron: You're telling a member rising on a point of order what her point of order is. Come on, give us a break.

The PRESIDENT: Order!

The Hon. T.G. Cameron: That's not the role of the President.

The PRESIDENT: Order! The matter that is before the council, the Hon. Carmel Zollo, deals with deregulation in respect of the methods of fishing. The member sought leave, and was given leave, to ask a question on European carp. I have observed that there is some opinion creeping in. I think that, if the member confines his question and his explanation to the subject of European carp and does not venture into side issues, we will all be much calmer.

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: The river fishermen tell me that they are completely in the dark about a scheme of management for a carp fishery. I ask the minister, for the benefit of the unemployed fishermen:

1. How much will it cost the commercial fishermen to enter the new carp fishery?
2. How much will a person from outside the commercial river fishery have to pay to enter into the carp fishery?
3. What would be the annual licence fee?

4. Specifically, what nets and devices would be approved to harvest European carp?

5. What areas would be excluded from access? Considering that the price of carp (and I understand that the member for Hammond's preferred option is to use the carp for fish meal) is 19¢ a kilo, and that it costs 50¢ a kilo to catch carp, will the government consider putting in place a subsidy, or bounty, to harvest these nuisance European carp?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his important question in relation to European carp. Of course, the reason why the government has structured the particular package is that it has to try to ensure that a number of entrants remain in the fishery to target European carp. Certainly, I think there is some agreement between the Structural Adjustment Committee that was looking into this issue and my department that there be room for about five or six fishers to be able to target carp.

The honourable member asked what areas would be excluded. Clearly, in relation to that (and this was made clear when I met with the inland fishers back in June), we would not have a reach system; they would have access to the entire river. Obviously, there would be certain areas, such as reserves and the like, that would need to be excluded, and that sort of detail would have to be worked through. But, essentially, it would not be a reach fishery, as it is at the present.

In relation to the cost, clearly, that is a matter that would need to be negotiated, in terms of licences, with the Fisheries Management Committee, and that would obviously be based on the number of entrants in the fishery. But, given that we want to encourage that, any fishing licences would be reasonable in terms of taking into consideration that there would be reduced income relative to what currently applies.

The honourable member also asked a number of questions about outside entrants. I have made it clear—and this was clear in the offer that was given to the inland fishers when the ex gratia payment offer was made—that there would be priority for those who took an option before 30 September. If they took the second option—option two—in that offer they would have priority in relation to any future arrangements for the fishery.

The Hon. A.J. Redford: Why is there a time limit?

The Hon. P. HOLLOWAY: There must be some resolution of this matter in relation to the fishery. We need to know whether people wish to be involved. If they do not wish to be involved, the question the Hon. David Ridgway asked about outside entrants comes into play. If people do not choose that and choose to take the full ex gratia payment, or some other option, and exit, the government has to look at the options it has available to it to target carp. The honourable member is quite correct—and I made this point on a number of occasions—we need to ensure that we have some targeting of carp in the river so that their numbers are kept within reasonable bounds. I made the point during the debate last night—and I hope I am allowed to refer to it—that in Victoria it is my understanding that a number of fishers target European carp. I understand that they use certain sorts of haul nets to specifically harvest them within the backwaters. They are the sorts of things that the department is looking at.

Of course, a few weeks ago officers from my department made themselves available to have some initial discussions with the inland fishers in relation to this matter, and I hope that they will make themselves available in the future to discuss with any fishers who wish to continue in the fishery what sorts of equipment might be appropriate. I know in Victoria some sorts of nets have been used to target European carp, and we are obviously open to—

The Hon. Caroline Schaefer: But they are still gill nets.

The Hon. P. HOLLOWAY: No, they are not gill nets. There are various sorts. I am not an expert in nets. However, some sorts of fyke, wilke and haul nets are used. The government is prepared to discuss those matters with those river fishers. If it is warranted to have further discussions, if there are people interested in doing it from the existing river fishery, we are prepared to have discussions with them. If no people wish to take up the offer of continuing in the fishery, the government will have to look at other entrants who might wish to target the carp.

When I was shadow minister for fisheries some years ago, I well recall at one stage some owners of a certain property along the river wished to target carp. At that time, the inland fishers very strongly lobbied me to oppose any attempt by the government to allow those people to harvest carp. The inland fishers—quite rightly in my view—believed that, because they were licensed to catch fish within the river and sell fish, they should have had priority in terms of harvesting carp and that that right should not have been given to others. I agree that the priority should be for inland fishers to have that right. However, others would certainly like the right to harvest carp if no commercial fishers wish to take up that right.

The Hon. CAROLINE SCHAEFER: As a supplementary question, how many times has the structural adjustment committee mentioned in the minister's answer met and who is on it?

The Hon. P. HOLLOWAY: The structural adjustment committee, formed to look at the adjustment package, met once for a full day meeting. That was its only meeting. It was clearly intended to be that way because, of course, there was a very tight time line in relation to ensuring that the ex gratia payment offers were made as quickly as possible. I well recall being criticised by the Hon. Caroline Schaefer because she said that I had left people in limbo who needed to know their offer as quickly as possible, and that is why the process was given a particularly tight time frame. Also, of course, the Inland Fisheries Management Committee is involved in matters relating to the fishery. Perhaps, in an earlier answer, I should have referred to the Inland Fisheries Management Committee as a body that could look at these sorts of issues in terms of what equipment is used. Certainly, those bodies are in existence to look at these matters.

The Hon. D.W. RIDGWAY: As a supplementary question, has the minister provided information on harvesting carp and how was that information passed on?

The Hon. P. HOLLOWAY: I assume that the honourable member is asking about passing information onto the fishers. I imagine that the inland fishers would probably know more than most of us about harvesting carp. I guess that there is some scientific information about what is done in other states. I am not aware of what information was given to the inland fishers at their meeting with officers of my department on, I think, 14 August, but I suppose I can find that out. Clearly, there needs to be an ongoing dialogue between the relevant fisheries management committee and those fishers who wish to continue about what happens in other states and what information is available. Clearly more work needs to be done on that, and we are certainly prepared to do that work.

TRANSPORT AND ART

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Premier and the Minister for the Arts, a question about transport and the arts.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday, I learnt about the cheeky character of two of my new colleagues, the Hon. David Ridgway and the Hon. Terry Stephens. I am assuming in jest they brought to my attention an article which appeared in the *Advertiser* dated 28 August and which was entitled 'Chile Dog Art Under Fire'. This article had escaped my attention but not the attention of the *Advertiser*—it rated in the World News section of the newspaper—

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: Yes, it did show some diligence on the part of my colleagues in that as soon as they saw the reference to art in the headline they thought I would be interested, and I appreciate their support for the arts in this state. They did, with semi-straight faces, query whether an opportunity had escaped me when I was Minister for Transport and Minister for Tourism in advancing a joint-funded transport and arts project—either community arts or public arts—that would have also cleaned up our road network of dead animals. This would be modelled on the $14 500 that the Chilean government gave to an artist to clean up dead dogs on the highways of Chile.

It should not surprise you, Mr President, that this article did feature in the World News of the *Advertiser*, because serious arts rarely do. The article states:

> A Chilean art exhibition featuring dead dogs picked off the highway has stirred controversy in conservative Chile—

and, I suspect, a similar project would in Adelaide—

> particularly over the use of $14 500 in government funds to promote the event. Artist Antonio Becerra scoured the streets of the capital collecting about a dozen corpses of dogs that had been hit by cars. He then embalmed the mutilated cadavers and painted on their bodies, inserting pins and spikes into their preserved flesh. Animal lovers and politicians are outraged by the *Oils on Dogs* exhibition but [the artist] defended his work as a reflection of violence and cruelty in society.

I acknowledge that such a community arts exhibition would not interest me—and not only because I have never liked dogs dead or alive and they have never liked me. However, I remain an enthusiast of government departments developing arts policies and programs which help them meet their corporate objectives and, also, in turn give artists jobs.

The Hon. Sandra Kanck: Is this a serial?

The Hon. DIANA LAIDLAW: No, my colleagues asked whether I had missed an opportunity in terms of arts and transport funding.

The PRESIDENT: Order! I am sure the member is about to come to the question.

The Hon. DIANA LAIDLAW: Yes, I am, Mr President, and I recognise that we are nearing the end of a long session. In terms of transport and the arts and, generally, the arts across government, the former government had developed a policy of government departments progressively implementing arts policy, and I understand that the Premier will shortly release the government's arts and education policy statement that has been prepared by Arts SA and the education department. But, also, similar policies were developed for health, corrections, crime prevention, the PTB and Transport SA in terms of arts projects at gateways to townships and the like.

I asked a question of the Premier on 3 July calling for advice on whether the government intends to continue this arts policy across government and also continue to release the annual Arts Statement. On 10 July the Premier advised as follows:

> I have been advised that Arts SA have been preparing the 2001-02 Arts Statement over the last few months. The format and style of publication is yet to be considered.

I ask the Premier and Minister for the Arts: first, has the format and style of the Arts Statement publication been resolved, and when will this statement be released; and, secondly, what is the fate of the Alex Denko project undertaken by the previous government in conjunction with the Adelaide City Council in the West Parklands at the entrance to the city along Sir Donald Bradman Drive?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer the specifics of the question to the Premier. But, I was interested to hear from my colleague the Hon. Bob Sneath that apparently road workers are, indeed, paid a dead animal allowance as part of their package, and rightfully so. I think we know now that the Hon. Diana Laidlaw kept this as an arts payment, not a transport payment. Clearly, she was not concerned about the workers.

The Hon. Diana Laidlaw: Was it for dogs, or only kangaroos, wallabies and everything else?

The Hon. P. HOLLOWAY: I think they get the same allowance, whatever the animal. There is a whole new future for the arts. As another of my colleagues suggested, on some of our highways we could have the longest road kill art project in the world. However, I think I have probably strayed as much as I should—

The Hon. Diana Laidlaw: Not as far as I did.

The Hon. P. HOLLOWAY: Probably not as far as the Hon. Diana Laidlaw, but I think I have strayed far enough into the area of non-serious art and serious art. I will refer the question to the Premier for his response.

RAIL, SOUTHERN LINK

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Government Enterprises, questions about plans to build a heavy rail link in the southern suburbs.

Leave granted.

The Hon. T.G. CAMERON: Today's *Advertiser* carried a front page story regarding plans to build a heavy rail link linking the southern suburbs to the Adelaide Darwin line as part of a $100 million deep-sea port project at Port Stanvac. Mobil, the Australian Wheat Board and the Australian Barley Board say that the heavy rail link would protect grain exports and give wine producers greater access to overseas markets. The privately funded project would include extending the Port Stanvac jetty by 650 metres and building a terminal—

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation, and I am having trouble hearing the Hon. Mr Cameron.

The Hon. T.G. CAMERON: —capable of storing 100 000 tonnes of grain. Under the plan, the two existing railway lines, which are broad gauge and incompatible with standard gauge interstate railway lines, would be converted to heavy gauge by rail and sleeper replacement along the existing 25 kilometre rail route between Goodwood and Noarlunga.

The proposal also throws into doubt commitments to build a deep-sea port at Port Adelaide, part of the contractual obligation when Ports Corp was sold to the private consortium Flinders Ports for $130 million last year. The Minister for Government Enterprises is reported as stating that cabinet will consider the proposal.

My office has already received a number of telephone calls from southern suburbs residents alarmed about the impact that heavy freight trains rumbling past their homes would have on their health and properties. The suburbs that would be affected by this development include: Goodwood, Clarence Park, Black Forest, Clarence Gardens, Edwardstown, South Plympton, Ascot Park, Cumberland Park, Marion, Mitchell Park, Oaklands, Warradale, Hove, Brighton, South Brighton, Seacliff, Seacliff Park, Marino, Marino Rocks, Hallett Cove and Lonsdale, not to mention the impact at the large road crossings at Cross Road/South Road, Morphett Road and Brighton Road.

This could have a disastrous impact on the 60 000 people living in the immediate vicinity of the Noarlunga line, if you take into consideration the noise, environmental pollution and the real possibility of decreased housing prices. My questions are:

1. Considering the impact that heavy freight trains would have on residents living along the 25 kilometre route, what environmental (including noise and visual pollution), social and economic studies has the government undertaken on the proposed southern rail link and will they be made available to the public?

2. What times would these heavy freight trains be running? Would they be allowed to run after midnight, and what impact would they have on traffic flow at the numerous rail crossings along the length of the proposed route?

3. Will the minister assure the council that, before any initial decision is made on this project, residents living in the affected suburbs along the 25 kilometre route will be fully consulted?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Earlier, in answer to a question asked by the Hon. Sandra Kanck, I said that this proposal comes essentially from a private corporation, particularly the AWB, in consultation with the Mobil Refinery. Whereas I believe that the proponents of this project have had the courtesy to provide information about their project to certain ministers in the past couple of days, I do not think that it is one on which the government has done any detailed work. I will check with the Minister for Government Enterprises as to whether any work has been done.

In answer to an earlier question, I indicated that the government's preferred position—and it is certainly my view—is that Outer Harbor would be the preferred site for a grain terminal for a number of reasons, one being that Outer Harbor is the site of our container port and it makes sense to have some synergies in relation to the operations at Outer Harbor.

From the brief information that I have, I understand that it would be half a dozen trains a week, none of which would run at night. At this stage, though, that is not the issue. This is just a proposal put up by the Wheat Board and Mobil: I do not believe it has not been presented to the government for consideration. As I have said, it is not the government's preferred option and, clearly, if this proposal were to be further considered, a lot more work would need to be done. However, I will provide a more detailed response from the responsible minister.

MURRAY MOUTH

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

Leave granted.

The Hon. R.K. SNEATH: The poor condition of the Murray mouth has been reported to the parliament by the minister as well as by the Minister for the River Murray. I understand that closure of the mouth will have a severe environmental impact on the Coorong. Can the minister advise the council of work being undertaken to keep the Murray mouth open this summer?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): It certainly is the case that there would be a severe environmental impact on the Coorong. I am aware that there would also be fairly severe implications in relation to the fishery in the lakes and the Coorong. I have been advised by the Minister for the River Murray that the planning for a sand pumping project is well underway. The key aim of this project is to have a stable channel to the Coorong. Sand sampling began this week on the sand delta that has formed inside the Murray mouth. The result of this analysis will guide the way the project is undertaken.

While these investigations are continuing, approvals, referrals and notifications are being sought. The council would be aware that the Murray mouth forms part of the Coorong National Park and is a RAMSAR wetland of international significance. It is therefore crucial that the process is undertaken with all the necessary approvals in place. I am also mindful that the project will need to be approved by the Murray Darling Basin Commission, and this approval will be sought at its meeting on 17 September.

It is worthwhile highlighting that the various agencies involved in these approvals are working extremely well together to complete these processes as quickly as possible. Subject to these approvals being granted, the task of removing sand and clearing a channel is planned to commence in October. It is important to note that even with the planned intervention there remains a real possibility that the Murray mouth will close in the next few months. The Murray Mouth Advisory Committee is currently preparing a contingency plan for excavating a new opening if the existing mouth closes.

REPLIES TO QUESTIONS

ABALONE FISHERY

In reply to **Hon. IAN GILFILLAN** (15 July).

The Hon. P. HOLLOWAY: The South Australian commercial abalone fishery for greenlip (Haliotis laevigata) and blacklip (H.rubra) began in 1964. By 1971, the number of licences exceeded 100 and these were reduced through a policy of non-transferability. At the same time the fishery was divided into the three management zones still used today. Thirty licences remained in 1976 when five additional licences were issued; three in the western zone and two in the southern zone.

In 1980, licences became transferable and several transfers occurred as the fishery expanded due to the improvement in price and export markets. A significant increase in catch and fishing effort led to concerns that the resource may be over-exploited, so in 1985 quotas were introduced in the western zone to directly control the level of catch. Quotas were subsequently introduced into the southern and central zones during 1988 and 1989 respectively. Minimum legal lengths are in place for each species in each of the three zones.

Fisheries Management Committees (FMCs) were established for the key South Australian fisheries through Regulation in 1995. The underlying philosophy for their establishment was to provide opportunity for greater involvement and ownership of fisheries management decisions by stakeholders. FMCs have responsibilities provided for under S.32 of the Fisheries Act 1982 to advise the minister and director on the effective management and administration of a particular fishery, so as to enable the Minister to achieve the S.20 objectives of the Act, namely:

(a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or over-exploited; and

(b) achieving the optimum utilisation and equitable distribution of those resources.

The functions and powers of FMCs are described in the Fisheries (Management Committees) Regulations 1995.

The Abalone Fishery Management Committee (AFMC) consists of the following members:

Independent Chairperson

2 members representing the western zone (commercial)

1 member representing the central zone (commercial)

1 member representing the southern zone (commercial)

Fishery manager (PIRSA) (non voting)

Research scientist (SARDI) (non voting)

South Australian Fishing Industry Council (non voting)

South Australian Recreational Fishing Advisory Committee (non voting)

Conservation Council (observer)

The need to vote on issues at FMC meetings has been rare. Agreement is generally achieved through consensus.

In 1997, PIRSA introduced a formal stock assessment process that involved the preparation of an annual fishery assessment report by SARDI Aquatic Sciences. The report brings together available scientific information on South Australia's abalone stocks and forms the major information source used in setting the Total Allowable Commercial Catch (TACC).

Each year, SARDI submits the report to PIRSA and the AFMC for their consideration. Following consideration of the fishery assessment report, and any other relevant information, PIRSA and the AFMC provide their recommendations to the director of fisheries and Minister for Agriculture, Food and Fisheries.

This advice is in respect of blacklip and greenlip abalone for each of the three abalone fishery zones and any sub-zones and takes into consideration the fishery management objectives, strategies and reference points as set out in the abalone fishery management plan.

The latest fishery assessment reports for the abalone fishery were prepared by SARDI (Mayfield et al) in September 2001 (whole of the fishery) and May 2002 (southern zone). The reports are technical and quite lengthy but some pertinent points from the Executive Summary of each report should be noted:

Extract from September 2002 SARDI abalone fishery assessment report

Over the last five years, commercial fishing effort ranged between 0.2 and 131 fishing days.yr^{-1} in areas 33 and 18 respectively. Over the last 10 years, fishing effort increased significantly in three and decreased significantly in eight fishing areas across all three fishing zones. For the Western and Central Zones, the area over which fishing effort was spread has reduced since quotas were introduced.

Overall commercial catch-per-unit-effort (CPUE) for all species across all zones has increased from 65 kg.hr^{-1} in 1968 to over 80 kg.hr^{-1} in 2000. This probably reflects changes in fishing efficiency rather than a trend in stock abundance. CPUE in most fishing areas has ranged between 60 and 80 kg.hr^{-1} over the last five years.

The abundance of abalone at six sites surveyed by divers ranged between 0.08 and 0.8 abalone.m^{-2}. There were no consistent trends in overall abalone abundance through time. However, abalone abundance has declined significantly at both Ward Island and Avoid Bay since surveys were initiated.

The abundance of juvenile abalone ranged between 0.005 and 0.25 abalone.m^{-2}. There were no consistent trends in juvenile abalone abundance through time. Over the last decade, juvenile abalone abundance has declined significantly at only one site (Tiparra Reef).

At four sites, the proportion of legal-sized abalone has increased over the last decade. This may have resulted from decreases in fishing intensity associated with establishment of the quota system and may have resulted in increased abalone biomass and egg production at three of these sites.

The analyses conducted in this report do not provide evidence to suggest that abalone stocks in any of the three zones are under serious threat. However, overall abalone abundance, juvenile abalone abundance and the proportion of legal-sized abalone have all declined at Avoid Bay.

It should also be noted that our analyses are limited to areas at which independent-surveys are conducted and/or where intensive fishing occurs. Therefore, information presented is unsuitable for determining why the number of areas fished and levels of effort and catch in many fishing areas have declined significantly in recent years. Research to address this issue is identified as a priority.

Extract from September 2002 SARDI abalone (southern zone) fishery assessment report

The analyses presented in this report do not provide evidence that suggest abalone stocks in the southern zone are over-exploited.

I understand that Dr Shepherd, a previous employee of SARDI and senior author of the papers to which you refer, has not whole heartedly agreed with the SARDI stock status reports on abalone for the past five years. This is a difference of scientific opinion and does not mean that either group of scientists are wrong. However, I note that one author contributed both to the papers and the stock status reports, although they infer different outcomes.

In summary, I advise that:

- There is no serious concern by PIRSA Fisheries or the industry for the abalone fisheries, which requires any urgent action in relation to the management of the abalone fisheries.
- I am satisfied with the performance of the abalone fishery management committee in their role of providing advice to the director of fisheries and myself on matters relating to the abalone fishery.
- There is currently no plan to establish an independent committee to determine the annual total allowable catch for the abalone fishery. This is my decision to make, as with the other three quota managed fisheries in South Australia, based on the best available scientific advice and advice from PIRSA Fisheries and other sources.
- It is difficult to compare the New South Wales Fisheries Management Committee system with the South Australian structure. If the comparison is restricted to the member voting rights issue it is suggested that this is of little significance in our FMC process, particularly given its history of rare usage and the advisory nature of the committees.
- There is continuing scientific debate world-wide on the assessment of abalone stocks and their management. Dr Shepherd is well recognised as an outstanding biologist, but there are other scientists with experience in stock assessment and fisheries mathematical modelling that do not support his theories for stock management.
- South Australia has some of the best abalone fisheries in the world and this has been due to a precautionary management approach to stock harvest rates. Current scientific assessments indicate that the resource is not being over-exploited.

ARTS BUDGET

In reply to **Hon. DIANA LAIDLAW** (16 July).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

1. The 11 July 2002 media statement, titled International Film Festival has starring role in arts budget, refers specifically to additional funding for a range of new initiatives for the arts, viz. the inaugural Adelaide International Film Festival, the Thinkers in Residence initiative, an annual WOMAD festival, the safe storage of the South Australian Museum's valuable collection of natural science materials and increased operating funding to the Adelaide Festival Centre Trust.

2. The new initiatives referred to were submitted for funding as part of the 2002-03 state budget process. They were considered as part of a rational budget process and additional funding for these new initiatives was secured accordingly.

3. Cabinet was informed in December 2001 by the previous Minister for the Arts of the discovery of unregistered asbestos in the Bastyan Building of the State Library and the significant impact this would have upon the project budget and program. The preliminary cost assessment was that the cost of removing the asbestos could be more than $1.5 million. Cabinet was advised at that time that only once the scope of works was defined and implemented, could an accurate estimate of the final cost of the removal of asbestos be able to be determined. It was stated clearly at that time that there was little

or no capacity for the cost of asbestos removal to be met from within the approved project budget of $41.2 million.

The extent of unregistered asbestos in the Bastyan Building has been clarified as construction works have progressed. Work undertaken to date suggests that the cost of asbestos removal would be about $3.0 million.

The estimated total cost of the project, as contained in Budget Paper No. 5—Capital Investment Statement 2002-03, includes the estimated cost of asbestos removal.

STATE BUDGET

In reply to **Hon. R.I. LUCAS** (16 July).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

In answer to the question asked by the leader of the opposition on 16 July 2002, there has been no change in the manner in which wage and salary provisions are presented in the State Budget.

All completed enterprise agreements are fully funded in the Budget and are appropriately reflected in agency financial statements.

As shown in the Budget Statement (page 8.8), the next round of remuneration increases for most groups within the public sector are not expected to occur until after 1 July 2004. The exceptions to this are for public service executives (1 July 2002) and medical officers (1 January 2003).

The Treasurer indicated at the Estimates Committee on Tuesday 30 July 2002 that a provision of 3.5 per cent had been made to manage future wage outcomes in line with the expected timings indicated on page 8.8 of the Budget Statement.

A provision of 2 per cent is held in agencies, with the remainder included in a central wage contingency provision. This is consistent with past practice. This remains reported under the Administered Items for the Department of Treasury and Finance.

Given that only medical officers and executive agreements are affected this year there are minimal unallocated wage provisions in the 2002-03 figures.

AUSTRALIAN SOUTHERN RAIL

In reply to **Hon. SANDRA KANCK** (18 July).

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

1. The Minister for Transport is aware of this.

2. The Minister for Transport is aware of this.

3. The Minister for Transport is aware of this. In the same article, Auspine is also quoted as suggesting that the rail project is irrelevant and that it would be more beneficial to proceed with upgrading the Border Road. This is a project which, by Auspine's own analysis, will cost around twice as much as the benefits that it creates. Auspine wants governments to pay but it is the main beneficiary. In contrast, reopening the South-East rail line has benefits at least two and half times the cost and these benefits are spread throughout the community. Not only economic benefits to the South-East, but also environmental and road safety benefits.

4. The request for proposal issued last year only required that the successful respondent open the Mt Gambier to Wolseley link. However, all tenderers indicated preparedness to construct additional spur lines, open terminals and reopen other lines where there is market demand and a sound business case. Two of the respondents, ASR and Freight Australia, have recently announced that they are working on a joint approach to reopen the link between Mt Gambier and Portland, supposedly to target export bulk timber products, with joint marketing and pooling of assets. No doubt these two organisations will also assess, with Auspine, the business case for a spur to the Auspine facility at Tarpeena.

5. The Minister for Transport has indicated that this is incorrect. The government's funding contribution is in accordance with the conditions of the request for proposal and hence is limited to a fixed price contribution to the initial upgrade of the Mt Gambier to Wolseley link only. The successful company must meet all other start up costs including financing costs, other upgrade costs including other links and spurs, provision of rolling stock and locomotives and establishment of staff, marketing and terminal services.

6. The obligations of the successful company are established through a contract. If the company is in breach of contract and the contract is terminated as a consequence, the government is able to claim damages and these will be enforced through the normal processes of contract law.

7. No tenderer offered $36 million of up front private sector funding for the South-East rail network. The member's question indicates she has been provided with some information from a competing bid and she seeks to know why it was not the preferred bid. It would be inappropriate to divulge the details of each bid in this place. However, one bid does indicate an investment figure of $36 million and it may be that the member is referring to that bid.

The $36 million refers to investment proposed throughout the life of the project, including significant expenditure outside the South-East rail network. This includes expenditure on Victorian owned railway lines and within the Victorian owned Port of Portland, and on other private infrastructure in Victoria and South Australia. If this is the bid to which the member is referring, it is worth noting that it was conditional upon the Victorian link to Portland being opened prior to the link between Mt Gambier and Wolseley and on funding support from the Victorian government to achieve this. The Victorian government's 'Regional Freight Links Program' currently indicates that funding for the upgrading of the link between Portland and the SA Border will be provided in 'late 2005'. The bid requires that this funding be brought forward—a condition over which the South Australian government has no control unless it funds these works in Victoria itself. It also required funding of around $1 million from local government. Again, the South Australian government could not control this requirement unless it provided the funding itself.

All bids were assessed by independent technical and financial advisers. These assessments revealed that the bid to which the member seems to be referring had some cost items omitted. It also highlighted risks associated with the structure of the bid, including lack of demonstrated financial strength and risk of over estimation of revenue and under estimation of costs. The omissions, risks, likely higher cost, security of funding and conditions associated with this particular bid resulted in it not being the preferred option for the project.

8. The Key Performance Indicators (KPI's) in the contract require the successful company to grow the business such that the overall tonne kilometres of freight indicated in the Public Works Committee report are achieved. As to how the company intends to grow the business to meet these contractual requirements is up to the company and is not specified by the contract.

9. The construction of such a spur line is not a requirement of the request for proposal and it is outside the leased area of the South-East rail network. However, this does not imply that such a spur will not be built. As mentioned in the response to the member's fourth question, it is up to the private sector as to whether or not it goes ahead. As previously mentioned, the KPIs in the contract ensure that the benefits expected of the project are delivered, but the contract does not dictate how this is to be achieved except that the link between Mt Gambier and Wolseley must be opened.

10. The reference to a once a week service by the member appears to refer to recent comments made by an Australia Southern Railroad representative in discussions with local council representatives in the South East. These comments have been taken out of context. The once a week service was what the representative anticipated the initial demand would require on start up. Many businesses in the South-East have said they support rail but will not commit to it until they see it is up and running. Clearly, if there is more demand, and as demand grows, there will be additional services to meet that demand. In contrast, the competitor's five day a week service refers to the maximum number of connections with existing Pacific National services on the interstate line that can be made if demand requires, provided there is capacity available on the Pacific National service. It did not refer to the initial service that would be provided. The selection of the preferred bidder was based upon independent technical, financial and risk assessment of all bids against the requirements of the Request for Proposal.

11. All three shortlisted respondents indicated that they planned to reopen the existing intermodal terminal in Mt Gambier. In addition, all three shortlisted respondents indicated they intended to reopen the link between Mount Gambier and Portland. The market in the South East is fiercely competitive and all three shortlisted respondents have indicated a robust business plan is necessary.

12. There is no evidence that ASR has a flawed business plan, except the hearsay of its competitors. The Minister for Transport doubts any successful company would provide its business plan to its competitors. Australia Southern Railroad has been operating profitably in South Australia for around five years and is part of the second largest railway company operating in Australia, the Australian Railroad Group. The contract is performance based and requires the company to achieve KPIs based around tonne kilometres

of freight carried. What is important is how well the company performs in terms of this KPI, not the apparent inferences of a competitor that it has a flawed business plan. All three respondents sought exemptions from the access regime for the same reason. The exemptions were requested to prevent competitors cherry picking the most lucrative markets which then restricts the company's ability to reinvest in the infrastructure to grow the business as is required by the contract.

13. The apparent dissatisfaction expressed in the South-East media appears to be as a result of unfounded claims and misleading information. The questions posed by the member highlight the dissatisfaction of an aggrieved bidder and are not considered to provide any reason to review the tender selection process.

STANDING ORDERS SUSPENSION

The Hon. M.J. ELLIOTT: I move:

That standing orders be so far suspended as to enable me to move a motion without notice.

Motion carried.

SHOP TRADING HOURS

The Hon. M.J. ELLIOTT: I move:

1. That a select committee be appointed to inquire into and report upon—
   (a) the likely impact of changes retail trading hours on the level of market domination by a small number of retailers and the consequent effect on their competitors and suppliers, in particular:
      (i) is it likely to be anti-competitive in the longer term?
      (ii) what is the likely long term impact on prices?
   (b) any other related matter.
2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication as it thinks fit of any evidence presented to the committee prior to such evidence being reported to the council; and
4. That standing order 396 be suspended to enable strangers to be admitted when a select committee is examining witnesses, unless the committee otherwise resolves that they shall be excluded when the committee is deliberating.

I will not be lengthy at this stage because I have already debated this matter at some length earlier. However, I note that the opposition, at least, did indicate that it was supportive of this motion getting up. It has been arguing to me—and I guess it will argue again—that having two committees at once will confuse things. All I am asking is that the committee be formed to give it a chance to advertise for submissions. Otherwise, six or seven weeks will elapse before the motion can be debated again, after which the committee would have to advertise, and effectively that will result in a two-month delay. If that is what the opposition wants to do then that is obfuscation—nothing more and nothing less.

All I am asking for is that this committee be formed and be given a chance to advertise for submissions; otherwise it is six or seven weeks before the motion can be debated again, after which the committee would have to advertise. Effectively, that is a two-month delay. If that is what the opposition wants, it is obfuscation and nothing more or less, in my view.

The Hon. R.D. Lawson interjecting:

The Hon. M.J. ELLIOTT: I thought I had certain undertakings earlier in the day, but they seem to have dissolved a little between earlier conversations and now. Like so many things in this place, that gets under your skin after a while. It is little games being played all the time. They call it politics. As I said, the other inquiry is solely economic in its considerations. When I say 'economic', that is in a very narrow sense as well. This one looks at much broader issues, particularly the impact on small businesses, in terms of their ability to compete with the larger traders; the impact on suppliers; and the impact on prices. The intention is for this to be broader. I know the opposition gave an undertaking to the government that the other select committee would report by the time parliament sat again. It is not as if these committees will get in each other's way. As I said, I think it is obfuscation that is suddenly being put up. I am saying that, at the very least, this committee could meet on one occasion, determine what the advertisements should state, and place those advertisements to enable people to make submissions. That is not a big ask. Indeed, I hope that there would be support for this motion from all sides of this place.

The Hon. R.D. LAWSON: The reason I have reservations about establishing a second select committee today is that confusion will undoubtedly prevail if we have two select committees of the Legislative Council meeting on the same subject and advertising for submissions. Any member of the public who might be interested in shop trading hours will see two different advertisements for two select committees. There will be general confusion in the community. I indicated this morning to the Hon. Michael Elliott and to the council that the Liberal opposition will certainly be supporting the establishment of the select committee envisaged by Mr Elliott, and we do not resile from that for one moment.

He has now moved the select committee. He has put the motion in a form that is acceptable. The only hesitation the Liberal opposition has about supporting this motion is that it will create two separate select committees which will meet at the same time and advertise to the public in a way that will, in my view, create confusion. Certainly, there is the great likelihood of creating confusion. I indicated before that we will be supporting the establishment of this committee. At the moment, I cannot see procedurally how we can do this, but I invite the Hon. Mr Elliott to modify the motion in some way to ensure this select committee is not meeting at the same time and advertising at the same time as the other select committee. In my view, we owe it to the community. I seek leave to conclude my remarks later.

The PRESIDENT: Is leave granted?

The Hon. M.J. ELLIOTT: No.

The PRESIDENT: There has been a dissenting voice, so leave cannot be granted. The honourable member will have to continue his remarks.

The Hon. R.D. LAWSON: It is a matter of regret that the Hon. Mr Elliott is not prepared to allow further time to resolve this matter, because it is a very fine distinction that we seek to make. Of course, it is possible that Mr Elliott's select committee, when it meets, will agree to defer advertising. That would lead to an avoidance of the confusion of which I speak.

The Hon. T.G. ROBERTS (Minister for Agriculture, Food and Fisheries): I, too, would oppose the setting up of a parallel committee. I am not sure what negotiations went on between the parties, but in a lot of cases committees take

evidence away from their terms of reference. I am not sure whether the honourable member would see the committee, as other members have from time to time, as a carriage for a particular position that the individual member had, but that would be a determination for the select committee once the select committee that has been set up determines to meet. In many cases, select committees have been flexible about their terms of reference but, if we set up another select committee, that would be confusing in the public's mind, and I am not sure where we are going to draw the members from to find the time to sit on it, although I am sure that could be done. I suggest to the honourable member that in talking to the mover of the previous motion that set up the select committee there may be some flexibility for us to look at.

The Hon. J.F. STEFANI: I strongly support the motion of the Hon. Mike Elliott. It is an important issue that the honourable member has moved, particularly as the committee will cover a number of important areas, which have already been mentioned. Considerable thought was given by the honourable member to the formulation of the terms of reference, and his own personal circumstances have also indicated to me a great depth of sincerity and thought given to these terms. With his concurrence, I would like to make an amendment to the terms of reference. I would like to include a further paragraph: to inquire into the social consequences of the changed trading hours. I know that the honourable member wishes to have that amendment inserted. In speaking again in favour of the establishment of this committee, I see no problem—

The PRESIDENT: Just one moment. If you are moving that amendment formally you need a seconder. The honourable member has moved to insert a further paragraph concerning investigating 'the social consequences of the changed trading hours'. For the benefit of the committee, I will ask the Clerk to read the proposed amendment so that we are clear on it.

The CLERK: There will be a new paragraph (b), and it will indicate 'the social consequences of the changed trading hours'. Then existing paragraph (b) will become paragraph (c).

The PRESIDENT: New paragraph (c) deals with 'any other related matter'. It has been moved and seconded that that amendment be added to the motion as proposed by the Hon. Mike Elliott.

The Hon. J.F. STEFANI: Essentially, therefore, we have three terms of reference for the inquiry. I strongly support the proposal to establish a second select committee because it can, in fact, continue the work once the first select committee has reported to parliament.

The Hon. T.G. CAMERON: As I understand it, the Legislative Council has already carried a resolution to set up one committee, and we are now debating setting up another committee to canvass a range of subjects, or material. Whilst the motion standing in the name of the Hon. Mike Elliott goes further than that standing in the name of the Hon. Robert Lawson, to my way of thinking both committees will still be covering the same subject. I have been here for seven years, and I cannot recall this council ever setting up two committees to deal with the same subject.

It seems to me (and I do not want to start playing politics here) that, to resolve this issue, there should be a discussion between the Hon. Robert Lawson and the Hon. Mike Elliott to see whether some compromise proposal can be adopted to ensure that we have only one committee examining shop trading hours. I would have thought that we run the risk of becoming a bit of a laughing stock if, through the processes of pure politics, we set up two committees to investigate basically the same thing.

I concede that the proposition of the Hon. Mike Elliott goes further and would be more extensive than the limited inquiry proposed by the opposition. I indicated earlier that I supported both propositions but, at that stage, only one had the numbers to get up, and that was the proposition standing in the name of the Hon. Robert Lawson. I am not sure what has happened between the passing of that motion and now, but it would seem that we now have the numbers in the council to carry both resolutions.

I just wonder where we are going with this. Every time we disagree on the terms of reference for the setting up of a Legislative Council committee are we going to spit the dummy and say, 'We cannot reach an agreement, so we will set up two committees.'? It begs the question: will the members of the Lawson committee (if I can call it that) also sit on the Elliott committee? As I understand it, there will need to be some changes to the wording if we are to achieve that. Will there be an overlap, or is it the intention of the Hon. Mike Elliott to propose an entirely new committee, comprised of five or six new members completely different from the past? If we are to walk down that path, let us suspend the standing orders of this council and just have a debate about the issue; otherwise, we run the risk of two different groups of members of this council handing down two reports.

What worries me is that we will not be researching and therefore we will not be looking for answers to the problems that we know are there with respect to shopping hours. We will have two committees competing with each other and playing politics. The whole process will become distorted and we will not achieve a decent result out of either committee. I do not know whether it is appropriate to ask this question, but is there any room for compromise between the motion that this council has already carried and what the Hon. Mike Elliott proposes, so that we can proceed on a normal and sensible path? Otherwise, we will end up looking like a bunch of jerks.

The Hon. A.J. REDFORD: I move:

That the debate be adjourned.

The council divided on the motion:

AYES (14)

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

NOES (5)

Cameron, T. G.	Elliott, M. J. (teller)
Evans, A. L.	Kanck, S. M.
Stefani, J. F.	

Majority of 9 for the ayes.

Motion thus carried.

STATUTES AMENDMENT (THIRD PARTY BODILY INJURY INSURANCE) BILL

Adjourned debate on second reading.

(Continued from 28 August. Page 922.)

The Hon. M.J. ELLIOTT: This bill has changed minimally from the bill that passed through the lower house with the support of both Labor and Liberal under the previous government, and one can assume that it will have similar support in the upper house on this occasion. The bill has the following objectives:

1. to re-emphasise that South Australia will retain the statutory authority MAC as the sole provider for compulsory third party bodily insurance;

2. to change the MAC's obligation from attempting to achieve prudent surpluses to maintaining a sufficient level of solvency;

3. to clarify the role of the MAC as not a significant government business activity;

4. to protect structured settlements by ensuring that they are overseen by authorised prudential regulated sources and allow the MAC to be one such source;

5. to amend the operations and composition of the third party premiums committee; and

6. to remove public disclosure requirements that were relevant to an environment where the former SGIC competed with private insurers for business.

By way of background, unlike other states, South Australia has been spared the costs associated with the collapse of private insurance companies because we have had the regulated statutory body, the MAC. This reinforces the fact that the benefits of restricted competition outweigh the costs and risks associated with introducing private companies into compulsory third party insurance. The public has also benefited from the current situation in that there is more ability to control costs, efficiently collect funds and ensure equity between claimants. The government now wants to re-emphasise the parliament's commitment to provide stability for future MAC agreements, and the government also wants to make changes in line with a recent review of compulsory third party bodily insurance arrangements in this state. I have some questions in relation to clauses 4, 7, 12 and 18, but I will wait until we get into committee before I ask those questions. The Democrats support the second reading.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank members for their contributions to this debate prior to the passage of this legislation that will improve the CTP fund in South Australia. As honourable members will recall, the bill was originally drafted by the former government, and I acknowledge the contribution of all members of parliament in their approach to what are quite complex issues.

I would like to attend to some issues raised by the Hon. Rob Lucas regarding the current arrangements with the existing claims manager. The existing claims manager, SGIC General Insurance Limited, continues to manage the claims for the CTP fund under a claims management agreement which expires on 30 June 2003. This is the contract that was originally entered into in 1995 for a term of three years, renegotiated to a limited extent for a further three-year term in 1998, and then extended for two one-year extensions from 30 June 2001.

Thus, at this stage, there is no change in the arrangements that apply for members of the public who might wish to or might be entitled to lodge a CTP claim. He also asked whether the name of the two companies in parallel negotiations had been made public. On 28 September 2001, the Motor Accident Commission advertised for expressions of interest to manage CTP claims. A significant number of expressions of interest was received by the Motor Accident Commission and, after a rigorous selection process, some of those parties were selected to proceed to the next request for tender stage. Documents inviting those companies to submit a request for tender proposal were despatched in February this year, with final proposals required to be lodged in May. Again, after considerable and thorough analysis, two companies were selected to enter into parallel negotiations, Alliance Australia and SGIC General Insurance Limited. These companies were advised of this decision in late July, and both organisations were asked whether they would approve the disclosure of their identity, provided both gave mutual consent. That consent was received in late July, and information was disclosed to each of them and also to certain stakeholders who have a direct interest in the outcome.

The Motor Accident Commission believes that a low profile announcement of the parallel negotiations was in the best interests of all parties, particularly the staff at SGIC, whose future employment arrangements depend on the outcome and for whom general public speculation about that outcome could be stressful or hurtful. At this stage of the process, there was no impact for the general public on the management of CTP claims, and it was not considered appropriate or necessary to make a public announcement. Plans are being made to make full public disclosure when a final decision has been made as to the company that will manage claims from 1 July 2003.

Also, the Hon. T. Cameron has asked whether amending the Third Party Premiums Committee's make-up by 'amending the requirement to have three people representing motor vehicle owners to having three people representing the interests of motor vehicle owners,' is a way of bypassing direct input by motor vehicle owners. As the act currently stands, the three people appointed pursuant to this subsection are required to merely represent motor vehicle owners, and the act does not clarify what role they should perform in carrying out the representation.

The amendment seeks to make it clear that the three people must direct their attention to the higher duty of furthering the interests of motor vehicle owners rather than perhaps simply attending meetings as mere observer representatives of motorists. The amendment does not in any way seek to change the ability of motorists to have a direct input into the process. I hope that adequately addresses the questions raised by members, and I again thank all members for their contributions.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.I. LUCAS: I missed part of the leader's response to the second reading. Is it correct that the two companies negotiating for the claims management process have announced that they are the two parties contesting the claims tender process?

The Hon. P. HOLLOWAY: I said that they had agreed to the release of the information, I think back in July. In late July both organisations were asked whether they would approve the disclosure of their identity, provided both gave mutual consent. That consent was received in late July.

The Hon. R.I. LUCAS: I did not hear all of the minister's reply, so I thank him for clarifying that. First, is the Leader of the Government in a position to indicate broadly—and one accepts that these timetables might change—the time line for

a final decision by the Motor Accident Commission Board; and, secondly, can he confirm that, ultimately, the decision is not for the board to make but for the cabinet?

The Hon. P. HOLLOWAY: I am advised that the board would expect to make a decision in the next two or three months, and it will go to cabinet later in the year.

The Hon. R.I. LUCAS: So, the roles in the decision-making process are such that the Motor Accident Commission Board recommends only the successful tenderer? Is the final decision for the cabinet to make as opposed to the board?

The Hon. P. HOLLOWAY: I am advised that the decision is made by cabinet.

The Hon. R.I. LUCAS: I understand it to be the case that, when the decision was taken in the first instance for the current company to manage the claims management process, that was the same process followed by the Motor Accident Commission Board in a recommendation, and the cabinet of the day made a decision in relation to that.

The Hon. P. HOLLOWAY: In that case, because it was a sale process, the Asset Management Task Force made the decision as to who would buy the contract, and cabinet approved it.

The Hon. R.I. LUCAS: Various commitments were given during that sale process to the company managing the claims management process for the Motor Accident Commission, including employment and the location of offices and functions in South Australia. Can the government place on the record what public requirements, if any, have been placed on the tenderers in relation to those existing commitments in respect of the choice of the successful company as a result of this tender process?

The Hon. P. HOLLOWAY: I am advised that that is a requirement in the tender document, and it has been stated publicly that the claims will be managed in South Australia by South Australians.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. M.J. ELLIOTT: This clause, which amends section 13A, changes 'prudent surplus' to 'sufficient level of solvency'. This is a change from a cash result basis to an accrual approach that includes the consideration of assets and liabilities. This funding is kept separate from Treasury but dividends are paid, or the Treasurer is responsible for guaranteeing the fund. The size of 'sufficient level of solvency' is decided by the Treasurer and gazetted according to a complex formula, which is printed in the *Gazette* and recorded in the annual report (clause 11), currently estimated at about 11 per cent.

Are the government and the opposition prepared to consider whether or not this sufficient level could be set by regulation at a numerical percentage of surplus, which could then be disallowed by parliament? I have had an amendment drafted along those lines but, as yet, it has not been circulated. However, if there is an indication from both sides of the chamber that they are not interested I will not table it.

The Hon. P. HOLLOWAY: I am advised that the methodology to establish the level of sufficient solvency is required to be published in the *Gazette*, and at the time it is established, or at the time of any change (and again in the annual report of the Motor Accident Commission), it is considered that these mechanisms provide sufficient transparency to allow interested parties to make inquiries of the Deputy Premier and Treasurer as to the basis for determining the current level of sufficient solvency or to make inquiries about the reasons for and the effects of any changes.

The Hon. R.I. LUCAS: Do I take it that the government is not prepared to amend this? It is hard, from the opposition's viewpoint, obviously, to make a judgment about something that it has not seen. If the honourable member is looking for an indication of the opposition's position, I would have to say that, at this stage, we would not be in a position to support it. If at some other stage the honourable member introduces private member's legislation or the bill is reconsidered, at least as a joint party room we could have a discussion about a particular amendment and make a judgment about it.

Having been on the other side of the fence, I am not sure how we as members would be able to involve ourselves to the extent that we could make a judgment about whether or not we should disallow the regulation. All of us would necessarily need to have access to all of the estimated liabilities of the Motor Accident Commission. We would need to have access to all of the actuarial advice that is available to the Motor Accident Commission.

The third party premiums committee has a high degree of confidentiality in its considerations, and those persons who serve on the third party premiums committee and have access to actuarial advice are required to maintain the confidentiality of the advice that they receive. I assume that some of that information should not be in the public arena. So, I would not say that forever and a day the Liberal Party would not consider an issue because, frankly, it has not been put before it, but if asked today for an immediate response, given that I have carriage of this bill for the opposition, at this stage I would have to say that, should the member go ahead and draft it, we would not be able to support it today and we would be interested in further discussions with him. We would need to be convinced that we could resolve the sorts of questions that I have raised with the honourable member about access to information so that sensible judgments could be made about what is a fairly critical decision for the operations of the Motor Accident Commission and for the level of CTP premiums being set in South Australia.

The Hon. M.J. ELLIOTT: As I said, parliamentary counsel has just arrived with the draft amendments, and it is not their fault: there has been a fair bit of pressure of time, unfortunately, in getting things done. But, as there is an indication that there are not sufficient numbers to support an amendment in this area, I will not persist with it or place an amendment on file.

Clause passed.

Clauses 5 and 6 passed.

Clause 7.

The Hon. M.J. ELLIOTT: This clause removes a requirement to report to the commonwealth insurance commission and the Treasury. Apparently, these reports are replicated in the annual report, and I understand that the Treasurer will receive a monthly report and that some information will be placed on the web site. Can the minister inform us what information is expected to be on the web site?

The Hon. P. HOLLOWAY: My advice is that the annual report and road safety information are on the web site. There is also a link to SGIC which contains information on how to make individual claims and, indeed, other information.

Clause passed.

Clauses 8 to 11 passed.

Clause 12.

The Hon. M.J. ELLIOTT: This clause relates to prosecutions under part 4 of the Motor Vehicles Act. Apparently minor breaches do not interest the Director of Public Prosecutions unless they involve fraud. This is meant to allow insurers to access smaller breaches. My question is: what breaches are intended to be dealt with under this clause?

The Hon. P. HOLLOWAY: I have been provided with the example of somebody declaring that their car was garaged in premium district 2—which is the country district, whatever the boundaries are—and making a claim whereas, in fact, the car was garaged in the city. In other words, they were getting the benefit of a cheaper premium because they had made a claim that did not appear to be true.

Clause passed.

Remaining clauses (13 to 19) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

Adjourned debate on second reading.

(Continued from 20 August. Page 713.)

The Hon. SANDRA KANCK: I will address both this bill and the Wrongs (Liability and Damages for Personal Injury) Amendment Bill as a package in what I have to say here today. At the outset, I should mention that the Democrats have been campaigning publicly for about four years now on the issue of capping payouts on medical malpractice.

The ACTING PRESIDENT (The Hon. J.S.L. Dawkins): We need to have a lower level of audible conversation; I cannot hear the Hon. Sandra Kanck.

The Hon. SANDRA KANCK: And extending that concept we have been campaigning on now for what must be five years to other areas is a very sensible path. We are concerned that the scope we are dealing with here is very broad and there may be a number of unintended consequences and risks. This legislation was introduced to the lower house only two weeks ago on 14 August, and that has made it difficult to fully analyse its content and to consult with everyone about the possible impact of this legislation, and I put on record some of the Democrats' concerns about the public liability bills that we have before us. Until the 1980s, all insurance was private and companies charged what they liked, but this was not a problem because few people took out insurance.

With the introduction of compulsory insurance, these schemes became very successful. However, some companies became involved in dodgy investments outside what were normal trustee practices, which has probably had a great bearing on the situation in which we now find ourselves. To help those companies out, I think it was former premier John Bannon—so we are going back quite a few years—who put a cap on non-economic loss, that is, pain and suffering, of $60 000 per annum, plus CPI. That cap is now about $200 000, which has made general schemes all the more lucrative. The general schemes also tend to be safer and more viable than private schemes because everyone has to contribute, and it raises the question of why we need to change it. There is no doubt that we need to address the issue of public liability, but rushing this legislation risks having insurance companies cashing in on the current panic before we know the full implications of the changes.

It seems that the Treasurer is being pushed—not necessarily pushed, but he seems to be very keen for South Australia to wear the crown for being the second state to have something in place. However, having that sort of race when there really is no race does not necessarily produce the best results. Some of our concerns relate to definitional and practical issues. I understand we will be using commonwealth definitions, but I also understand that the commonwealth definitions are not yet in place. So that does leave things very wide open.

I question how we can know that the savings will go to the consumer. Due to the rush behind this legislation there has not been time to ascertain how much the insurers gain by way of premiums for each category of insurance and how much is paid. Would it not have been prudent to do so to see whether this legislation is really necessary? It is possible that, since the bill was introduced, the minister might have more information. If so, I would be very pleased to hear of it. With more time, we could have explored alternative approaches to address problems for many groups who cannot take out liability insurance due to the cost. Might it not be better if we considered a state-managed liability insurer for community-based organisations to offer competitive rates and possibly even return a profit to the state?

The second area of concern relates to the implications in the workplace. Over the last two decades there has been a consistent eroding of workers' entitlements, including the removal of the right to issue proceedings against an employer for an unsafe system of work. This bill further reduces the ability of injured workers to issue proceedings against their employer for common law damages, and people not fully compensated under the present system will suffer more.

I indicate the Democrats support for this bill and also for the Wrongs (Liability and Damages for Personal Injury) Amendment Bill, but I want on the record our concern about the unnecessary haste with which we are dealing with these issues and that this could lead to loopholes in the legislation. I am certain that, in a few months' loopholes will be found and we will be back here dealing with amending legislation to try to get it right.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank all members for their contribution to this debate. Some members, particularly the Hon. Caroline Schaefer and the Hon. Diana Laidlaw, expressed disappointment that this bill does not provide for parents to waive the rights of their children to sue for damages if they are injured during the course of a recreation. I note, however, that other members, such as the Hon. Carmel Zollo, expressed satisfaction that this is an appropriate result. Obviously, reasonable people can differ in relation to this matter, and the question was not an easy one for the government.

The government seriously considered providing for waivers on behalf of children and canvassed this issue in its discussion paper. However, comment was received from many sources urging the government to abandon this proposal. Commentators not only included the Law Society and the Australian Plaintiff Lawyers Association but also several children's interest groups, such as Kidsafe and the National Investment for the Early Years. Comment also came from the Association of Independent Schools SA and Catholic Education SA about their concern for the position in which teachers might be placed.

In addition, difficulties emerged, for example, as to whether or not adults, such as a grandparent or family friend

who takes a child on an excursion or a step-parent or a parent's de facto partner who stand in for parents, should be permitted to grant waivers and whether such persons might be liable to legal action by the parent in case of injury to the child. Comment was also made as to the situation of separated parents, one of whom might wish to grant a waiver to which the other parent would strenuously object. Further, concern was expressed that children may later be able to sue their parents or other guardians for giving a waiver.

Although the government appreciates that the bill would have been more far reaching in its effects had children been covered in this way, it ultimately reached the view that the exclusion of children was the better policy. Several members commented that it would have been desirable if the provision for waivers had extended beyond active sports to include other activities such as cultural and artistic activities. For example, the Hon. Diana Laidlaw spoke of the Come Out Festival and the associated street marches. Members would understand that the government is constrained in this respect by the terms of the proposed commonwealth amendment to the Trade Practices Act. That amendment is limited in scope and the activities covered by this bill are similarly limited.

In respect of the provision of other types of services, the Trade Practices Act will continue to apply as it does now and, to that extent, broader legislation by this parliament would be futile. Indeed, to avoid any argument that our bill is broader in scope than that of the commonwealth, I foreshadow that I will move an amendment to the definitions in the committee stage.

The Hon. Terry Cameron spoke about what might be the process for the consumer who enters into a waiver. The bill envisages that the code would be available on the internet so that a consumer who wishes to do so can check in advance what safety regime applies to the chosen provider. If it is a recreation for which there is a charge, the consumer is to be given a notice in the form to be prescribed by the regulations explaining the effect of the waiver. He or she is entitled to inspect the code, which must be available at the provider's place of business.

The bill does not require the provider to supply copies of the codes as this was considered onerous if keeping a copy was in any event required. The consumer would then enter into the contract to be bound by the code, or not, as he or she chooses. So it will be different from the situation envisaged by the honourable member in that you do not waive your rights merely by entering, but you are required to enter into a contract.

However, the situation is different where the recreation is provided free of charge. In that case, the provider can be covered by the code if he or she prominently displays a sign complying with the regulations. A consumer who makes use of the recreational service is then bound by the code. In this context, the Hon. Angus Redford asked about the club member who does not pay a fee for a particular game but pays subscriptions to the club for the right to play. In that case, the recreation is not being provided gratuitously and the former procedure—that is, a contract of waiver—would apply. I suggest that it would not be difficult for a club to make arrangements for its members to sign a waiver.

The honourable member asked for some examples of the two categories. An example of the situation where there might be a contract of waiver would include where a person pays to engage in an activity such as windsurfing or parachuting. An example of a case where the person is taken to be bound by a notice might be where a person is allowed free access to a skateboarding rink provided by a local council.

The honourable member also asked several rhetorical questions. Some of them were more in the nature of comments or matters for members to consider, but I will address them to the extent possible. He mentioned the case of a school that provides recreational activities to the public, as distinct from its own students. A school can be a provider and can register to be covered by codes just like any other provider of a recreational activity as defined. However, it can be protected by a code only in respect of the liability to adults, not children.

As the definition of 'recreational activity' is covered by the bill, as mentioned earlier, it is not open to us to further refine the definition without running the risk of inconsistency with the Trade Practices Act as proposed to be amended. No doubt there may be some activities where it is not clear whether or not they are covered, as can happen with any broad definition, and several members have offered examples. However, the Treasurer has indicated in another place that it is not necessarily the government's intention to register codes for any and every recreation that might be covered by the bill. Rather, the intention is to cover risky sporting activities that would otherwise face difficulty in securing insurance.

The Hon. Angus Redford also asked about the possibility that a code might require a provider to receive special training only offered by a monopoly provider. Under the bill the minister can require the proponent to obtain a report on the proposed code from any nominated person or body. In such a case the minister might well wish for a report from an independent expert or a representative body which is not the proponent of the code. The minister is not obliged to register any code and might well decline to register a code that he considered imposed onerous requirements that were not relevant to safety.

The honourable member also asked about the bureaucracy involved in the registration of providers. The bill requires a provider to register with the minister, giving the information required by regulation. I expect that that might include details such as its name and place of business, the activities to be covered and the code to be applied. The process should not be onerous. The honourable member also asked about the cancellation of codes. As an example of a cancellation, this might occur if the code ceased to be adequate because, for example, of a change in generally accepted safety standards.

The Hon. Angus Redford spoke at length about the issue of risk management, particularly for the non-profit sector. Obviously, in the present bill the very registration of codes will have the effect of implementing risk management measures, because they will clearly set out for the provider what he or she is to do to avoid accidents or injuries to consumers. However, over and above this legislation, a number of initiatives have been undertaken by government agencies to assist in raising the risk management awareness and understanding of various sectors of the community, and to provide advice and assistance to groups and bodies in those sectors in relation to the implementation of better risk management practices and procedures.

It may be helpful to the council if I mention some of these, because I would not like members to be under the impression that nothing is being done. The Office for Volunteers has introduced a risk management education program for volunteer groups in South Australia. A state volunteer compact is to be developed to provide a framework for

effective working relationships between the government and volunteer organisations. Likewise, the South Australian Tourism Commission has developed a volunteer strategy for Australian Major Events which includes the development of a volunteer management program and a volunteer guide for event managers. Training and education will be provided for volunteers for specific events.

Tourism operator seminars are being conducted in all tourist regions of the state as part of a package of initiatives that the commission has established to address public liability issues, and to assist operators in improving risk management practices. Again, the Office for Recreation and Sport has developed a risk management resource for the sport and recreation industry, to give sport and recreation organisations in this state the basic information to help them understand the principles of risk management. It is not a detailed how-to manual but, rather, an introductory guide with references to lots of other resources depending on the needs of the individual organisation.

The above-mentioned agencies are working together to ensure that their risk management activities are coordinated where possible to complement each other and enhance the overall benefits to the community. They are also working with Local Government Risk Services, which is a division of insurance broker Jardine Lloyd Thompson. It provides risk management advice to councils, and it facilitates the provision of public liability cover to a large number of community and sporting clubs associated with councils, with the aim of providing an extended resource base to coordinate a statewide risk management project for community, volunteer and tourism groups and bodies.

Contrary to what the honourable member suggested, the government is very mindful of the value of risk management strategies in avoiding claims, or reducing the number of claims. However, in most cases it is not necessary to legislate to achieve this. As to the many other comments and suggestions offered by the Hon. Angus Redford and other members as to other possible measures to alleviate the insurance crisis, these will be brought to the attention of the Treasurer. As members are aware, this issue is under ongoing national consideration and further legislation may come before this council in due course, after the recommendations of the commonwealth's panel of experts are published at the end of next month.

Finally, I foreshadow two further amendments. The first is designed to make clear that the ordinary rules about contributory negligence and the contribution between tort visas are to apply to injury claims covered by this bill. These rules are set out in the Law Reform (Contributory Negligence and Apportion of Liability) Act 2001. It is the government's intention that the courts be able to take into account the contributory negligence of the consumer and that the provider also be able to take contribution proceedings if a third person has contributed to the harm.

The second amendment will address the concerns which have motivated the amendment foreshadowed by the Hon. Robert Lawson, concerning the disallowance of codes. The government does not think that disallowance is appropriate but does wish to respond to the honourable member's concern that there should be proper opportunity for public scrutiny and criticism of the code before it comes into operation. The government will move an amendment to address this by requiring the minister to advertise any application to register a code, and consider any resulting public submissions before deciding whether to register a code. I hope this solution will commend itself to members. I thank honourable members for their contribution. I guess if members wish to pursue some of those issues, we can do so during the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. A.J. REDFORD: I will make a couple of general comments, without going into too much detail, about the response by the honourable member in relation to some of the comments I made in my second reading speech. The first comment that he made was that the process of developing codes of practice and registering those codes should not be too onerous. However, he did not in any way, shape or form indicate why it would not be too onerous. On many occasions, we have passed legislation in this place—and I can think of the forest legislation, which was quite innovative legislation to separate forests from land—but without some sort of push or impetus it has never been taken up. That is the problem here. Simply to say that it will not be too onerous is not good enough, as far as I am concerned.

The minister talks about 'risk management' and the fact that there are bodies engaged in risk management. I will be interested in hearing a general response from the minister and we can get to the detail later. This bill talks about recreational activity provided by a wide range of organisations, both volunteer and non-volunteer. If you do not fall within recreation and sport, tourism, local government or the Office for Volunteers, you do not get any assistance. Frankly, I do not think that is good enough.

I am pleased that for the very first time in this whole debate, on the last night of parliament, after all the development of this package of legislation, the words 'risk management' have come from the mouth of someone on the government benches.

The Hon. P. HOLLOWAY: I am pleased that the member is pleased. My comments earlier were that the registration of providers should not be onerous. The registration of codes is a different matter. One would expect that a lot of work would go into codes—and appropriately so—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Indeed, it is difficult and tricky. I think we are talking at cross purposes. The comment I made was in relation to the registration of providers.

The Hon. R.D. LAWSON: In my second reading speech, I made mention of the fact that this bill is related to amendments to the Trade Practices Act. Of course, the Trade Practices Act only applies to corporations and constitutional corporations. The amendments to be made in the federal parliament to the Trade Practices Act will have an important bearing on those corporations. However, a similar provision to the prohibition under the Trade Practices Act against exemption clauses appears in the South Australian Fair Trading Act. That exclusion of exemptions will continue to apply to sole traders, for example, in South Australia. I may have been distracted during the minister's response, but I did not detect his mentioning anything about any intention of the government to amend the Fair Trading Act. Unless that amendment is made, it seems to me that a significant area remains uncovered by this legislation.

The Hon. P. HOLLOWAY: Perhaps the deputy leader could provide us with the section of the Fair Trading Act to which he is referring. There are some provisions in the Consumer Transactions Act to which the honourable member might be referring, but if he gives a reference it will make it easier for me to answer his question.

The Hon. R.D. LAWSON: Section 96 of the Fair Trading Act has the marginal heading, 'Contracting out prohibited', for example. That means that the prohibition in section 56 of the Trade Practices Act against misleading and deceptive conduct cannot be mitigated by some form of exemption clause. Similarly, section 58 of the Fair Trading Act provides that a person must not in trade or commerce, in connection with the sale or supply of possible goods or services, make false representations about how good the services are. An owner of a merry-go-round, who is an individual, not a corporation, might commit some breach of that section and not be able to contract out of it.

The amendments to the Trade Practices Act allow persons to whom that act applies to contract out of their liability. It concerns me that contracting out will now be permitted in relation to recreational services under the commonwealth legislation, but not under this comparable South Australian legislation.

The Hon. P. HOLLOWAY: My advice is that there are no equivalent sections of the Fair Trading Act. I am advised that there is a more limited one in the Consumer Transactions Act, but that has a somewhat limited application in relation to domestic and household services, rather than recreation.

The Hon. R.D. LAWSON: I do not accept that explanation in full. Of course, the point I make is not so much a criticism of this bill, other than a comment on one of the limitations of the bill. We can overcome the difficulty to which I am referring by separate amendment to the Fair Trading Act, but perhaps that should be the subject of separate legislation.

Clause passed.

Clause 2.

The Hon. A.J. REDFORD: When does the government propose to bring this act into operation?

The Hon. P. HOLLOWAY: We want its operation to coincide with the commencement of the Trade Practices Act amendments.

The Hon. A.J. REDFORD: What work does the government intend to do between the time that this legislation is passed—hopefully, this evening—and the time that the legislation comes into operation?

The Hon. P. HOLLOWAY: I understand that the government wishes to establish a Treasury task force to work out details of the regulations to be implemented under the act.

The Hon. A.J. REDFORD: Who will be on that task force?

The Hon. P. HOLLOWAY: We can probably provide those details to the honourable member, but it will probably include the Commissioner for Consumer Affairs, someone from tourism, my adviser Katherine O'Neill (who has done work on this bill) and maybe someone from the Office for Recreation and Sport, but we will get that information for the honourable member.

The Hon. A.J. REDFORD: As I understand it, there is a task force to develop regulations and then, subject to the commonwealth legislation passing, this legislation will be proclaimed. Most of the work that the task force will be engaged in is the development of regulations; is that correct?

The Hon. P. HOLLOWAY: There will be other matters. We do not have the details on that, but I am sure there will be no shortage of work for the task force to undertake, given the importance of this matter and given that we are obviously trying to make up a lot of ground in a very short time.

The Hon. DIANA LAIDLAW: I would like the government to consider, since this Treasury task force is still being considered, that someone from the arts be invited or at least be given the opportunity to say that it is not relevant, because my experience in this field is that everyone speaks about the liability issue as if sport alone is the physical activity. There are a whole lot of circus activities and dance-relevant activities which are recreational and which have liability implications. I would like the Treasurer to be more imaginative in what the implications of this legislation may be beyond the sport and recreation field.

The Hon. P. HOLLOWAY: I take the point raised by the Hon. Diana Laidlaw and undertake to put that proposition to the Treasurer.

The Hon. A.J. REDFORD: Will an education program be embarked upon prior to the date on which the act comes into operation?

The Hon. P. HOLLOWAY: Does the honourable member mean in relation to giving information about the act and its operation or does he have something else in mind?

The Hon. A.J. REDFORD: That will do for a start. Is anything going to be done in relation to that?

The Hon. P. HOLLOWAY: That is something that the Treasurer would be considering once this bill is under way. Some information will need to be provided in relation to it, but that is the sort of thing that will be worked out in the coming weeks.

The Hon. A.J. REDFORD: Will anything be done during this period to establish a regime whereby people might be able to begin developing codes of practice?

The Hon. P. HOLLOWAY: There is no reason why people cannot start turning their minds to developing these sorts of codes.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: The whole point is that we have to have the act in place first. If the bill is passed this evening and we have these codes of practice and waivers included, that is when the work needs to begin. The important thing is to pass the bill so that the principle of waivers is established.

The Hon. A.J. REDFORD: This bill will be as useful as tits on a bull without some of these precursors.

The CHAIRMAN: Order! The choice of language could be a little better. It is probably not unparliamentary, but it would be better if the honourable member chose his language a little better.

The Hon. A.J. REDFORD: We are all tired: I think we should be a bit patient with each other. The government just does not seem to have addressed any of these issues. As I have said time and again with this package, there is a heck of a lot more to this whole problem of insurance than simply passing a few laws and hoping that everything will get better. The vagueness of the answers that the minister conveys on behalf of the government—and I appreciate that the minister does not have direct responsibility for this—would indicate that very little thought has been given to this aspect. That is disappointing.

As I have said in papers that would have been made available to the government following my trip on behalf of the former government to the United States, this issue is absolutely critical. If you do not do it properly, you will have all sorts of problems. When we get down to the risk management issue later, I will outline some of that in great detail, but I just think that the government is totally ill prepared in relation to this.

The Hon. P. HOLLOWAY: All I can say is that the government wants to get this bill through and establish its

task force, and establish the codes contained within the bill. We just need to get that set up. There is a lot of work to do, and the government is not suggesting that there are not many aspects to the public liability crisis within this country: there are many dimensions to it. One point that I would make is that the federal government has a particularly significant role in that, and one that in my opinion it has been pretty effective at slipping out of. But that is another story: let us not get into a debate on that.

Many things need to be done. They involve different levels of government and a lot of cooperation. This government is seeking that cooperation with the commonwealth and the other states. The sooner we get this bill passed the sooner we can address this crisis.

Clause passed.

Clause 3.

The Hon. R.D. LAWSON: I move:

Page 3, after line 10—Insert definition as follows:

'negative'—a motion before the House of Assembly or the Legislative Council is, for the purposes of this act, taken to have been negatived if the motion is defeated or the notice of motion lapses;

The Hon. R.K. Sneath interjecting:

The Hon. R.D. LAWSON: They are actually parliamentary counsel's words. This is a consequential amendment that provides an appropriate definition to underpin the following principle. The principle is that the codes of practice under this act, which modify the law relating to the duty of care, must be laid before both houses of parliament and can be negatived in either house of parliament. Members will know that, under the Subordinate Legislation Act of this state, any regulation or rule is required to be tabled in parliament and can be disallowed by motion of either house. That is any bylaw of any council.

These can be quite insignificant things and quite significant things as well, and they can be disallowed by a motion of either house of parliament. That is because of the important principle that, where regulations affecting the community are being introduced, they ought to be subject to parliamentary scrutiny and capable of being disallowed by either house of parliament. I have to go ahead a little in the bill to explain it, but these codes of practice alter the law, the duty of care that applies to people in the community.

At the moment, all members of the community are under a general duty of care to avoid foreseeable risk of harm to people who are affected by their actions. That is the general duty of care; the general law of negligence. The bill introduces these codes of conduct which convert that general duty of care not to harm one's neighbour into a duty to comply with a particular code of practice. So, we are changing the law by each of these codes—and there might be very many of these codes. As presently prepared, the bill gives the power only to the minister to either approve or disapprove of a code: there is no parliamentary oversight.

I submit that it is appropriate that there be parliamentary oversight of these codes of practice. It is not enough for the minister to give all the assurances in the world that he will consult on them, that he will advertise them, that he will make them available for people to comment on, that he will put them on his web site, or whatever. There ought be parliamentary scrutiny of these important instruments. We have parliamentary scrutiny of regulations under the Dog and Cat Management Act; we have parliamentary scrutiny in relation to the by-laws of every council for street signs, parklands and everything else. There is some parliamentary oversight. But here we have this important, significant and novel measure introduced into this state, which has never been introduced into any other place in the commonwealth, or anywhere else, so we are told, yet there is no parliamentary scrutiny.

What is proposed in the amendments standing in my name is a scheme under which these codes of practice will have to be tabled in parliament, and we are proposing that they will not come into force until there has been an opportunity for either house of parliament to negative them. This is a somewhat unusual way of approaching it. Most regulations are required to be tabled in parliament and can be disallowed; they come into force and they are subsequently disallowed. However, what is being proposed here is that these codes of practice will not come into force until the parliament has an opportunity to disallow them. That is exactly the same model that was adopted in relation to the code of clinical practice and the code of research practice under the Reproductive Technology Act. Those codes do not come into force until parliament has had an opportunity to disallow them.

What I am proposing, for which we seek the support of members and also the support of the government, is that there be this process of parliamentary scrutiny and the possibility for parliamentary disallowance of these codes. I imagine that a format will soon be developed for these codes of practice, and it may be a matter of formality, in most cases, for the parliament not to seek to intervene. But, certainly, in the early stages of the development of these novel codes, I would envisage that there will be an important role for probably the Legislative Review Committee in relation to codes of practice until we adopt what might be termed a pro-forma. But in every code of practice there will be different issues and different interest groups—industry groups, consumer groups, associations, sporting groups and the like—that should have the opportunity to put a point of view to the parliament. It is for that reason that I move the amendment now standing in my name—which, as I said, is really only an introductory amendment and, obviously, it will be taken as a test of the principle of parliamentary scrutiny.

The Hon. P. HOLLOWAY: The government opposes this amendment. But, to address the general issues raised by the deputy leader, we will be moving our own amendment. So, perhaps, with respect to this clause, we could use this as a test for the more substantive parts of the opposition's amendment. The effect of the opposition's amendment is to distinguish two processes: the registration of the code (which is a matter for the minister), and the code coming into effect (which is subject to a motion for disallowance). The government's main concern is that this process could create uncertainty and confusion for providers of recreational services.

The government's bill proposes simply that the code come into effect by being registered. A notice is published in the *Gazette*, and that is that. Providers of recreations know where they are. Once the code is registered, they can apply to register an undertaking to be covered and can conduct their business in reliance on the code. Their position is certain, and they can arrange their insurance accordingly. However, under the proposed opposition amendment, providers who rely on the fact that the code has been registered take a chance. They may find at a later date—indeed, perhaps several months later—that no such code comes into effect.

Obviously, the prudent provider will take no notice of a code when it is registered, but will wait out the necessary period. And it could be weeks, for example, if it is 14 days

disallowance by parliament, and we are now going into a six week recess; it could be a considerable time. So, they would have to wait for the necessary period, which could be some months, to see whether it is disallowed. Meanwhile, he or she can do nothing to limit liability to consumers of the recreation. He or she may have to renew insurance, if the time comes on, on the basis that there is still no uncertainty about any code. So, it is prudent to purchase full cover against common law risks. In that sense, we have not addressed the fundamental problem. Still worse is the fate of the imprudent provider who fails to grasp that a code appearing on the minister's web site as a registered code is, in fact, not of any legal effect.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I will take that up in a moment. He or she may purchase insurance that is quite inadequate, and be very badly caught out. The amendment seeks to avoid this undesirable result by requiring that the web site distinguish between registered codes that are in force and registered codes that are not. However, it is easy to imagine the small business operator or the non-profit association that does not realise the difference and does not think to take legal advice on it.

In the government's view, this proposal is both uncertain and potentially dangerous for recreational providers. The uncertainty is compounded by the proposal that even after the date for disallowance has passed either house of parliament may require the cancellation of a code at any time. In reality, this extends the disallowance period indefinitely. Unlike the position under the bill, which requires a minister to have some reason for cancelling a code, the council does not need any reasons. The government considers it inappropriate to have the parliament undoing the responsible minister's decision in this way. It is argued that the code is a regulation like instrument, because it—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: The Hon. Angus Redford has interjected, but what we are talking about here is certainty for business. The whole purpose of this package of measures is to try to reduce insurance costs. We are trying to reduce insurance premiums to increase the availability of insurance for certain activities by providing more certainty in the marketplace. The suggestion is that this amendment is going away from that direction.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is not a question of scrutiny at all. There is plenty of scrutiny in relation to this matter. It is argued that the code is a regulation like instrument because it can affect the rights of parties. However, this overlooks the fact that the code applies only as and when the parties to a contract decide that it should. It does not bind any person without his or her consent. And that is the point: people are not bound with or without their consent. In that sense, it is not a legislative instrument at all and it is not an appropriate instrument to be disallowed by the parliament. If the minister fails to register codes that are adequate, or registers codes that are not adequate, he or she will be subject to the usual scrutiny and criticism in the parliament and elsewhere.

There are other objections. Under the amendment the minister is to be compelled to register a code unless he or she has a good reason not to. This reverses the position under the bill, which leaves the matter to the minister's discretion. The government had indented that the onus should lie entirely on the proponent of a code to satisfy a minister of its adequacy. The proponent gets the benefit from the code, and it is up to him or her to do the spade work of showing that it is adequate and proper to be registered. If the minister has doubts, the code should not be registered. If the proponent can put forward an amended version that satisfies the minister, so be it. However, under the amendment if the minister simply does not know whether the code is adequate—for example, he has doubts about it that are not allayed by the expert report provided—he must go ahead and register the code because he cannot point to a good reason. The government does not think that this is desirable. The matter is too serious. The rights of many consumers will be affected. If the minister is doubtful that a code is adequate, he should not have to register it, because he will be doing those consumers a serious disservice.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I would have thought that the Hon. Angus Redford would understand that. The government certainly understands the concern for proper public scrutiny of codes and has filed an amendment to deal with that by other means. In relation to this debate, it might be helpful if I explain the amendment we will move shortly, because it is an alternative to the current amendment. The government cannot support the amendment moved by the Hon. Robert Lawson which would provide for disallowance of codes. However, it understands the concern for public scrutiny of codes and for a proper opportunity for public comment. Accordingly, it has proposed an amendment as an alternative solution to these concerns. This amendment would require the minister, before registering a code, to advertise the application in the press. It would allow interested parties an opportunity to inspect the proposed code and to make submissions as to its inadequacy. It would require the minister to take these into account before a code can be registered.

The government hopes that this mechanism may address the concerns that have been expressed. It avoids the uncertainty inherent in the proposal to disallow a registered code. However, at the same time it will ensure that there is a proper provision for public scrutiny of the codes before they take legal effect. It will give the minister the benefit of comment on the adequacy on the code from interested persons who may not otherwise have been involved in developing the code. The government recognises the concerns of members opposite and suggests that this could be a useful enhancement of the bill. I hope that the council will understand the reasons why the government is opposing the opposition's amendment and why we are seeking an alternative approach. This is too serious an issue to—

An honourable member: To leave to the parliament.

The Hon. P. HOLLOWAY: No, it is not too serious to leave to the parliament.

The Hon. T.G. Cameron: It is too serious for us to have any say in it.

The Hon. P. HOLLOWAY: That is not the case at all.

Members interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: All I can say is that it is a pitiful reflection on the parliament in this state when such arguments are put forward in total ignorance of the context. Perhaps, Mr Chairman, this place does need to be abolished.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.D. LAWSON: The response from the minister was most patronising and almost offensive. The minister made three points—

Members interjecting:

The CHAIRMAN: Order! Let's not get precious.

The Hon. R.D. LAWSON: The minister made three points which ought to be identified in the first place. First, he said that the amendment I am proposing will lead to uncertainty.

The Hon. P. Holloway: Yes.

The Hon. R.D. LAWSON: It won't. At the moment, there is uncertainty in most of the ways in which we handle regulations, because the regulation is made, it comes into force and can be subsequently disallowed by the parliament. So people in the community—

The Hon. T.G. Cameron: Only after extensive debate.

The Hon. R.D. LAWSON: Yes, but you are out in the community and you are complying with the regulation which regulation might later on be disallowed. In this amendment we are proposing that the registered code of practice will not come into force. It will not have any application until it has been tabled in parliament and until such time as parliament has had an opportunity to examine it and either approve it or disapprove it. It will not happen that there will be the uncertainty of something coming into force and then subsequently being disallowed. It simply will not come into operation until after parliament has had an opportunity to peruse it.

The minister said that there would be public scrutiny of the codes, and his alternative method is for the minister to allow there to be public comment, and there will be public advertisement of them. That is all very well—public scrutiny of the code. We are suggesting parliamentary scrutiny of the code, that is, the members of parliament who are responsible for legislating in this state will have had an opportunity to say whether this modification of a standard of law that everybody is bound to comply with will be altered.

The Hon. T.G. Cameron: And we will all be bound by a majority decision in this place.

The Hon. R.D. LAWSON: Indeed, as the Hon. Terry Cameron says, we will all be bound.

The Hon. A.J. Redford: Ask the minister whether he understands the doctrine of separation of powers.

The Hon. R.D. LAWSON: Perhaps the honourable member can ask him that a little later. The third point made by the minister was that this code of practice will only modify contractual arrangements, that is, a contract between individual users and the provider of the services, rather than have a legislative effect. In other words, you have to agree to it before you can be affected by it. However, the way the bill operates it will not have that effect. Clause 6(1) provides that a duty of care may be modified by a registered code by a contract, and subclause (2) provides that before entering into the contract you have to be given a notice in accordance with the regulations. But subclause (3) says that if a registered provider jumps through these various hoops:

> a consumer who avails himself or herself of the services is taken to have agreed to a modification of the provider's duty.

In other words, if you put the notice up outside your merry-go-round and the notice complies with the regulations—namely, it is black printing on a white background of a certain size—then the consumer is taken to have consented. It is not in the ordinary contractual sense where you go, sit down, look at a contract, sign it and a say, 'I agree to this.' It is a notification in accordance with the regulation which actually changes the law and the duty of care which is owed by that provider to a particular consumer.

The Hon. T.G. Cameron: Which often lessens the rights of the consumer.

The Hon. R.D. LAWSON: Indeed; not only often, but it will always lessen the rights of the consumer. So, this is not just a contractual arrangement. It is, in fact, a legislative arrangement that will apply, frankly, whether or not you read the sign and, as we all know, most consumers will not have read the sign. They will not have directed their mind to this matter. We as legislators owe an obligation to those people to ensure that the way in which their rights have been adversely affected is consistent with the public interest. So, far from adopting the less certain methodology which is to allow for subsequent disallowance, we are proposing that the code does not come into force at all until parliament has had an opportunity to scrutinise it.

The Hon. P. HOLLOWAY: That is one of the problems with this issue. At the moment in this country we have a public liability insurance crisis. We must address it now. We need to get on with the job. One problem will be, of course, whether many small businesses can afford to wait a third of a year—which it could be by the time this process goes through—before there is any relief in relation to this matter.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Supposedly it was introduced because, first, codes must be developed—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is not. Certain processes are in place that involve the development of the code. The code must be developed. Under these amendments it must be put on a web site, and it could well be three or four months before the 14-day period has elapsed.

The Hon. T.G. Cameron: Why three or four months?

The Hon. P. HOLLOWAY: Well, look at it now. Look at some of the disallowance motions that appear on the *Notice Paper*. It takes 14 sitting days to lodge a notice, but it could be months before it is debated. I can recall in this place that it has taken more than a year before some disallowance motions are considered. They hang around for various reasons. That is the reality if you proceed with this system. We need to provide those small businesses that are providing services with some relief as soon as possible. That is the whole purpose of this legislation. If it were not for that problem, I imagine that, in some ways, it would be very comforting, for a minister knowing that there is some sort of back-up process, such as parliamentary disallowance. The trouble is whether we have the time to do that as far as those providers are concerned. The other point that needs to be made is that, at the end of the day, it will boil down to a choice by the person who goes bungee jumping, parachuting, or whatever. If they are not a party to the contract, the current law applies. We are talking about developing codes, and the purpose of those codes is to reduce the public liability risk and reduce the insurance cost so that some of these service providers can continue in business.

All I can do is urge the committee to reject the Hon. Mr Lawson's amendment and to accept the government's amendment, which at least provides a more public process in terms of developing these codes. At the end of the day, this is not about escaping parliamentary scrutiny: it is about trying to deal with the practical problem of giving providers an assurance that they can address this public liability crisis.

The Hon. SANDRA KANCK: It seems to me that, if we vote for this, effectively we are saying that we support the Hon. Mr Lawson's amendment to clause 4; and, if we vote against it, we will be indicating our likely support for the Hon. Paul Holloway's amendment. I must say that, at first glance, I looked at the Hon. Mr Lawson's amendments and they appeared to be okay. Subsequently I looked at the minister's amendment and I am in favour of that, and the reason is the question of time. As the Hon. Mr Lawson explained, the code would not be able to take effect until it was tabled in parliament.

Let us assume that these laws are already in place and that tomorrow someone develops a code. It could not come into force until parliament resumed in the middle of October, and members would know that sometimes the time between sittings is much longer than six weeks. I have many problems about the delay that could occur as a consequence of that. If we are talking certainty, I think that having a code that comes into force and does so fairly quickly is probably the best way to go. The Hon. Mr Lawson has argued that scrutiny is also an issue. If this is a matter of concern to members of parliament, like everyone else in the state they would have an opportunity to go to the stated place, as in the Hon. Mr Holloway's amendment (which could be a web site or a physical place), to inspect the code.

I think that all parliamentarians are now computer literate to a lesser or greater extent and have access to the web. It would therefore not be a difficult thing for MPs who are concerned about this capacity to scrutinise to be able to follow the path indicated in the amendment proposed by the minister to gain that scrutiny and transparency. I indicate that the Democrats will not be supporting the insertion of this new definition.

The Hon. A.J. REDFORD: I must say that I am perplexed at the way in which the Australian Democrats approach issues. In the last parliament they were very strong about the role of parliament and the scrutiny of regulation and legislation. Indeed, the Hon. Ian Gilfillan—

The Hon. Sandra Kanck: Scrutiny will be there; check it out on the web site.

The Hon. A.J. REDFORD: The honourable member interjects, 'Check it out on the web site.' It is the law. That is a little bit like saying, 'Let us give the minister the whole of the law-making power of parliament. We will give it to the minister and, because he puts it on the web site, there is scrutiny because we can see it.'

The Hon. Sandra Kanck: That is how plan amendments are scrutinised.

The Hon. A.J. REDFORD: That might well be, but the logic of the argument is that we can give the law-making power to a minister and, because he puts proposals on a web site, we can visit a web site and that is scrutiny. That is utter and complete nonsense.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: It is, and I refer the minister to clause 6(2), which indicates that it modifies the duty of care. That is a change to the law. If a court says, 'The duty of care in a certain situation is different than what has been decided in previous cases, that is seen to be a change in law', and that is subject to the scrutiny of appellate courts, and ultimately the scrutiny of the parliament.

The Hon. P. Holloway: But every contract does that.

The Hon. A.J. REDFORD: No; this is a fundamental misunderstanding from the honourable member. A contract between two individual people is an arrangement. This is not a statement to the community at large. This is about providing services to the community at large and providing them with information that they may or may not act upon in relation to that. It is a modification of the duty of care and, if it is not, why does clause 6(2) say that it is a modification of a duty of care? If the advice that the minister is getting from the Attorney-General's Department is that this is not a modification of the law, I must say that I have some question mark over that advice, and my confidence in that advice is severely diminished.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: You are saying that it is not a change of law?

The Hon. P. HOLLOWAY: If you do not sign the contract, the current law applies; it is as simple as that. We are talking about waivers. If you do not sign it, the current law applies.

The Hon. A.J. Redford: Why do you need this bill then? On that logic, you and I could modify the duty of care by contract.

The CHAIRMAN: Order! The Hon. Ms Kanck.

The Hon. SANDRA KANCK: I just want to make sure that my interjection is on the record, that is, that the proposed process that I am choosing to support is really no different to the same sort of public scrutiny that occurs, for instance, with a plan amendment report. An advertisement appears in the newspaper. People can go to the Conservation Council, the Department of Environment or the Department of Urban Planning, look at whatever they need to look at and have an opportunity to make comment on it. The situation is similar with respect to the Mining Act. I know that, 18 months ago, I was responsible for amendments to the Mining Act that allowed these things to appear on a web site so that people could have the opportunity to have input. It is no different from that. It is transparent and it is available for scrutiny.

The Hon. R.D. LAWSON: In response to the Hon. Sandra Kanck's concern about the delays that might occur if a registered code cannot come into operation until after there has been an opportunity for parliamentary disallowance, in my instructions to parliamentary counsel I sought two forms of amendment: one, the amendment that is now proposed, namely, that the code will not come into force until there is an opportunity for parliamentary disallowance; and, two, the standard form that applies to most rules and regulations, namely, that they come into force immediately upon being made but that parliament subsequently has the opportunity to disallow.

The honourable member seems to be suggesting, as I understand her, that she would support the conventional disallowance procedure—namely, coming into force immediately but can be subsequently disallowed—but that she is reluctant to adopt the method employed in my amendment. The reason I did that was that the Hon. Nick Xenophon, in conversation, indicated a very strong preference for the method that I have adopted, namely, that the code does not come into force until there has been an opportunity for parliamentary disallowance.

I invite the Hon. Sandra Kanck to indicate whether she would support a disallowance mechanism of the sort that I have just outlined, namely, one in which the code comes into force immediately but can be disallowed. I indicate again that the reason we did not adopt that method is that it creates some uncertainty, because the code has force and then later it is taken away: then, of course, as we know from past experi-

ence, governments can often get a bit stroppy so they remake the regulation immediately and it has to be disallowed again.

The Hon. T.G. Cameron: You were pretty good at that.

The Hon. R.D. LAWSON: It has happened with governments of all persuasions.

The Hon. T.G. Cameron: Usually to the Democrats' disallowance resolutions, I might add.

The Hon. R.D. LAWSON: If one wants to overcome that difficulty, one should adopt the method that I discussed with the Hon. Nick Xenophon and which is included in these amendments currently under discussion.

The Hon. SANDRA KANCK: That indicates that there are three choices available: the Hon. Mr Holloway's amendment; the Hon. Mr Lawson's amendment; and a second amendment from the Hon. Mr Lawson that we do not have on file but which he could move in a hurry if we need it.

The Hon. T.G. Cameron: He's trying to win you over.

The Hon. SANDRA KANCK: I can tell that. I come back to the position that I stated earlier, that I believe that the transparency and the scrutiny that are required in this instance can be brought about by the Hon. Mr Holloway's amendment.

The Hon. R.D. LAWSON: I think, with the greatest of respect to the Hon. Sandra Kanck, that she misunderstands. These are not three alternatives. There are two possible parliamentary scrutinies where parliament has a role. The Hon. Paul Holloway's amendment is legislation by ministerial fiat. The minister can do what he likes when he likes.

The Hon. P. Holloway: It is not legislation: this is the legislation. It is a code.

The Hon. R.D. LAWSON: No, the code of conduct that the minister approves is solely a ministerial act. You, the minister, have said that the government will generously allow a public examination of this code that the minister proposes.

The Hon. T.G. Cameron: But no right of appeal.

The Hon. R.D. LAWSON: No right of appeal or disallowance, and no role for the parliament. I think it is worth examining the legislation, because I suspect the Hon. Sandra Kanck might be under some misapprehension. I appreciate, of course, that she has only just come into this role recently because of the absence of her colleagues. The process for registration of a code is outlined in clause 4: the proponent may apply to the minister for registration; such a code must set out the measures that the provider proposes to ensure a reasonable level of protection; a code submitted for registration must comply with the requirements of the regulation—and, presumably, that means it has to be typed on A4 paper and meet all those sorts of requirements and address a number of issues; the minister may refuse to register a code if the minister is not satisfied; the minister may register a code or cancel the registration. So, this is purely a ministerial act with no opportunity for parliamentary supervision or scrutiny.

The Hon. Paul Holloway is suggesting that they will keep that procedure but they will add to it. They must publish an advertisement in a newspaper. It will be in the Public Notices that everybody reads; circulating generally, giving notice of the application, as under the Liquor Licensing Act; identifying the recreational services—and that might be something like bungee jumping or adventure tourism or horse riding; stating a place—which may be a web site—which may be inspected; inviting interested persons to make submissions. What sort of scrutiny is that? It will be buried away in the back of a newspaper which nobody looks at, nobody has occasion to look at, nobody has a duty to look at. It is just a way of saying, 'We have consulted by putting in the notice: we have jumped through the hoops that we set for ourselves and the public has been consulted.'

This is the first legislation of its kind in any Australian state. This is the first such proposal. It sets such a low threshold that it is virtually useless. If we are going to be the first, we should set a benchmark that others will follow as setting a reasonable standard before we modify duty of care. We are changing the common law rules that apply to particular people.

The Hon. P. Holloway: If they sign a contract.

The Hon. R.D. LAWSON: The minister keeps interjecting 'if they sign the contract'. All people who have any familiarity with the way in which business is done realise that the signing of contracts is exactly the same as your having been deemed to have signed a contract when you buy an airline ticket. There, on the back in tiny print that nobody ever reads—other than a lawyer who is paid to do it—is the declaration that you are taken to have signed when you put forward your credit card because the rules say that that signature is sufficient. Nobody reads them and nobody will understand them. Unless you have a parliament that is prepared to take some responsibility, nobody ever looks at it. If you are happy to leave everything in the hands of the minister, whoever the minister might be, that is one thing. Frankly, we are not happy to allow it just to be a ministerial matter which, in the end, is actually a bureaucratic decision. Ministers do not get a chance to look at these things, anyway. They simply sign off and say, 'That will be good enough.'

The Hon. T.G. Cameron: Are you speaking from experience?

The Hon. R.D. LAWSON: That is the standard format. Once the standard format is adopted, I doubt whether too many ministers of recreational services, many of whom will not have the great training of the Hon. Angus Redford to understand these things, will take notice of them. So, when we are setting landmark legislation, I do not think we should set the bar so low that no standards are imposed.

The Hon. P. HOLLOWAY: Let us not spend too much time on this. The threshold that we should be setting is one which allows small business to continue to operate—one in which there is a reasonable practice where the minister can, after public consultation, endorse the code of practice that has been worked out through consultation with the industry and which then comes into place so that these industries can continue to operate. That is the threshold we need. That is why we are doing it in a hurry, and it is why we are here tonight. This bill has been introduced to make it practical. I suspect that, if the Hon. Robert Lawson has his threshold, we run the very real risk that this bill will not effectively deal with the very problem we are faced with.

There are two main flaws, and I will go over this for the last time. First, it is easy for small business operators not to realise the difference between the code when it goes onto the web site saying, 'This is the code that the government wants but it might be three months before it is finally given the imprimatur of parliament.' That is the first risk (and it is a considerable risk) that is introduced into the system if the opposition's amendment is carried.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No; this is not like other regulations. It is a considerable risk. Secondly, under this amendment, even after the date of disallowance is passed, either house can still require the cancellation of the code at any time. We would be introducing uncertainty, which is the

sort of thing that people setting insurance premiums take into account when setting rates. The other point I make for the last time is that we are talking about codes, and many codes have an affect on and are referred to in acts of parliament. In relation to planning, the Hon. Sandra Kanck has mentioned that codes are published and are mentioned in legislation—

The Hon. R.D. Lawson: They are all disallowable, and this is not.

The Hon. P. HOLLOWAY: There are many codes that—

The Hon. R.D. Lawson: That are disallowable.

The Hon. P. HOLLOWAY: Well, there are many that are not. For instance, there are dozens of federal codes. What about Agvet and things like that that are set through ministerial councils? I will not labour the point. The important thing is that, if we are to address the public liability insurance crisis, we should not make it so cumbersome that it does not achieve what it sets out to do.

The Hon. A.J. REDFORD: In response to that last comment, there is another way of addressing the issue and that is to just get rid of the law of negligence altogether and have 'buyer beware' if that is your only focus. My understanding is that clause—

The Hon. P. Holloway: We are not suggesting that; there has to be a balance in this, as there is with everything else.

The Hon. A.J. REDFORD: Yes, and that is what we are seeking. In relation to clause 6(4), was the minister's earlier comment that the modification of the duty of care is a simple contractual modification? Have I understood the minister correctly in restating it in that way?

The Hon. P. HOLLOWAY: Would the honourable member please repeat his question?

The Hon. A.J. REDFORD: My understanding is that what the minister is saying in response to my earlier assertion that this is a changing of the law and a quasi legislative function is that that is not the case but that it is a simple contractual amendment, and that is how the government would characterise it.

The Hon. P. HOLLOWAY: It is a change that is put into effect by the consent of the party, such as the person who goes bungy jumping. They sign the form and consent to the change in the law.

The Hon. A.J. Redford: I missed the last word, minister.

The Hon. P. HOLLOWAY: I was making the point about someone who goes bungy jumping and pays for the service. When they sign they are agreeing to a change in the law.

The Hon. A.J. REDFORD: That is exactly the point. Five minutes ago, the minister said that it was a simple contractual change and now he is saying that it is a change in the law. Which is it: a change in a contractual arrangement or a change in the law?

The Hon. P. HOLLOWAY: It is the act of signing the contract.

The Hon. A.J. REDFORD: Now I am utterly confused. Not 10 minutes ago, the minister said that the modification in the duty of care was not a modification in law but a modification to the contractual arrangements. And now the minister has used the word 'law' twice. So, is it a change in the law or is it a change in the contractual arrangement?

The Hon. P. HOLLOWAY: The code does not change the law; it is the consent of the party under the contract. It is not the code itself that brings about the changed circumstances.

The Hon. A.J. REDFORD: What does the code do then? Does it change the normal contractual arrangements? I will put it to the minister in this way. My understanding is that the minister is saying that a modification of the duty of care pursuant to clause 6 is a mere contractual change in the relationship and not a change in the nature of the law that might apply in that situation.

The Hon. P. HOLLOWAY: By the act of contract, the code is imported into the arrangement. Surely, any contract entered into by parties will change how the law operates within the limits of the law as they relate to the contract. That is what we are doing here. We do not disallow every contract entered into.

The Hon. A.J. REDFORD: I appreciate that, minister. Let me put the absolute absurdity of what the minister is saying into this context: if what the minister is saying is correct—if the effect of this bill is as he describes it—why the heck do we need the bill at all? We can have changes in contracts under the current law, so what use is this bill—as the minister asserts—if this is merely a change in contract when one avails themselves of these? Why do we need the bill, because that can be done now?

The Hon. P. HOLLOWAY: We need to provide certainty to people. People who enter into these contracts need to know that the waiver they sign has certainty. Both parties need certainty: the small business person who provides the service needs that certainty to get reasonable insurance rates; and the person who is going bungy jumping needs the certainty of knowing that reasonable provisions apply. That is the purpose of this law.

The Hon. A.J. REDFORD: As I understand the minister, that can be done now. You can put a sign on the door and that changes your contractual arrangement, or if you get on to an aeroplane, subject to trade practices provisions—

An honourable member: Which law?

The Hon. A.J. REDFORD: The contractual arrangement that currently exists at common law. I am sorry, but this might be a bit complex for the honourable member who interjects. There are two ways to characterise this: either it is a change in contract, in which case we do not need this bill at all, or it is a change in the law. If it is a change in the law, the opposition says that it ought to be scrutinised by parliament. The minister cannot have it both ways. You either need this legislation and it will have effect because it has the effect of changing the law and how it is applied on parties or, alternatively, we do not need the bill, because it is already within the capacity of people to change their contractual arrangements.

The Hon. P. HOLLOWAY: The purpose of this bill is to give those contracts some certainty in law. Clause 6—

The Hon. A.J. Redford: Why is the law uncertain now? Will the minister identify the uncertainty?

The Hon. P. HOLLOWAY: Well, I guess any contract would presumably be entered into under common law. At present, it cannot be done under the Trade Practices Act, and that is part of the problem. I am reminded that that is why the Trade Practices Act has to be amended first.

The Hon. A.J. REDFORD: Why don't we just rely upon amendments to the Trade Practices Act in the absence of this bill? What work is this bill doing?

The Hon. P. HOLLOWAY: The problem with that is that every individual provider would have to enter into their own individual contracts with sellers which would open up the prospect for litigation in relation to those. It is a matter of certainty, isn't it? That is what we are about: providing certainty. Certainty does have a significant economic value

which is, I guess, why business is done through Hong Kong rather than through mainland China.

The Hon. SANDRA KANCK: I beg members' indulgence here. Because I took over this folder of material only a short time ago, I missed bringing up something earlier. I understand we should be working through the definitions in alphabetical order, and I would like to ask a couple of questions about the definition of 'consumer'. It says that a consumer is 'a person (other than a person who is not of full age and capacity)'; I take it that that means a minor, being a person who is not of full age, but I am seeking some explanation for capacity. Does this includes people with diminished mental capacity?

The Hon. P. HOLLOWAY: If people lack mental capacity to enter into a legal contract they would also be excluded from the law.

The Hon. SANDRA KANCK: I have another question about 'consumer'. If a school were to enter into an agreement with an outside service provider, for example, a company that provides swimming instruction for students, and an agreement was made with the school for the whole body of students, would that still leave the school fully liable for the students as individuals?

The Hon. P. HOLLOWAY: The bill has no application to children and therefore the current law would apply.

The Hon. SANDRA KANCK: But does it not have an application to the school?

The Hon. P. HOLLOWAY: Not if they are providing services to a child. I discussed that matter at some length when I summed up the second reading debate. This has been an issue that has been raised throughout the debate in both houses: should children be included or not? It is one of those issues that is complicated and important but, in the end, the government decided that waivers should not be issued in relation to children.

The Hon. R.D. LAWSON: Perhaps I should indicate at the earliest opportunity that I have just had a discussion with parliamentary counsel. I did, in my earlier response, to the Hon. Sandra Kanck, suggest a method of overcoming her difficulty about delay, namely, that we adopt the conventional measure of disallowing the instrument after it had been tabled and after it had come into force. However, it has been pointed out to me, for reasons that I think are good, that it will not be possible to proceed by that route because that would create uncertainty.

If we are to have parliamentary scrutiny of these codes of practice, the only way we can effectively do it, without compromising the whole scheme, is in the way in which it is presented in my amendment, namely, that the codes do not come into force until there has been an opportunity for parliamentary scrutiny. Otherwise, we will have the difficulty of uncertainty being created by them coming into force and then going out of force. That would mean that people would have to insure against the possibility of them ceasing to operate. The committee divided on the amendment:

AYES (9)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lawson, R. D. (teller)
Lucas, R. I.	Redford, A. J.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	

NOES (6)

Gazzola, J.	Holloway, P. (teller)
Kanck, S. M.	Roberts, T. G.
Sneath, R. K.	Zollo, C.

PAIR(S)

Laidlaw, D. V.	Elliott, M. J.
Stephens, T. J.	Gago, G. E.
Xenophon, N.	Gilfillan, I.

Majority of 3 for the ayes.

Amendment thus carried.

The Hon. P. HOLLOWAY: I move:

Page 3—

Line 16—Leave out '"recreational activity" means' and insert:

'traditional services' means services that consist of participation in

Lines 21 to 25—Leave out the definition of 'recreational services'.

After line 27—Insert the following subclause:

(2) It is the parliament's intention that recreational services should be interpreted in the same way as the corresponding definition in the Trade Practices Act 1974 (Cwth)[1].

[1]The second reading speech given in the House of Representatives on the introduction of the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 implies that 'activities such as horse riding, bungee jumping and other similar activities' would fall within the definition of recreational services.

The Hon. P. HOLLOWAY: These three amendments are part of one proposal and should be taken together. The bill currently before the house contains a definition of 'recreational activity' and a definition of 'recreational services'. The purpose of this amendment is to ensure that there can be no doubt about parliament's intention that recreational services covered by this legislation are to be the same as the recreational services covered by the commonwealth's Trade Practices Amendment (Liability for Recreational Services) Bill 2002 now before the House of Representatives.

In another place, questions were raised as to the scope of the bill and the activities likely to be covered. It was apparent to the government that the reference to a service providing facilities in paragraph (a) of the definition of 'recreational services', in particular, was a source of some confusion. The definition of recreational services currently contained in this bill is, in effect, an elaboration of the definition of 'recreational services' contained in the commonwealth bill. However, on reflection, and on seeking further advice from parliamentary counsel, the government has reached the view it is preferable not to elaborate on that definition but to mirror it exactly. That is what this amendment does.

Members will well understand that, for the bill to work, it must be consistent with the proposed commonwealth legislation. It is not open to us to provide for waivers for activities that are not in fact covered by the commonwealth legislation, as any attempt to do so would prove invalid. The intention of this bill is to cover exactly the same activities as will be covered by the Trade Practices Act, as amended. This amendment is designed to avoid any doubt that this is the result.

The Hon. R.D. LAWSON: I indicate the opposition's support for this amendments. I understand the reasons for them. The definition and the footnote, in the amendment to the clause after line 27, refer to the second reading explanation in the House of Representatives, which indicates that recreational services will include 'activities such as horse riding, bungee jumping and other similar activities'. That is hardly a very extensive, highly descriptive or illustrative definition. Many members of the House of Assembly were gravely disappointed by the fact that in the debate in the House of Assembly the Treasurer said that in no way could

the Pichi Richi Railway, or any other activity of that kind, be regarded as the provision of recreational service, because he took the view that that simply was not a leisure time pursuit or activity involving significant physical exertion. What does concern us is that the minister seems to be taking an entirely personal view of what is or is not recreational services. That is yet another reason why the opposition is grateful to members of the house for supporting the motion which will give some degree of parliamentary scrutiny.

The second point to make is that this legislation might be keyed into the commonwealth Trade Practices Act—that is a very important key—but its effect is not limited to those activities that are governed by the Trade Practices Act, and in particular there will be many businesses which operate outside of the Trade Practices Act and are not governed by the Trade Practices Act but which will be affected by this bill. With those reservations I indicate the opposition's support for the amendment.

Amendments carried; clause as amended passed.

Progress reported; committee to sit again.

[Sitting suspended from 6.03 to 7.45 p.m.]

MURRAY RIVER FISHERY

Adjourned debate on motion of Hon. Caroline Schaefer:

That the regulations under the Fisheries Act 1982 concerning fishing activities, made on 30 June 2002 and laid on the table of this Council on 9 July 2002, be disallowed.

(Continued from 28 August. Page 934.)

The Hon. R.K. SNEATH: I had the opportunity to meet a fisherman from the Murray River and have a long talk to him for a couple of hours. I have also taken the time to read all the letters that I have received from the fishermen and their families and I certainly have some sympathy for them, the same as I have sympathy for all workers who lose their livelihood. I do not know how many opposition members raised their concerns with the minister, but I certainly did, on two occasions. I think I did okay, on one occasion, especially.

Members interjecting:

The Hon. R.K. SNEATH: There are interjections on the other side: 'What about the other?' As I said, I raised their concerns with the minister because I read their letters, but it would be interesting to see how many people on the other side knocked on the minister's door and raised their concerns when they got the letter: very interesting to see how many did that. What these people are doing is playing politics with the lives of families. That is what they did last night: they stood up in here to grandstand to the gallery. They are playing politics with these people's lives, knowing full well that they signed a pact with the member for Hammond that would have made them do the same thing.

The Hon. A.J. REDFORD: Mr President, I rise on a point of order. I understand that this pact, according to a ruling in another place, is sub judice, and I understand that there were some difficulties—

The PRESIDENT: The honourable member is talking in general terms about a political matter. I do not think there is a point of order. The Hon. Mr Sneath will bear in mind the points raised, but there is no point of order.

The Hon. R.K. SNEATH: Earlier this evening we heard the Hon. Mr Elliott in his speech on the select committees mention the political games that are played here. This is what members opposite have been playing over this issue—political games. And they continue to play political games at the expense of the Murray River fishers, which in my opinion is damned wrong and should not happen. These people are the big bad wolf, but they are not playing grandmother—they are playing political games. It is a shame. I understand that people came in last night to hear the debate, and I am sure they would have been disappointed because most people could see through these people and their games.

I would like to refer to a question that the Hon. Caroline Schaefer asked the Minister for Agriculture, Food and Fisheries about the Lake George fishermen. The answer of the Hon. Paul Holloway was:

> I am amazed that the Hon. Caroline Schaefer would want to bring up this issue. Let me present the council with the facts. There were two commercial fishers on Lake George. As a result of seasonal conditions all the fish died and, as a result of that, the fishery was not viable. The honourable member's predecessor, as the minister for fisheries, did offer those fishers a sum of money—I believe it was $60 000. . .

Do members know what the minister did then? The minister withdrew that money, offering those fishermen no compensation whatsoever. Reflecting on the last government and what it thought about the Lake George fishermen, it is a good job that the Labor Party is in government now to look after the Murray River fishermen. When people lose their livelihood, it is not time to play politics; it is time to sit down and seriously think of what we can do for them.

The Hon. T.G. Cameron: That's what we're asking the government to do.

The Hon. R.K. SNEATH: But the opposition knows full well that it signed a deal to do the very thing that is being done here, except—

The Hon. T.G. Cameron interjecting:

The Hon. R.K. SNEATH: The Hon. Terry Cameron interjects.

The PRESIDENT: Order! The Hon. Terry Cameron will not interject.

The Hon. R.K. SNEATH: This is a better offer than he ever negotiated for a worker when he was working for the AWU, I can tell you; a much better offer.

The Hon. T.G. Cameron: How would you know? You weren't there.

The Hon. R.K. SNEATH: I've seen some of your deals. But the fishers were very lucky that the Labor government was in. What they would have received if there had been a Liberal government is the same as the Lake George fishermen have received: absolutely nothing. Shame! Shame! You would have given them nothing, and now you want to play politics with their lives. You want to stand up here and grandstand and play politics with their lives. It is an absolute disgrace and I am very glad that we have had a compassionate minister to deal with this. I take the opportunity while I am on my feet to wish them and their families all the best for the future.

The Hon. R.I. LUCAS (Leader of the Opposition): I was not going to enter the debate, because my colleagues have adequately canvassed the issues, and in particular I pay tribute to the Hon. Caroline Schaefer. I think that everyone involved with this difficult debate will acknowledge the commitment that she has given and the compassion that she has shown in relation to these issues.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Let's just talk about that: let's just talk about who has shown compassion in relation to this issue. The Hon. Caroline Schaefer will not be able to blow her own bugle in relation to this because that is not the sort of person she is, but on behalf of my colleagues I pay tribute to the fact that she has been the one person who has been prepared right through all this to listen and to do something about the issues that have been raised on behalf of the people affected. I was not going to rise in this debate until I heard the garbage I just heard from the Hon. Mr Sneath in relation to this debate.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Mr Sneath talks about the opposition and the Hon. Caroline Schaefer playing politics in relation to this matter. I ask the Hon. Mr Sneath: which has been the party; who have been the members who, for the past two days, have forced those people to sit in the gallery hour after hour while they refused to let this issue be debated, while they tried to wear them out, while they tried to drive them home—

The Hon. P. HOLLOWAY: Sir, I rise on a point of order.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —while they tried to prevent any—

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I have a point of order, Mr President.

The Hon. R.I. LUCAS: You are a disgrace.

The Hon. P. HOLLOWAY: I have a point of order, Mr President—

The PRESIDENT: Order! There is a point of order. The Leader of the Opposition knows the rules of debate better than most. When a point of order is raised, he will not continue to debate. The point of order will be heard.

The Hon. P. HOLLOWAY: The Leader of the Opposition is not only quite clearly misrepresenting the position but also, in attacking me, he is using unparliamentary language. He is also distorting—

Members interjecting:

The PRESIDENT: Dissent is not a point of order. I am a little concerned that too much hubris is being shown on both sides of the council. This is a serious issue. It has been continuing for some days, and I am quite concerned about it. I ask honourable members to debate this issue with the dignity it deserves, because we are talking about the lives of South Australians on this occasion. We will do this in a dignified way and we will achieve a resolution in a short space of time.

The Hon. R.I. LUCAS: The actions of this minister and this government are an absolute disgrace—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —because of the way in which they have treated people, in particular during the last couple of days—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —people who have given up hours and hours, who have given up dollars, who have given up time to come down and listen to this debate. Through the actions of this minister, supported by people such as the Hon. Bob Sneath and others geeing him along and preventing this debate until late on a Thursday night, in the last stage of this parliamentary session—

The Hon. P. Holloway: You know the reason. Why don't you tell the truth, Rob Lucas—perhaps for the first time in your life tell the truth.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —because of the actions of this minister—

The PRESIDENT: Order! The Leader of the Government is not dignifying the debate by casting aspersions on honourable members. I want honourable members to treat one another with respect and I want them to treat the debate with respect. I will insist on that. The finger waving and the pointing will not make any difference to the facts of the debate. Let us continue the debate in a dignified manner and get on with the business.

The Hon. R.I. LUCAS: As I said at the outset, I was not going to participate in this debate until we had the contribution from the Hon. Bob Sneath tonight. The contribution of the honourable member came as a result of the specific urging of the minister to get him up on his feet in relation to this debate—

The Hon. P. HOLLOWAY: Sir, I rise on a point of order. The Leader of the Opposition is attributing motive to me. There is no way that he can know what it is. He is in breach—

An honourable member: Action, not motive.

The Hon. P. HOLLOWAY: No, he is attributing—

The Hon. R.I. Lucas: What is the point of order?

The Hon. P. HOLLOWAY: He is breaching the standing orders of this parliament by attributing motive.

Members interjecting:

The PRESIDENT: Order! There is no point of order. There is dissent. I understand that the points may be hurtful, but they are not unparliamentary. It is not the first time that words such as that have ever been used. Again, I remind members to maintain the dignity of the council.

The Hon. R.I. LUCAS: I am not sure what 'attributing motive' means and whether that is a mortal or venial sin in relation to the procedures of the parliament.

The Hon. P. Holloway: Just tell the truth—

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I will not be gagged in this debate. The Leader of the Government can stand up with as many fatuous points of order as he wishes, but I will not be gagged from speaking in this debate. As I said, I was not going to participate in the debate until we heard the contribution from the Hon. Bob Sneath tonight, when he attacked the Hon. Caroline Schaefer and other members on this side of the chamber for playing politics with the lives of South Australians—playing political games was the accusation that was levelled at the Hon. Caroline Schaefer and other members on this side. The Hon. Bob Sneath and the leader do not like the facts. With respect to the games that have been played in the past two days to try to stop this debate from taking place, this leader—a minister of the government—has led the charge. He has been skulking about the corridors of this place—

The Hon. P. Holloway: Why don't you tell the truth—

The PRESIDENT: Order! The minister is demeaning his own character by interjecting and casting aspersions about people not telling the truth. He may disagree, but I ask him to desist from—

The Hon. P. Holloway: They are accusations that are being made against me that are incorrect.

The PRESIDENT: Unfortunately, disagreement is not a point of order, and we are trying to maintain the dignity of this debate. All members will have to abide by the same rules.

The Hon. R.I. LUCAS: This minister has been skulking about the corridors of this place for the past 48 hours, trying to cobble together the numbers to prevent this debate from taking place—certainly trying to stop a vote from being taken. If this minister wants to deny the truth and the accuracy of that, let him stand up and make that statement and deny the truth and accuracy of what I have just put on the public record. This minister has tried, over the past 48 hours, to stop this debate from proceeding.

I strongly support the contribution that has been made by my colleague the Hon. Caroline Schaefer. She will very adequately summarise the substantive debate when she closes it but, on behalf of the Hon. Caroline Schaefer and my other colleagues who have been assisting her in this debate, I strongly refute the game-playing tactics by the Hon. Bob Sneath and other Labor members in relation to this matter. As I said, it is this minister who has led the charge for the past 48 hours on this issue.

The Hon. CAROLINE SCHAEFER: It gives me no joy to sum up with respect to this matter, because this will be, I would think, the last opportunity that I have to try to bring some pressure on members opposite to give some form of justice to 30 people who, through no fault of their own, now have no way of making a living. I would like to refute some of the allegations that have been made about me and my party.

I was the minister for primary industries at the time that members of the Labor Party sold their souls to the Hon. Peter Lewis. I was involved in looking at his compact, and I was one of the ministers who would have been asked to sign that compact had it been signed. I stand here in front of every one of you and say that it was not signed. The front page is quite a separate document—

The Hon. R.K. Sneath interjecting:

The Hon. CAROLINE SCHAEFER: As the Hon. Bob Sneath knows, that is an entirely separate document.

Members interjecting:

The Hon. CAROLINE SCHAEFER: We did not sign that compact because we knew that it could not be afforded—and there are some prices that no-one should be asked to pay just for the sake of power. It is also—

An honourable member: Tell the truth.

The Hon. CAROLINE SCHAEFER: I am telling the truth. One of the things that I have never done in this council is not tell the truth. I know that tonight's debate will not give those people back their licences; it will not give them back their gill nets. But I had no choice: there was no other way that I could have brought this matter to the council. I considered a censure motion. It would have been very easy to censure the minister, because his handling of this issue has been nothing short of abysmal. I did not do that, because I have seen censure motions lie on the table for months and years with little effect. I could have, I suppose, in retrospect, tried for a select committee. But the process in this place, for as long as I have been here, has been to move a motion of disallowance and let it lie on the table and let the Legislative Review Committee deal with it. That would have given the fishers an opportunity to give evidence and to be heard by a bipartisan committee. However, I was informed that that was not going to take place, so I saw no other choice but to take this to its sorry conclusion.

If this motion is carried tonight, my understanding is that that will at least make the Hon. Paul Holloway take this matter back to his cabinet or to Executive Council. Hopefully that will open the door for him—and I do not think that he is a man without compassion—and give him the opportunity to admit that a mistake has been made and that these people have property rights. I have read various documents that show that, legally, this is a property right. Even if it is not legally binding, morally these people had a transferable licence against which they could borrow money. So, the banks thought it was a property right. Why has that property right not been compensated? Why have we looked at an income?

If I owned a hotel on the corner of North Terrace and King William Street and the government compulsorily acquired some of my property in order to widen the street or for whatever reason, under the law I would be compensated for the value of the property—whether I had been running that property full-time, part-time, at a profit or at a loss has nothing to do with the fact that it is a basic property right.

Members opposite are certainly correct in one thing, and I think perhaps one thing only, that is, the Liberal Party and the Labor Party went to the election with identical policies on the river fishery. I made public statements in the Riverland. I spoke to some of the people present in the gallery tonight before the election and told them what my policy might be. That was an independent scientific review, because two groups of people were telling me entirely different stories. There was then to be a consultation process. However, before the election I said to those people that I could not see their fishery surviving in the long-term, because I could count and I knew the political ramifications. However, I promised them that I would listen to them and that I would try to work out decent compensation.

What has disappointed me more than anything about this matter is the Hon. Paul Holloway's absolute refusal to speak with these people, to answer their letters, to have them through his doors or to talk to them on the telephone. Indeed, I have approached him on a number of occasions for some sort of bipartisanship. I know that the Hon. Julian Stefani has tried very hard to work toward some sort of fair settlement. I know the Hon. Nick Xenophon has suggested an independent arbiter, but none of these things has happened. Why have they not happened? Because this matter was rushed into headlong, because of an agreement with the Speaker in another place.

I could go on at length, and I know that I have quoted a number of people. One of the fishers sent to me and to all of us something yesterday that probably asks all the questions we are all asking. He began by saying:

> The way we have been treated is extremely unfair. We had our dream business and the Labor government suddenly wiped it away from us for no reason and has offered compensation less than our last year's income. We have capital investments of more than they are offering us. We have come to terms that we are not going to get our business back, but we have not come to terms with the ex gratia payment they have offered us. We work hard to make an honest living and cannot believe the South Australian Labor Government can do this to our family and 29 others. We not only fished for native species but also did our bit to remove the 'River Pest' European Carp. We have grave concerns as to what damage they will do to the river system in the future if not removed as they will take over the habitat of the native fish when they reach plague proportions.
>
> Fishing is our lives. My father was a fisherman, my brother is a fisherman, my sister and brother-in-law are fishers, my uncle, my cousin. . . How can they do this and then offer us a ridiculous payment. . . my son also wanted to be a fisherman one day.

I will quote from the letter he wrote to the minister—one of the thousands that have been written to the minister with no reply—as follows:

I am writing to you in reply to your letter dated 15 August 2002, regarding the Governments offer to licence holders in the Murray River Fishery.

As you stated in your letter that it is in the interests of licence holders to make a decision regarding acceptance as soon as possible so that assistance may be provided. We would love to make a decision and get on with our lives, however there are too many issues regarding the offer. Here are just a few:

- We did NOT receive FAIR and REASONABLE offers. How is it fair that some licence holders received only approximately $11 000? We all pay the same licences fees.
- Our Fishing licences were valued by PIRSA at $100 000. This was not taken into consideration. Most of the fishermen were offered well below this amount. Our Home and Business Loan were approved by the bank because our fishing businesses were valued at $100 000.
- Our offer was not even the amount we earnt last year! It was an average of three years income starting four years ago. Is it fair that our CURRENT FIGURES are not used? (We purchased our business four years ago and were still building up markets to reach our potential).
- No consultation was given. We were only TOLD what the government is going to do.
- Our special circumstances were not taken into consideration (you multiplied our income starting four years ago by 1.5) but as I said, my offer was not even what I have earnt last year!
- Is it fair and reasonable that we have invested well over $100 000 in capital into our business and this has not been taken into account?
- Is it fair and reasonable that you have closed down a sustainable fishery that is scientifically and economically sustainable for NO reason and still not offer us a fair and reasonable offer?
- Is it fair and reasonable that you have closed down a fishery with transferability rights and still not offer us a fair and reasonable offer?
- Is it fair and reasonable that to stay in the fishery to fish for European Carp some people will pay approximately $6 000 and some over $100 000?

I should explain that. Here the fisher is alluding to the fact that the people who take up the offer to fish European carp will immediately lose half their ex gratia payment offer. So, they will lose half their offer if they take up the offer to go into the carp fishery, which will require different gear because they are not allowed to use the nets they currently use. The letter continues:

- Is it fair and reasonable that to stay in the River Fishery we have to forego HALF of our offer to fish for the River pest, European Carp without the use of our main weapon against Carp, 'Gill nets'?

Apparently the people who fish for European carp in all other waters in Australia still have access to mesh nets. However, mesh nets have been banned here. The letter continues:

- Is it fair and reasonable to make us commit by 30 September to the Limited Licence when a Commercial Viability Assessment has not been done which is a prerequisite for a business plan?
- Is it fair and reasonable that we have to decide whether to stay in the fishery to fish for European Carp by 30 September, when we do not have a Management Plan, no idea of Licence Costs, no idea of where we can fish or what gear can be used?
- Is it fair and reasonable that PIRSA Fisheries propose a Scheme of Management for a Carp based fishery in South Australia but can not tell us how it will be possible to compete with other commercial fishers in South Australia, New South Wales and Victoria who are using gill nets to harvest Carp?
- Is it fair and reasonable that if we do not take up the offer by 30 September that our offer will be halved? (Keeping in mind we do not even know the Management Plan of the new fishery).
- Is it fair and reasonable that we only have until 31 January or the offer will expire?
- Is it fair that Peter Lewis has stood by his commitment of removing gill nets, but not by his commitment to compensate fishermen forever?
- Is it fair that after many letters and phone calls that you will not meet with us to discuss this in person, or even on the telephone?
- Is it fair and reasonable to say that you DO NOT really want us to stay in the River Fishery and fish for the River Murray Pest European Carp?

You have not shown any interest in supplying us details, a reasonable offer or any security. After many letters you still ignore the fact that I have years of experience and markets for European carp. However, I cannot leave my customers in limbo forever while a management plan is prepared. I supply rock lobster fishermen who may be forced to import bait from overseas and also tortoise farmers.

And he talks about the tortoise farmer who cannot change his practices. I believe that he sums up the frustration of these people. They have had their livelihoods summarily pulled out from under them with no decent discussion with anyone, with no details of how they are meant to go on, with no details of the new fishery and, above all, there has been a total lack of recognition of their property rights. I know and they know that tomorrow these regulations can be reinstated. I know and they know that they have had their licences taken from them forever; but I am hoping that, by this disallowance motion, the minister opposite me, and his cabinet, will be forced to show some compassion.

There could have been a phase-out of this fishery. The Environment, Resources and Development Committee recommended a phase-out over 10 years, which would have given people some dignity and opportunity to renew their lives. All of that has been taken from them; and, yes, it will be an expensive exercise to do well. Hopefully, the new government will learn a lesson from it and not perhaps rush headlong in ignorance into something of which it has no understanding. At least, I hope that it has no understanding because if it has an understanding of what it has done it is totally without compassion.

The council divided on the motion:

AYES (8)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lucas, R. I.
Redford, A. J.	Ridgway, D. W.
Schaefer, C. V. (teller)	Stefani, J. F.

NOES (6)

Gazzola, J.	Holloway, P. (teller)
Kanck, S. M.	Roberts, T. G.
Sneath, R. K.	Zollo, C.

PAIR(S)

Stephens, T. J.	Gilfillan, I.
Laidlaw, D. V.	Elliott, M. J.
Lawson, R. D.	Gago, G. E.

Majority of 2 for the ayes.

Motion thus carried.

STATUTES AMENDMENT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) BILL

Second reaading.

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 forms part of the 10-point plan for *Honesty and Accountability in Government*. The government is committed to ensuring more open, honest and accountable government in the future.

The bill brings together amendments to the *Criminal Law Consolidation Act* 1935, the *Public Corporations Act 1993* and the *Public Sector Management Act 1995* that address the duties of agencies and the conduct of public sector chief executives and other employees, members of government boards, and public officers generally. The bill also makes consequential amendments to the *Industrial and Employee Relations Act 1994*.

The bill ensures that all people working in the public sector—whether as members or directors of public sector corporate bodies, as members of advisory bodies, as senior executives or officials, as employees or as or through contractors—are subject to duties of honesty and accountability. The government believes that similar duties should apply to members, senior executives and employees of all public sector corporate bodies whether or not the bodies are subject to the Public Corporations Act.

The government is also determined to improve the standard of annual reporting by public sector agencies and the bill includes amendments to the Public Sector Management Act to that end.

Amendments to the Criminal Law Consolidation Act

Section 237 of the *Criminal Law Consolidation Act* will be amended to broaden the definition of *public officer*. The definition of *public officer* already includes members of Parliament, judicial officers, councillors and local government officers and employees, police officers, public sector employees and directors of government boards.

The amendment proposed will ensure that offences relating to public officers such as *bribery of a public officer* and *abuse of public office*, also apply to contractors, and anyone who performs public sector work through contractors, such as employees and sub-contractors.

Section 251 of the *Criminal Law Consolidation Act* will also be amended to make it an offence for a *former* public officer to improperly use information gained whilst a public officer. Currently it is only an offence to improperly use information *whilst* in Office.

Amendments to the Public Corporations Act

The *Public Corporations Act* already contains provisions about honesty, unauthorised transactions and interests, conflict of interest and duty of care for directors, as well as provisions outlining management duties for boards in Part 4, and the Schedule of the Act which relates to subsidiaries. The *Public Corporations Act* also already contains provisions in the Act (ss.37 and 38) and the Schedule of the Act, governing unauthorised transactions with and interests in public corporations and subsidiaries by executives. Part 4 and sections 37 and 38 (as with other parts of the Act) only apply where they are declared to do so. The bill amends the Act so that Part 4 and sections 37 and 38 will automatically apply to all public corporations.

The government is dedicated to progressing a culture of honesty and accountability at all levels within government.

Consistent with this, the amendments to the *Public Corporations Act* will also introduce provisions requiring senior executives of public corporations or subsidiaries to disclose pecuniary interests, and all employees including senior executives, to declare conflicts of interest and to act honestly in performing their duties.

As with all honesty provisions introduced by the bill, non compliance will be an offence unless the act of dishonesty is trivial and does not result in significant detriment to the public interest. In the event of conviction, the court will be empowered (in addition to imposing a penalty), to order payment of an amount equal to any profit, loss or damage arising from non compliance. In the event of contravention, action can also be brought in a civil court to recover any profit, loss or damage arising from the contravention.

Again, the provisions imposing obligations upon senior executives and other employees of public corporations in respect of honesty and conflict of interest will automatically apply to a public corporation or a subsidiary, and will result in uniform obligations respectively, for senior executives and other employees of all public corporations and subsidiaries.

Amendments to the Public Sector Management Act

The *Public Sector Management Act* will be amended to give explicit legislative backing to Codes of Conduct issued by the Commissioner for Public Employment. A Code published in the Gazette will be binding according to its terms on all public sector employees including by definition, all chief executives, ministerial staff and those employed by a public corporation or subsidiary.

The *Public Sector Management Act* will also be amended to introduce uniform provisions imposing obligations about honesty, care and diligence, unauthorised transactions and interests, and conflict of interest on *corporate agency members* of all non public corporation statutory corporations and their subsidiaries.

Corporate agency members are directors of a body corporate, or members of a body corporate where there is no governing body.

The provisions in essence replicate the existing provisions in the *Public Corporations Act* about honesty, care and diligence, unauthorised transactions and interests, and conflict of interest so that *all* directors on government boards, whether public corporations or not, will be subject to the same stringent obligations.

Honesty and conflict of interest provisions will also be introduced in the *Public Sector Management Act* to capture those that provide advice to public sector agencies as members of unincorporated advisory bodies appointed by the Governor or a Minister, whether established by statute or not. The obligations will extend to *advisory body members* that provide advice to public corporations or subsidiaries.

The amendments will repeal the existing provisions in the Act about disclosure of pecuniary interest and conflict of interest for public service chief executives and the Commissioner of Public Employment, and replace them with more comprehensive provisions that impose obligations regarding disclosure of interest and conflict of interest on *senior officials* in the public sector. Non compliance will for the first time, be an offence, and depending on the senior official, render them liable to termination of employment or disciplinary action (which could in turn result in termination of employment). *Senior officials* will also be subject to a duty to act honestly in the performance of their duties.

Senior official is defined to include all public sector chief executives, statutory office holders with the powers of chief executives, the Commissioner for Public Employment and Deputy, and a person declared to be so by the Minister.

The *Public Sector Management Act* will also be amended to introduce obligations regarding honesty, unauthorised transactions and interests, and conflict of interest for *corporate agency executives*. *Corporate Agency Executives* are employees who take part in the management of a public sector agency that is a body corporate.

The provisions proposed regarding *unauthorised transactions* and *unauthorised interests* for *corporate agency executives* mirror *existing* provisions in the *Public Corporations Act* for *executives*, and have been introduced to ensure that all executives of public sector agencies that are bodies corporate, are under the same obligations whether public corporations or not.

The provisions regarding honesty and conflict of interest for *corporate agency executives* mirror the provisions in the bill for *employees*. However, where a *corporate agency executive* is also a *senior official*, then the provisions applicable to senior officials apply as regards the duty to act honestly and the duty with respect to conflict of interest. This ensures that all *senior officials* have the same obligations in this regard.

The amendments will repeal the provision in the Act concerning conflict of interest for public service employees, and replace it with a more comprehensive provision that imposes an obligation to disclose conflict of interest on *public sector employees*, which includes by definition ministerial staff. Where an employee fails to comply with the obligations it will be grounds for termination of employment. However, where an employee is subject to a statutory disciplinary regime—that regime still applies. Similarly, where an employee is subject to the common law relating to termination of employment—that law still applies. Public sector employees will also be subject to a duty to act honestly in the performance of their duties.

The amendments in respect of disclosure of pecuniary interest, conflict of interest and duty to act honestly for *senior officials* and other *public sector employees* in essence replicate the provisions to be introduced in the *Public Corporations Act* for *senior executives* and *employees* and will ensure consistency across the whole public sector.

The *Public Sector Management Act* will also be amended to introduce honesty and conflict of interest provisions for *persons performing contract work*. The obligations will extend to those performing contract work for public corporations or subsidiaries.

Whilst the provision imposing a duty to act honestly upon contractors mirrors the other honesty provisions introduced by the bill, the conflict provision is more limited in its scope. There is no obligation to disclose conflict of interest at large. What is required is disclosure of conflict or potential conflict of interest where it relates to a contract or proposed contract binding a public sector agency or the Crown. Importantly, the contract for the performance of the contract work has been specifically excluded from the

operation of the provision to avoid confusion on the part of a person to whom the provision applies, between duties owed to a contractor and those owed to the public sector agency or the Crown.

A new provision will be inserted that specifically requires public sector agencies, (including by definition, a public corporation or subsidiary), to ensure that annual reports are accurate, comprehensive, deal with all significant issues affecting the agency and written and presented in a manner that aids ready comprehension.

A provision will be inserted that requires a written statement of the reasons for delay in the event that an annual report is presented late to a Minister. The statement must be tabled with the report. A provision will also be introduced to require an annual report to be tabled in Parliament, to specify the date upon which the report was presented to the Minister. As a result, it will become evident where a Minister has failed to table a report on time through his or her own dilatoriness.

The existing provisions in the Act imposing obligations on agencies to prepare annual reports and specifying the contents, are currently situated towards the end of the Act. They will be repealed and reproduced with the new provisions, under Part 2—to be renamed *General Public Sector Aims, Standards and Duties*.

I commend the bill to honourable members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2

AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 4: Amendment of s. 237—Definitions

This amendment extends the meaning of public officer to include natural persons who work for the Crown, a State instrumentality or a local government body as contractors or as employees of contractors or otherwise directly or indirectly on behalf of a contractor. This means that the serious offences relating to conduct of public officers and bribery or corruption of public officers apply regardless of how an officer is engaged in public office.

Clause 5: Amendment of s. 251—Abuse of public office

The amendment extends the application of the offence of abuse of public office to a person who gained information by virtue of a public office that the person no longer holds.

PART 3

AMENDMENT OF INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994

Clause 6: Amendment of s. 4—Interpretation

This amendment ensures that persons performing contract work for a public sector agency or the Crown (to whom certain provisions of the Public Sector Management Act apply) will not be regarded as public employees for the purposes of the Industrial and Employee Relations Act 1994.

Clause 7: Amendment of s. 36—Remuneration and conditions of office

This amendment updates a second out of date reference to the Government Management and Employment Act 1985.

PART 4

AMENDMENT OF PUBLIC CORPORATIONS ACT 1993

Clause 8: Amendment of s. 3—Interpretation

The amendments in this clause—

- update references related to changes in the law applying to corporations (the Corporations Act 2001 of the Commonwealth);
- insert a definition of senior executive for the purposes of imposing duties of honesty and disclosure on persons in this category. A senior executive is a chief executive or an employee holding or acting in an executive position declared to be a senior executive position by the corporation's Minister by notice in the Gazette.

Clause 9: Amendment of s. 5—Application of Act

This clause ensures that if a statutory corporation is subject to any part of the Public Corporations Act, the duties of honesty and disclosure, etc., set out in Part 4 and sections 36A to 38A (as amended) will apply to the directors, senior executives, executives and employees of the corporation.

Clause 10: Amendment of s. 16—Director's duty to act honestly

Subsections (2) and (3) of section 16 are struck out because improper use of information or position by a director of a public corporation is dealt with in provisions of broader application to public officers in the Criminal Law Consolidation Act.

A new subsection is inserted providing that the provision does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest. This limitation is similar to that applying to the concept of acting improperly defined for the purposes of the offences of a public nature in the Criminal Law Consolidation Act.

Clause 11: Amendment of s. 17—Transactions with directors or associates of directors

Section 17 sets out restrictions in relation to directors entering into transactions with the corporation. The new paragraph excludes transactions relating to the employment of a person under a contract of service with the corporation or a subsidiary from the application of the section.

Clause 12: Amendment of s. 18—Directors' and associates' interests in corporation or subsidiary

These amendments are consequential on changes to the law applying to corporations.

Clause 13: Amendment of s. 19—Conflict of interest

These amendments require disclosures to be in writing.

Clause 14: Insertion of ss. 36A and 36B

36A. Duty of employees to act honestly

This section applies to all employees of a public corporation including senior executives and executives and mirrors the obligation of directors to act honestly in the performance of duties (see sections 16 and 21 of the Public Corporations Act).

36B. Duty of senior executives with respect to conflict of interest

This section imposes a duty on all senior executives to disclose pecuniary interests of a kind listed in regulations to the board on appointment and to keep that list of disclosed interests up to date. This requirement is imposed because of the nature of the management role of senior executives and it is an offence to fail to comply with the requirement.

The section also requires disclosure of all pecuniary or other personal interests of a senior executive or an associate of a senior executive that may conflict with a duty and prohibits a senior executive from taking action in relation to a matter where there is a conflict except as authorised in writing by the corporation's Minister.

As with directors, the corporation's Minister may give directions requiring resolution of a conflict of interest (cf. section 19(7)), the Minister or the corporation may avoid a contract entered into without the required disclosures having been made (cf. section 19(2)-(4)), the section does not apply if the person is unaware of the interest or conflict but the burden lies on the person to prove that he or she was unaware (cf. section 19(9)) and the person can be required to account for profit or pay compensation on conviction for an offence against the section or in separate proceedings taken by the corporation or the corporation's Minister (cf. section 21).

Clause 15: Amendment of s. 38—Executives' and associates' interests in corporation or subsidiary

These amendments are consequential on changes to the law applying to corporations.

Clause 16: Insertion of s. 38A

38A. Duty of employees with respect to conflict of interest

This section requires all employees of public corporations to disclose to the chief executive pecuniary or other personal interests held by the employee or an associate of the employee that may conflict with the employee's duties. Failure to comply is not an offence but is a ground for termination of the employee's employment. In other respects the duty and the consequences of failure to comply with the duty are similar to that applying to senior executives and directors.

Clause 17: Amendment of Sched.—Provisions applicable to subsidiaries

The Schedule sets out the provisions applicable to subsidiaries of public corporations. The provisions applying to subsidiaries are amended in the same way as the provisions applying to parent corporations.

PART 5

AMENDMENT OF PUBLIC SECTOR MANAGEMENT ACT 1995

Clause 18: Amendment of s. 3

The amendments to the Public Sector Management Act in part apply provisions similar to those in the Public Corporations Act to persons and bodies not caught by the provisions applying to public corpora-

tions. Consequently, a number of definitions and interpretation provisions relevant to the mirrored provisions are introduced into the Public Sector Management Act, namely, definitions of beneficiary, debenture, relative, relevant interest, spouse and subsidiary and the interpretation provisions relating to associates and subsidiaries.

New definitions of advisory body, contractor, contract work, corporate agency member and corporate agency executive are included for the purposes of imposing obligations of honesty and accountability on relevant persons.

To ensure that subsidiaries are dealt with in the same way as parent public sector agencies (that are not public corporations) the definition of a public sector agency is expanded to include a subsidiary of a public sector agency.

A definition of relevant Minister is included in relation to public sector agency, corporate agency member, corporate agency executive, advisory body member, senior official, employee and person performing contract work.

A senior official is defined as the Commissioner, the Deputy Commissioner, a Chief Executive, a statutory office holder having the powers of a Chief Executive, a chief executive of a public sector agency other than an administrative unit or a person holding or acting in a position (being a position established by an Act or an executive position) declared by Ministerial notice in the Gazette.

Clause 19: Substitution of heading to Part 2

The new obligations are included in Part 2 and the heading to the Part adjusted accordingly. A Division 1 heading is inserted above the present contents of the Part.

Clause 20: Amendment of s. 6—Employee conduct standards

The conduct standards for all public sector employees are expanded to require compliance with the code of conduct for employees issued from time to time by the Commissioner of Public Employment and published in the Gazette.

Clause 21: Insertion of Divisions

DIVISION 2—DUTY OF AGENCIES TO REPORT

6A. Duty of agencies to report

6B. Contents of report

The obligation of public sector agencies to prepare annual reports is relocated from its current position (section 66) to this Part dealing generally with the obligations of public sector agencies.

The new section requires a late report to be accompanied by an explanation of the reasons for the delay. It also requires the agency to ensure that the report is accurate, comprehensive, deals with all significant issues affecting the agency and written and presented in a manner that aids ready comprehension.

DIVISION 3—DUTIES OF CORPORATE AGENCY MEMBERS

6C. Application of Division

6D. Duty of corporate agency member to exercise care and diligence

6E. Duty of corporate agency members to act honestly

6F. Duty of corporate agency members not to be involved in unauthorised transactions with agency or subsidiary

6G. Duty of corporate agency members not to have unauthorised interest in agency or subsidiary

6H. Duty of corporate agency members with respect to conflict of interest

6I. Removal of corporate agency members

6J. Civil liability for contravention of Division

These sections mirror, with relevant modifications, the provisions of the Public Corporations Act applying to directors of public corporations (ie sections 16 to 19 and 21 of the Public Corporations Act). The duties must be complied with by members of a public sector agency that is a body corporate or members of the governing body of a public sector agency that is a body corporate (in circumstances where the Public Corporations Act does not apply).

DIVISION 4—DUTIES OF ADVISORY BODY MEMBERS

6K. Duty of advisory body members to act honestly

6L. Duty of advisory body members with respect to conflict of interest

6M. Removal of advisory body members

6N. Civil liability for contravention of Division

These sections introduce duties of honesty and disclosure of potential conflicts of interest for members of advisory bodies—unincorporated bodies comprised of members appointed by the Governor or a Minister (whether or not under an Act) with a function of providing advice to a public sector agency.

DIVISION 5—DUTIES OF SENIOR OFFICIALS

6O. Application of Division

6P. Duty of senior officials to act honestly

6Q. Duty of senior officials with respect to conflict of interest

6R. Civil liability for contravention of Division

These sections mirror, with relevant modifications, the provisions inserted into the Public Corporations Act imposing duties of honesty and disclosure of prescribed interests and all potential conflicts of interest on senior executives. The provisions expand the current duties imposed on the Commissioner for Public Employment and Chief Executives (see sections 18 and 27).

DIVISION 6—DUTIES OF CORPORATE AGENCY EXECUTIVES

6S. Application of Division

6T. Duty of corporate agency executives to act honestly

6U. Duty of corporate agency executives not to be involved in unauthorised transactions with agency or subsidiary

6V. Duty of corporate agency executives not to have unauthorised interest in agency or subsidiary

6W. Duty of corporate agency executives with respect to conflict of interest

6X. Civil liability for contravention of Division

These sections mirror, with relevant modifications, the provisions in or inserted into the Public Corporations Act imposing duties of honesty and accountability on executives of public corporations. The duties are imposed on all corporate agency executives—persons who are employed by a public sector agency that is a body corporate and are concerned or take part in the management of the agency.

DIVISION 7—DUTIES OF EMPLOYEES

6Y. Application of Division

6Z. Duty of employees to act honestly

6ZA. Duty of employees with respect to conflict of interest

6ZB. Civil liability for contravention of Division

These sections mirror, with relevant modifications, the provisions inserted into the Public Corporations Act imposing duties of honesty and disclosure of potential conflicts of interest on employees. The provisions expand the current duties imposed on employees (see section 56).

DIVISION 8—DUTIES OF PERSONS PERFORMING CONTRACT WORK

6ZC. Duty of persons performing contract work to act honestly

6ZD. Duty of persons performing contract work with respect to conflict of interest

6ZE. Civil liability for contravention of Division

These sections introduce duties of honesty and disclosure of potential conflicts of interest for persons performing contract work for a public sector agency or the Crown. The duty to disclose conflicts applies to conflicts that relate to a contract or proposed contract binding the agency or the Crown (other than the contract for the performance of the contract work).

DIVISION 9—EXEMPTIONS

6ZF. Exemptions

This section enables regulations to be made exempting a person or class of persons conditionally or unconditionally from the application of a provision of this Part other than Division 1 or 2.

Clause 22: Amendment of s. 12—Termination of Chief Executive's appointment

This amendment makes sure that failure to comply with the new duties can result in removal of a Chief Executive.

Clause 23: Repeal of s. 18

This section currently deals with disclosure of pecuniary interests by Chief Executives. The matter is covered by the new Division 5 of Part 2.

Clause 24: Amendment of s. 21—Termination of Commissioner's appointment

This amendment makes sure that failure to comply with the new duties can result in removal of the Commissioner.

Clause 25: Repeal of s. 27

This section currently deals with disclosure of pecuniary interests by the Commissioner. The matter is covered by the new Division 5 of Part 2.

Clause 26: Repeal of s. 56

This section currently deals with disclosure of interests that may conflict with duties by employees. The matter is covered by the new Division 7 of Part 2.

Clause 27: Repeal of s. 66

This section currently deals with annual reports of public sector agencies. The matter is covered by the new Division 2 of Part 2.

Clause 28: Amendment of s. 74—Immunity of public sector employees, office holders and advisory body members

This amendment extends the immunity provision to all public sector employees, persons holding offices or positions under the Act and advisory body members.

Where the person is employed by a body corporate, liability is to lie against the body corporate. In other cases it lies against the Crown.

Clause 29: Insertion of s. 79A—Proceedings for offences

New section 79A mirrors section 42 of the Public Corporations Act. Prosecutions for offences against the Act are only to be instituted with the consent of the Director of Public Prosecutions. The time for bringing proceedings for summary offences is extended to 3 years and later prosecutions may be brought with the consent of the Director of Public Prosecutions.

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

GAMING MACHINES (GAMING TAX) 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 provides for amendments to the *Gaming Machines Act 1992*.

Apart from a reduction in gaming machine tax rates to make room for the GST and the cessation in March 2002 of a temporary tax surcharge of 0.5 per cent of net gambling revenue (NGR), which had been introduced in 1997 to recover a shortfall in tax revenue against an industry guaranteed level, tax rates on gaming machines in hotels and clubs have remained unchanged since 1 July 1998.

The government announced in the Budget an increase in the tax payable by venues on that part of annual NGR in excess of $1.5 million with tax relief to be provided to venues with NGR below $945 000.

Subsequent to the Budget and following consultation with the hotel industry, the government agreed to make some changes to its gaming tax proposals. These changes, as reflected in this bill, involve applying smaller increases in rates of tax than proposed in the Budget for venues with annual NGR between $1.5 million and $3.5 million while maintaining the proposed highest marginal tax rate of 65 per cent for hotels (55 per cent for not-for profit entities) albeit above a higher threshold level of $3.5 million of annual NGR (rather than $2.5 million under the original Budget proposal). The revised tax structure for venues with annual NGR above $1.5 million is estimated to raise an additional $27 million in a full year.

Based on 2001-02 activity levels, adjusted to 2002-03 estimated NGR levels, it is estimated that a total of 176 venues out of 593 will be affected by the increase in tax, including 161 hotels and 15 not-for-profit venues.

As originally proposed, estimated tax relief of $5 million per annum will be provided to small gaming venues, many of which are struggling financially. Clubs SA has, for some years, been lobbying for a tax free threshold to assist small venues.

Clubs and hotels generating annual NGR of less than $75 000 will no longer be required to pay any gaming machine tax. The benefit of the tax-free threshold of $75 000 will be reduced for larger venues by increasing marginal tax rates between $75 000 and $945 000 of NGR.

The net result is that a diminishing amount of tax relief will be provided to venues with annual NGR up to $945 000 while venues with annual NGR between $945 000 and $1.5 million will pay virtually the same amount of tax as at present. Venues with annual NGR in excess of $1.5 million will pay more tax.

The new tax structure will take effect from 1 January 2003 and is estimated to raise an additional $9.1 million in 2002-03 and $22 million in a full year.

In addition to these changes to the tax structure the government will also put in place a surcharge on the sale or transfer of ownership of gaming machine businesses. This is the subject of separate legislation viz, *Stamp Duties (Gaming Machine Surcharge) Amendment Bill 2002*.

The bill now also includes a series of amendments that are designed to match provisions in the *Liquor Licensing Act 1997* relating to trustee licensees and to support the collection of the new gaming machine surcharge proposed by the *Stamp Duties (Gaming Machine Surcharge) Amendment Bill 2002*. It is desirable that *Gaming Machines Act* licensing provisions are consistent with the *Liquor Licensing Act* provisions since a person cannot hold a gaming machine licence unless the person holds a liquor licence. The proposed new surcharge is to be imposed on transactions where there is a transfer of a gaming machine business or an interest in a gaming machine business. Such transactions may involve interests under a trust and the proposed new provisions (matching the *Liquor Licensing Act* provisions relating to trustee licensees) are intended to assist in the detection of those transactions and the collection of the surcharge.

I commend the bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 3—Interpretation

This clause inserts the following new definitions in section 3 of the *Gaming Machines Act* (the principal Act):

- a trust is considered for the purposes of the principal Act as a single entity consisting of the trustees and the beneficiaries;
- a trust or corporate entity means a trust or a body corporate;
- a beneficiary is defined to include an object of a discretionary trust;
- an officer, in relation to a body corporate, means a director or a member of the governing body of the body corporate;
- an officer, in relation to a trust, means a trustee.

A further amendment is provided by including a new subsection that goes to the determination of how a person is to be considered to be in a position of authority in relation to a trust or corporate entity.

These definitions are based on and are consistent with provisions in the *Liquor Licensing Act*.

Clause 3: Amendment of s. 8—Representation

Clause 4: Amendment of s. 19—Certain criteria must be satisfied by all applicants

Clause 5: Amendment of s. 23—Minors not to hold licence, etc.

Clause 6: Insertion of s. 26A

26A: How licences are to be held

Clause 7: Amendment of s. 28—Certain gaming machine licences only are transferable

The amendments provided for in these clauses are consequential on the decision to make the licensee provisions of the principal Act consistent with the licensee provisions of the *Liquor Licensing Act*.

Clause 8: Insertion of s. 28A

28A: Condition requiring payment of gaming machine surcharge

If, on the Commissioner's consenting to the transfer of a gaming machine licence, any gaming machine surcharge payable under the *Stamp Duties Act 1923* in respect of the transfer of the business conducted under the licence has not been paid, it is a condition of the licence that the surcharge be paid within the period allowed under that Act.

Clause 9: Amendment of s. 36—Revocation or suspension of licences, etc.

Clause 10: Amendment of s. 38—Commissioner may approve persons in authority

The amendments provided for in these clauses are consequential on the decision to make the licensee provisions of the principal Act consistent with the licensee provisions of the *Liquor Licensing Act*.

Clause 11: Insertion of s. 38A

38A: Condition requiring payment of gaming machine surcharge

If, on approval by the Commissioner of the assumption by a person of a position in authority in a trust or corporate entity that holds a gaming machine licence, any gaming machine surcharge payable under the *Stamp Duties Act 1923* in respect of a transaction related to the assumption by the person of the position has not been paid, it is a condition of the licence that the surcharge be paid within the period allowed under that Act.

Clause 12: Amendment of s. 39—Commissioner may approve agents of the Board

Clause 13: Amendment of s. 42—Discretion to grant or refuse approval

Clause 14: Amendment of 48—Offences relating to management of business or positions of authority

Clause 15: Amendment of s. 51—Persons who may not operate gaming machines

Clause 16: Amendment of s. 68—Certain profit sharing, etc., is prohibited

The amendments provided for in these clauses are consequential on the decision to make the licensee provisions of the principal Act consistent with the licensee provisions of the *Liquor Licensing Act*.

Clause 17: Substitution of s. 72

Current section 72 is to be repealed as it is of historic interest only. New section 72 contains definitions for the purposes of Part 8 (GAMING TAX) (comprising sections 72 to 73C) of the principal Act.

72. Interpretation

The definitions of net gambling revenue (or NGR) and non-profit business have been moved from their current position (*subsection (6) of section 72A*) so that their defined meaning will be for the purposes of the whole of Part 8 and not just for section 72A. The actual definitions, however, remain unchanged.

The new definition inserted is that of prescribed gaming tax. The prescribed gaming tax is set at different levels for non-profit businesses and for all other businesses. Aside from that, the method for calculating the gaming tax for any business is similar.

A new rate of gaming tax is to come into operation from 1 January 2003. This means that different tax rates will apply for the first half and second half of the 2002/2003 financial year. Gaming tax, however, must be determined on the basis of the net gambling revenue derived in respect of licensed premises for the whole of the relevant financial year (*see section 72A(3a)*). Therefore, in order to determine the prescribed gaming tax for the whole of the 2002/2003 financial year, the gaming tax must be calculated (for either a non-profit business or for any other business, as the case may be) in accordance with Part 1 of the table set out in paragraph *(a)*(i) or (ii) (as the case requires) of the definition of prescribed gaming tax as adjusted by Part 2 of the table set out in paragraph *(a)*(i) or (ii) (as the case requires) of the definition.

From the commencement of the 2003/2004 financial year and for each successive financial year, the prescribed gaming tax is to be calculated in accordance with the tables set out in paragraph *(b)* of the definition of prescribed gaming tax.

Clause 18: Amendment of s. 72A—Gaming tax

New subsection (1) provides that the holder of a gaming machine licence must pay to the Treasurer, for each financial year, the prescribed gaming tax on the net gambling revenue derived in respect of the licensed premises in the financial year. (The current subsection is substantially the same but also contains obsolete information.)

Subsection (3) provides that the gaming tax is to be paid in monthly instalments to be calculated and paid in the manner specified by the Minister by notice in the *Gazette*. A new subsection (3aa) is to be inserted allowing for the Minister, by further notice in the *Gazette*, to vary or revoke such a notice.

Subsections (6) to (10) of section 72A are to be repealed. The repeal of subsection (6) is consequential on the amendment provided for in clause 2 while subsections (7) to (10) contain only obsolete information.

Clause 19: Substitution of s. 85

85: Vicarious liability

This provides for vicarious liability in relation to an offence against the principal Act by a body corporate, or the trustee of a trust, that is a licensee.

Clause 20: Amendment of s. 86—Evidentiary provision

This amendment is consequential.

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

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

In Committee (resumed on motion).

(Continued from page 991.)

New clause 3A.

The Hon. A.J. REDFORD: I move:

Page 3, after line 27—Insert:

Establishment of South Australian Office of Risk Management

3A(1) The minister must establish a South Australian Office of Risk Management.

(2) The office has the following functions:

(a) to determine world best practice with regard to risk management;

(b) to offer free advice on matters relating to insurance and risk management;

(c) to implement and conduct education programs on risk management;

(d) to assist providers in developing and obtaining approval for codes of practice.

This amendment has the effect of establishing a South Australian Office of Risk Management. As mentioned in the debate in another place by the Hon. Iain Evans, a former Minister for Volunteers, I attended a number of places in the United States in July last year to look at various issues associated with volunteers, liability and insurance, and I briefly talked about that in my second reading speech.

The first office I visited was that of the CEO of the National Non-Profit Risk Management Centre in Washington DC where I met Melanie Hermann, who is a very articulate lawyer. The National Non-Profit Risk Management Centre offers free advice on legal issues and insurance to the non-profit community. They have a team of lawyers and consultants which is generally funded by volunteer organisations. They tend to provide advice to peak volunteer organisations. Ms Hermann, in discussing various issues and in particular legislative reform, talked about the importance of non-legislative responses.

She said that one of the big difficulties in the United States is that there has been a pattern of dealing with some of these issues in a legislative way and, ultimately, there is little impact following that. She said that it is absolutely critical when dealing with any legislation changing liability law to do a number of things. First, she said that it is absolutely critical that everything is done to ensure that there is no false sense of security in relation to any legislation passed, and she was referring to a misunderstanding as to the nature and effect of particular pieces of legislation. The second issue that she said is extraordinarily important is that there must be a proper education program, and she could not stress highly enough the importance of education and planning. Finally, she stressed the importance of proper risk management.

One of the most interesting things I found before I went, and also since I left, is that when one gets onto the web sites of various non-profit organisations in the United States and, in particular, when one looks at advertisements for volunteer sector conferences, the single biggest item that appears on non-profit conference agendas is that of risk management, and this organisation plays a principal role in dealing with that. Indeed, it is self-funding.

By way of history, the organisation was established by President Bush Senior towards the end of his presidential term and, in fact, was launched by President Bill Clinton and successive Republican and Democrat regimes have continued funding that office. Indeed, as I said, the office is now getting

very close to being self-funded, and I think that there are opportunities to charge organisations for that advice. The second person I met was Mrs Betsy Johnson, the CEO of the Washington Council of Non-Profit Organisations. She indicated that the biggest issues for volunteers, apart from specific government policies, are training, management, legal and board issues and occupational health and safety, and that there has been a substantial effort to bring occupational health and safety issues to the forefront.

I visited many other people, including Mr Jeff Altmann, a senior law partner at McKenna and Cuneo, one of the biggest legal firms in the world, and he also emphasised the same issue—as did Peter Walt, the Executive Director of the National Centre for Non-Profit Law. Indeed, I think I visited 12 or 13 CEO's of different organisations. I met with a number of officials from Chugg Executive Risk Incorporated in Washington, the largest not-for-profit underwriting company in the United States, and either first or second in the world. I met Johanna Chanin, and she indicated to me that they are embarking upon a policy of not insuring organisations unless they have proper occupational health and safety regimes in place. Indeed, she emphasised that the risk management education part of this package is far more important, in her view, than legislative change.

The legislative arrangements in the United States are a heck of a lot different from what we see here. Firstly, there have been no restrictions, or very few restrictions, on common law damages. In fact, there have been legislative intrusions mainly in the area of protection of volunteers and establishing liability or non-liability in various areas of the law. But the United States has legislatively changed the quantum of damages that have been awarded by very little.

The other interesting point is that they have contingency fees in nearly every case—I do not know that they do not have contingency fees in any case—which is far different from the legal environment that we live in. The second point is that a successful defendant, usually in an insurance case, cannot claim any costs from the unsuccessful plaintiff; so the plaintiff is basically in a no-lose situation with regard to contingency fees. Thirdly, nearly all civil cases are decided by juries. As a consequence, the order of damages that are awarded in most jurisdictions in the United States exceeds the sort of damages awards that we have in this country three-fold. Indeed, when I explained that to Ms Chanin and her colleagues, she indicated words to the effect that Australia—and this was before any sort of legislation that is currently before this place—is insurance company heaven and that if they had a situation that reflected what we have, there would be a substantial improvement in the United States, which was very interesting.

I visited a number of sporting officials and, again, the principal focus when dealing with this issue is in the area of risk management—and that was consistent from the east coast to the west coast of the United States. In my second reading speech, I outlined in some detail what I wanted to achieve from this amendment, and I note that the government has responded. I gave my speech more than a week ago, yet today is the first time that I have heard the government respond, which, I might add, is a strange way of trying to work legislation through a system. In any event—

The Hon. P. Holloway: Be fair, it is not my fault. The honourable member knows the circumstances.

The Hon. A.J. REDFORD: I am not criticising the minister or the Leader of the Government in this place. I well know and he can assume that I understand clearly that this is not his bill. However, I am criticising the Treasurer, who has overall responsibility, and I say again that it is a pity, given his workload, that he could not find someone else to manage the bill from whoa to go who had a little more time on their hands. To clear that up, when I criticise the government I make no personal criticism—

The Hon. P. Holloway: The honourable member knows why my response was delayed, but we will not go into it.

The Hon. A.J. REDFORD: I make it clear that I am not criticising the minister in his personal ministerial capacity. As I understand the government's response, existing government departments already carry out the work that would be covered by such an office, and the cost of setting up the office would be great and is not provided for in the budget. I understand that certain advice has already been given.

Bearing in mind that until February this year I was closely associated with the Office for Volunteers in assisting the minister, I have a very good knowledge of what the position was until that point in time. My first point is that, if the Office for Volunteers has developed packages, it has done most of that work since this government took office. If that is the case, I congratulate the government, but I suspect that that is not the case. However, if it is the case, I would appreciate being advised what additional funds this government has included in this budget to assist the Office for Volunteers. However, I suspect that it has not.

My second point is that, like a lot of members, I have visited a number of volunteers and other sector conferences throughout this year, and risk management has not figured high on any agenda that I have seen. My third point is that the minister points to the Office for Volunteers, the Tourism Commission, the Department of Recreation and Sport and Local Government Risk Services as being capable of providing these sorts of services. The bill is quite broad and it is certainly much broader than those sectors identified by the minister. The bill provides as follows:

> A person who provides a recreational service on a commercial or non-commercial basis.

That is an extraordinarily broad group and range of activities from the private to the public sector. These bodies do not provide an overarching risk management service. My second point is that risk management should be a specialised and targeted issue, just as occupational health and safety is in industrial relations. That is the only way you will get it to the top of the agenda. I cannot see how the Tourism Commission will put occupational health and safety for volunteer and recreational organisations at the top of its list. Mr President, you know that occupational health and safety is the sort of thing—unless you really confront people with it—that is left pretty low down on any agenda.

The other issue the minister alluded to is that the cost of the office would be significant. I am not suggesting that the minister adjust this year's budget, but I am suggesting that he adjust next year's budget. If government funds are already being expended, it is not that difficult to shift those resources out of those existing offices and put them into this statutory office, should this parliament pass my amendment, so that there is a body in this state, similar to what exists in the United States, that has a total focus on occupational health and safety.

My third point is that these bodies may well provide an existing service in relation to occupational health and safety, but they are not helping these organisations with the development of codes, because this is a novel approach. Before the

dinner break, we heard a lengthy argument from members that parliament might supervise these codes which may well cause a delay in the promulgation of the codes. I do not believe that that is the case. However, if the government is correct in that assessment, this body will assist that process and will assist organisations in the development of codes.

The Hon. P. Holloway: It will not assist parliament.

The Hon. A.J. REDFORD: I did not say that I accepted what the government said. Certainly, if the minister accepts the vote that occurred before the dinner break, the minister would welcome the establishment of an office that will assist in the development of codes. How can a small organisation such as a pony club draft the code to go through the process of ministerial and parliamentary approval without engaging lawyers and others at great expense? Unless we do that a lot of these organisations will not get around to adopting these codes.

I think that next year the minister will be reporting to the parliament that no codes have been adopted. I can assure the minister that I will draw his attention to my contribution today and last week and say, 'I told you so.' That is why I think that we need an office of this nature.

The Hon. P. HOLLOWAY: The government is mindful of risk management, as I think we all are these days. Risk management is part and parcel of the jargon across all sectors of government and the private sector. It has become increasingly important and, of course, it is driven by higher insurance premiums and the increasing difficulty of getting public liability insurance. We are all mindful of that, and this government has taken steps to inform and assist various sectors of the community about it. As the honourable member has referred to the Office for Volunteers, I will put on the record the following information in relation to that office.

The Office for Volunteers has introduced a risk management education program for volunteer groups in South Australia. The goals of the program are to create awareness of the Volunteers Protection Act 2001, to develop a comprehensive risk management education program, to deliver the program free of charge across various mediums and to make it accessible to all South Australian communities.

The program will include the provision of appropriate tools to enable volunteer groups to assess their level of risk and to design their own risk management plans and the provision of information and advice as to how to manage and minimise these risks. Following a tender process, a strategic planning group has been appointed to develop and deliver the program. It will be in two stages. The first stage will be an information gathering stage. The second stage will be the conduct of approximately 20 risk management workshops around the state.

The managing director of the strategic planning group, James Crown, will conduct all of the workshops and the program and provide risk assessment tools for the not-for-profit organisations and volunteers attending. To answer the honourable member's question, a budget of $70 000 has been allocated for the provision of services, and this amount will be supplemented by considerable involvement from the Office for Volunteers.

To return to the honourable member's amendment and why the government will oppose it, I indicate that the government does not wish to create bureaucracy for bureaucracy's sake. It can contribute to risk management more appropriately through the relevant government departments. After all, the needs of the sporting and recreation sector are substantially different from the needs of the community. The needs of the service and charitable sectors differ again from the needs of the tourism industry. Different sectors have different needs.

Further, the implementation of this amendment would obviously entail substantial cost for which there is no budget. I note that the amendment does not seek to restrict the services of the office in any way so it would need to provide free help equally to non-profit organisations and to commercial providers. The amendment is not limited to recreational services, so apparently anyone who asks for risk management advice, in any context, would be entitled to receive it at taxpayers' expense.

The Hon. A.J. Redford: That's rubbish.

The Hon. P. HOLLOWAY: That is what it provides.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: The amendment provides:

> The minister must establish the South Australian Office of Risk Management.

and, further, that 'It has the following functions. . . to offer free advice on matters relating to insurance and risk management.' It does not provide—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: If the honourable member says the government has to set up a body which will offer free advice, then I think we are entitled to claim that that is what the member wants it to do. So, the amendment is not limited to recreational services: there is no limit on it. It provides that the office will 'offer free advice on matters relating to insurance and risk management.' Presumably anybody—including commercial providers—can receive advice at taxpayers' expense.

In addition, the proposal that the office should assist in development of codes is obviously problematic because it would create an expectation that a particular code would be registered when, in fact, the office would not and should not be able to fetter the minister's discretion. The amendment provides:

> The Office has the following functions:
> (d) to assist providers in developing and obtaining approval for codes of practice.

So, if its function is to assist providers in obtaining approval for codes of practice, then there will be the expectation that this office will deliver it, when it should not fetter the minister's discretion in those matters. After all, the minister will ultimately be responsible. I have no doubt that this opposition would certainly want to hold the minister responsible for any decisions made in relation to that. So, this amendment provides for the setting up of a body that will raise the expectation that approval will be granted.

I will not spend any more time on this. I feel there are very compelling reasons why this amendment should be rejected. This amendment is so flawed that were it carried the government could not pass the bill in that form. Clearly, we are talking about either a conference or the withdrawal of the bill.

The Hon. A.J. REDFORD: Unfortunately, the government is developing a pattern: if it does not get its own way it makes threats such as the withdrawal of the bill which is an unfortunate way to deal with legislation.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: Well, the minister did. I would be most interested to know, in relation to this process and the additional $70 000—for which I am sure the volunteer and small business sectors will go down on their knees and thank the government, just as primary industry will thank

the government for its web site list as to where they can buy hay—how many lawyers are going to involved? What qualifications will be held by the people involved in developing this risk management aspect to the Office of Volunteers?

The Hon. P. HOLLOWAY: That question is inappropriate for this stage of the committee. We are debating the Hon. Angus Redford's amendment. For the benefit of the council I provided some information in relation to the Office of Volunteers. We do not have people here from that office who can give all the detail. But, heavens above, we are debating the amendment moved by the Hon. Angus Redford.

The CHAIRMAN: And that is what we should be doing.

The Hon. P. HOLLOWAY: And that is what we should be doing.

The Hon. A.J. REDFORD: I will try to put this so that even this minister can understand it. The minister said that there is no need for this office, and that the government has in train a whole strategy for information gathering, workshops and the development of a whole package of risk management. The minister also said he would spend $70 000. That was on this clause and it was all relevant to it. All I have done is to ask—and I invite the minister to respond—for information on the qualifications held by the people involved in this process. Are they simply people from the Office of Volunteers, perhaps being given a bit of extra overtime, or have some people been promoted and juniors brought in to the office? That is all I am asking. It is not that hard.

The Hon. P. HOLLOWAY: As I say, we are debating the establishment of a new office of risk management. In relation the Office of Volunteers, as I said, I have provided the information that is readily available to me. We would have to go to the office to get more advice. However, I am not being asked this in the context of the government bill or in relation to anything that is in the bill. I am being asked the question in the course of debating the honourable member's own amendment.

The CHAIRMAN: I think that the minister makes a strong point.

The Hon. A.J. REDFORD: Can I just get an undertaking from the minister that he will try to bring back at some stage—it will not hold up the bill—an answer to that question?

The Hon. P. HOLLOWAY: Your requirement is to know details of the expertise of the people in the Office of Volunteers: we will see what we can do.

The Hon. A.J. REDFORD: It should not be all that hard. We used to be able to do it.

The Hon. R.D. LAWSON: I think it is regrettable that the government has adopted such a negative attitude to the risk management proposals advanced by the Hon. Angus Redford. The mover of this amendment indicated the experience that he had in the United States. I can appreciate that the government might feel that what has been done there is a little too remote to be followed here. However, if it looks just across the border to Victoria, a ministerial statement made by the Labor Minister for Finance on 26 March 2002, records the following fact:

> . . . that the government had provided $330 000 from the Community Support Fund to the Municipal Association of Victoria for the development of risk mitigation activities. The project has been managed in conjunction with a broad coalition of community organisations including VicSport and the Arts Council of Victoria. The project will have immediate application to other sectors of the economy, including small business.

In my second reading contribution, I mentioned the organisation ourcommunity.com.au in Victoria, which has established the Australian Community Groups Insurance Scheme and has been at the forefront of community education in relation to risk management strategies and programs.

I think it is deplorable that the government should adopt such a negative attitude to a proposal from the very beginning. It has been done in Victoria; it ought to be done here. All that the amendment seeks to establish is an office—a facility—for doing that. And yet the government seems to be running away from a perfectly reasonable suggestion at 100 miles an hour.

The Hon. P. HOLLOWAY: I simply remind the committee that I have just given information in answer to the Hon. Angus Redford. The government, through the Office of Volunteers, has introduced a risk management education program for which a budget of $70 000 has been allocated. I rest my case.

The Hon. A.L. EVANS: I am always reluctant to add another government department to any structure. I tend to think one increases one's costs a lot and does not often see a lot of results. I am open to consideration of this amendment, but I would be interested to know the costs of setting up that department. Victoria's program was mentioned, but I did not quite understand it as being a risk management office. Do other states have them? That is a question with which I would like some help.

The Hon. P. HOLLOWAY: I guess it is the Hon. Angus Redford's duty to explain the amendment, but the point I would like to make to the Hon. Andrew Evans is that there is no budget for this office. I suppose the costs depend on how comprehensive its functions would be. Again, I make the point that the honourable member's amendment provides that the office 'offer free advice on matters relating to insurance and risk management'. That is not constrained to any group or sector of the economy. It is a broad-ranging function. That is probably the strongest argument against it. In this day and age, people should get risk management advice.

Companies do it all the time. Any reasonable company, if it did not have resources within to get good risk management, would pay for it. It should be part of its business plan and part of its overall operations. The idea of a government department providing free advice to commercial people on this matter is silly. For the volunteer and not-for-profit groups, the government has a role, and that is why the program I mentioned earlier does provide the budget to deliver that service for volunteers.

The Hon. A.J. REDFORD: In response to the Hon. Andrew Evans, it would not be the cost of the Victorian office, which is $348 000. That office has other functions. I imagine that this could be done for $200 000, given that the government has allocated $70 000 from the Office for Volunteers. I suspect that it would be a net cost of between $100 000 and $150 000 a year.

The Hon. SANDRA KANCK: I think the idea of risk management is something that we need to consider in terms of trying to bring down some of our insurance costs. The concept is headed in the right direction but, as I said in my second reading speech, we are doing so much of this on the run. It seems to me to be very much untested. I am certainly concerned about the costs of setting it up, and I am concerned about the application of it. It appears to me that it would go beyond recreational services.

It seems that it will offer free advice to almost anyone—and that could be to insurance companies that are already

raking in enormous amounts of money. While the idea is good in theory, I am concerned about what we have before us. Given that I am dealing with this issue from a fairly uneducated perspective, having taken on this matter only this afternoon, I am loathe to accept something such as this as an amendment when I have all these outstanding concerns. I think it is such a pity that we are having to do this in a pressure cooker atmosphere.

The Hon. A.J. REDFORD: I can count and I recognise that this will be lost on the voices, so I will not seek to divide. I think this bill will be an abject failure, and I look forward to this time next year, particularly during the estimates process, and getting straight answers about the five, six or 10 codes that it appears we will have in that time. The responsibility will lie on the government's head. I make that prediction.

The Hon. P. HOLLOWAY: The Hon. Angus Redford might be right about one thing because, as a result of all the extra delay in relation to approving codes, there might be very few of them. I make one point about this whole package of measures—

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order! The minister is on his feet.

The Hon. P. HOLLOWAY: A news release was issued by Suncorp Metway last week. It is worth making the point that this announcement states:

> Suncorp, Australia's second large insurance group, has moved to relieve the crisis in public liability insurance.

It announced a number of measures it was taking. The news release continues:

> In the second phase, expected to take effect from September, some further occupational groups in New South Wales and South Australia will be made eligible for insurance cover. These include a range of community workshops such as sheltered workshops, unlicensed clubs, charitable aid depots, aged-persons support organisations, performing arts venues and residential care services. These initiatives are in recognition—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Listen—I will quote the relevant point, as follows:

> These initiatives are in recognition of the significant legislative changes that have been implemented by the New South Wales and South Australian governments, which are yet to be introduced in other states.

The Hon. Angus Redford is trying to say that this is hurried and rushed and has no importance, but there is an example of where the package of public liability measures is having a practical effect. I do not think anyone is claiming, given that we are moving into this area, that it will be perfect and not without problems. At least we are going in there and it is having some tangible benefit.

New clause negatived.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 6 and 7—Leave out subclause (4) and insert:

(4) Before registering a code, the minister—

(a) may require a proponent to obtain a report on the code's adequacy from a nominated person or association; and

(b) must publish an advertisement in a newspaper circulating generally throughout the state—

(i) giving notice of the application;and

(ii) identifying the recreational services to which the code relates; and

(iii) stating a place (which may be a website) at which the code may be inspected or from which a copy of the code may be obtained; and

(iv) inviting interested persons to make submissions on the adequacy of the code within a period specified in the advertisement (being a period not less than 21 days from the date of publication of the advertisement); and

(c) must consider any responses received to the advertisement within the time allowed in the advertisement.

I foreshadowed this amendment earlier as an alternative to the disallowance option. The government believes that the two are not incompatible and that we could have this amendment in conjunction with the amendment moved earlier, in the sense that it does assist in terms of the process. Before registering a code, the application would be advertised in the press and interested parties would have an opportunity to inspect the proposed code and to make submissions as to its adequacy. The minister would be required to take these into account before a code could be registered. Rather than withdrawing the amendment, I believe it can sit with the amendment that was carried earlier and that it would be useful to assist the process of public information regarding the relevant codes.

The Hon. R.D. LAWSON: The opposition supports this amendment, which is part of the consultative process. We say it is appropriate to have a code of this kind adopted. The fact that the minister will be required to obtain public comment, as well as table the codes of practice in this place, is not a duplication but, rather, a sensible process.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 4, lines 8 to 15—Leave out subclauses (5), (6) and (7) and insert:

(5) Unless the minister refuses to register a code (which the minister may only do for good reason) the minister must—

(a) register the code by entering in on a website determined by the minister and publishing notice of its registration in the *Gazette*; and

(b) ensure that a copy of the code is laid before both houses of parliament (together with copies of any reports on its adequacy submitted by the proponent).

(6) A registered code takes effect as follows—

(a) if no notice of a motion to disallow the code is given in either house within 14 sitting days after the code was laid before the house, the code will take effect at the expiration of that period (or if the period is different for each house, on the expiration of the later of those periods);

(b) if notice of a motion to disallow the code is given in either or both houses during that period, the code will take effect when the motion is negatived (or if notice is given in both houses, when the motion is last negatived).

(unless the code itself fixes a later day for its commencement).

(7) The minister must ensure—

(a) that the register of codes can be inspected at a website determined by the minister; and

(b) that the register differentiates clearly between the codes that are in force and those that are not.

(7A) The minister—

(a) may cancel the registration of a code if satisfied that there is good reason to do so; and

(b) must cancel the registration of a code if—

(i) either house of parliament passes a resolution disallowing the code; or

(ii) either house of parliament at some later stage passes a resolution to the effect that registration of the code should be cancelled.

(7B) On cancellation of the registration of a code, the minister must—

(a) publish notice of the cancellation in the *Gazette*; and

(b) remove the code from the relevant website.

This amendment is part of the parliamentary scrutiny process. It is actually the key to it. We had the debate in relation to that process when the definition of 'negative' was inserted in the bill. The committee indicated its support at that time on a test vote and I invite support for this provision. I have nothing further to add.

Amendment carried.

The Hon. SANDRA KANCK: In my contribution on the previous amendment of the Hon. Angus Redford I raised my concern about the costs of setting up this risk management section. I am actually concerned about what we have so far and the resources that are going to be made available to do all this work associated with the codes. Is that going to come from existing staff within the minister's office or is some new unit going to be set up?

The Hon. P. HOLLOWAY: This will involve resources within the Treasurer's office; if and when this bill passes the government will have to look at those. I am sure some thought has been going into it. Earlier today we talked about a Treasury task force looking at the regulations and other things, and I am sure that these are matters that will be looked at. I imagine that the Treasurer will be trying to do what he can within existing resources but if additional resources are necessary then I am sure that he will go to cabinet on that matter. At this stage I just do not have that information with me.

The Hon. SANDRA KANCK: In this debate I am not clear how much of the apparent conflict I am seeing is chest beating and how much is real but, if it is real, would the government consider that it might be better to have an independent expert assessing these codes as they are submitted?

The Hon. P. HOLLOWAY: If the honourable member looks at clause 4, subclause (4) provides:

> Before registering a code, the minister may require a proponent to obtain a report on its adequacy from a nominated person or association.

The Hon. Sandra Kanck: A bit like an EIS.

The Hon. P. HOLLOWAY: It could be an expert to give that information.

The Hon. A.J. Redford: Who pays for that?

The Hon. P. HOLLOWAY: The proponent.

Clause as amended passed.

Clause 5.

The Hon. SANDRA KANCK: Many schools around the state hire their halls to the public, for instance. In that regard will schools be able to class themselves as providers?

The Hon. P. HOLLOWAY: If schools were providing a recreational service within the meaning of the bill, then they would be able to, but the important point is that they would have to be providing that appropriate recreational service.

Clause passed.

Clause 6.

The Hon. SANDRA KANCK: In relation to the duty of care, are the codes going to spell out the sort of signage that will be required? If someone has a sign that says people enter at their own risk, will that be adequate? In other words, are the codes going to have very clear guidelines about what the signage has to say, what size and all that sort of thing?

The Hon. P. HOLLOWAY: There are provisions in subclause (2) and subclause (3)(b) that require the signs in a manner and form required by the regulations, notifying consumers. So, there will be the power in the regulations to regulate those signs.

The Hon. R.D. LAWSON: Would the minister confirm that the provision about the display of prominent notices in a manner and form actually only applies to occasions on which the recreational services are provided gratuitously and that it is not intended that there be a general provision that prominent signs will be able to be used as the manner of communicating modification of duty of care?

The Hon. P. HOLLOWAY: I believe that is clear from subclause (3), which provides:

> If a registered provider—
>
> (a) provides recreational services gratuitously; and
>
> (b) displays notices. . .

Clearly, it is only in those circumstances where the services are provided free.

Clause passed.

Clause 7.

The Hon. P. HOLLOWAY: I move:

Page 5, after line 33—Insert:

> (3) The duty to comply with a registered code is a relevant statutory duty of care within the meaning, and for the purposes of, the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001.

This amendment is moved to avoid any argument that this bill is excluded from the scope of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001. Members will recall that that act was passed last year to reverse the effect of the High Court decision in *Astley v Austrust Limited* and to extend and update the old provisions of the Wrongs Act 1936 that were headed 'Proceedings against and contributions between tortfeasors' and 'Apportionment of liability in cases of contributory negligence.' That act enables a party who has been held liable to pay damages for a breach of duty of care to claim contribution towards the damages from any other person who also caused the injury or other loss. That act also enables a court to reduce the plaintiff's damages for a breach of a duty of care to the extent that it thinks just and equitable having regard to the plaintiff's contributory negligence.

The old common law was that a plaintiff's contributory negligence completely defeated a claim for negligence. It was unclear whether the plaintiff's contributory negligence could be taken into account in assessing damages for a claim for breach of a contractual duty of care. The government's intention is that, in actions against a provider for injuries caused by a breach of the code, it should be open to the provider to plead any relevant contributory negligence on the part of the injured person, that is, a failure by that person to take reasonable care for his or her own safety. The contributory negligence does not dispose of the claim but results in an apportionment of responsibility between the parties as the court considers just.

The government also intends that the provisions of this act as to contribution actions, where there are several parties responsible for the injury, should apply here. For example, the injury might have been caused partly by a breach of the code and partly by the fault of another person, such as a manufacturer of equipment. As the bill stands, there might be room for dispute as to whether this act applies to the scheme of liability established by the bill. This amendment will put the matter beyond doubt.

The Hon. R.D. LAWSON: The opposition supports this amendment which, it is conceded, makes clear a principle that we would have thought would apply even without its provision. I point out that the language of the subclause confirms the point I was making earlier that the duty to comply with a registered code is actually a substituted duty for the general duty of care that applies. So, the question in relation to an action under one of these indemnities will not be, 'Has the defendant complied with the general duty of care?' but, 'Has the defendant complied with the terms of the registered code?' We support the amendment.

Amendment carried; clause as amended passed.

Clause 8.

The Hon. SANDRA KANCK: My question relates to the application of the act. I take it that it will apply only to accidental or negligent acts and would not include any reckless or malicious acts, but it does not appear to spell that out. Could this be misinterpreted as a consequence of that not being spelt out somewhere?

The Hon. P. HOLLOWAY: Malicious and intentional acts would be criminal and, therefore, they would be excluded under clause 8(2)(c), which provides:

(2) However, this act does not affect—
(c) criminal liability.

The Hon. SANDRA KANCK: Let us take a riding school, for example, and someone puts a burr under the saddle of a horse. It is hardly criminal, but it is very intentional—the horse gallops away.

The Hon. P. HOLLOWAY: Some of those sorts of events would, presumably, be breaches of the code. If in that particular case you had to provide a horse at a riding school that was fit to ride, or whatever, it may be covered under those sorts of provisions.

Clause passed.

Clauses 9 and 10 passed.

New clause 11.

The Hon. R.D. LAWSON: I move:

After clause 10—Insert new clause as follows:
Report on implications of these amendments
11. As soon as practicable after the expiration of two years from the commencement of this act, the Economic and Finance Committee must investigate and report to the parliament on the effect of this act on the availability and cost of insurance for providers of recreational services.

The purpose of this amendment is self-explanatory. There was within my own party some discussion as to when that investigation and report should take place, and the amendment seeks to have it take place after the expiration of two years from the commencement of the act, by which time it should be possible to have determined how the act is going and, in particular, how it is answering all those concerns which have been expressed and which the government is responding to in introducing this legislation.

I should indicate to the committee that I propose to move a similar amendment to the Wrongs (Liability and Damages for Personal Injury) Amendment Bill so that, once again, in relation to that, two years after the commencement of that bill the Economic and Finance Committee will investigate and report, and one would imagine that the committee will be able to combine those activities. We do not envisage that it would be an onerous or difficult task for the Economic and Finance Committee to obtain a report at that time. We earnestly hope that the report will indicate that these measures have been implemented and that they have provided benefits to the community in the form of more available insurance at an affordable cost.

The Hon. P. HOLLOWAY: The government supports the amendment. The purpose of this bill, of course, is to put downward pressure on insurance premiums for public liability in the community by removing or, at least, reducing risk within this sector. In order to achieve the goal of benefiting consumers, obviously, if those benefits are to be passed on—benefits that insurance companies receive from greater certainty—they should be passed on to consumers. The insurance companies must be accountable and, therefore, it is appropriate that the operation of this act be examined after a period of time, and two years is a very suitable period of time. We support the amendment.

New clause inserted.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 822.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank honourable members for their contribution to the debate. I note that the Hon. Sandra Kanck made comments in relation to this bill during the debate on the Recreational Services (Limitation of Liability) Bill. The Hon. Robert Lawson asked about the likely savings to the Motor Accident Commission as a result of this bill in respect of both non-economic and economic loss. In terms of non-economic loss, the proposed changes to the 0-60 point scale will result in lower value claims receiving smaller awards for non-economic loss, and major claims receiving much larger awards. I am advised that, assuming that future claims experience is similar to that of the past, an annual saving of some $10 million in respect of non-economic loss is anticipated for the CTP Fund. Of course, the exact figure will depend on the number and nature of claims made each year.

As to the cap on economic loss, the effect of this is harder to foresee. The cap has been in place as to future loss in motor accident cases since 1998. In that time, there have been no claims that would have exceeded this cap, so it has resulted in no savings, as such. The inclusion of past economic loss within this cap may increase the number of cases to which the cap applies, so there may be a saving to the commission as a result, although experience suggests that this is unlikely.

If such a claim was to arise, the amount of any savings would depend on the injured person's earning potential in the particular case. It is important to understand that the proposal to cap past and future loss of earning capacity is not so much concerned to generate savings as it is to safeguard against the risk of extraordinary claims having to be paid for this head of damage, that is, the cap will allow insurers to more accurately estimate the risks they take when writing injury cover. They will not have to make provision for setting their premiums for unusual but immense claims such as in the Blake case. The impact of the bill in this aspect, therefore, is not in reducing average claim costs but improving their predicability. The cap can also be expected to assist in generating savings for the insurers in terms of containing reinsurance premium costs.

The Hon. Robert Lawson also inquired about the originally proposed amendment to the occupiers' liability provisions of the principal act. The government had put forward for discussion a provision that would have expanded the effect of the present provisions of section 17C by allowing parents to contract on behalf of their children so as to reduce or exclude the duty of care that would otherwise be owned by the occupier. As members will be aware, the Wrongs Act presently allows such contracts to be made by adults but does not allow them to bind third parties. This restriction would

have been removed so that the parent or guardian could bind the child.

For the reasons I have given in the context of the Recreational Services (Limitation of Liability) Bill, the government was persuaded to abandon this proposal. The other effect of the draft provision would have been to permit an occupier who provided gratuitous access to land for recreational purposes to exclude liability by a notice. This is now subsumed in the Recreational Services (Limitation of Liability) Bill to the extent that the occupier is providing a recreational service as defined. No other amendment to the provisions of the Wrongs Act is presently proposed, but the matter can be reviewed when the report of the commonwealth's panel of experts is available.

The Hon. Terry Cameron asked several questions as to the calculations behind the figures used in this bill. The first question was, 'How are these figures (non-economic loss) arrived at—arbitrarily or by examining the points awarded in cases or any reviews, reports etc.?' An examination was conducted by actuaries Brett and Watson on recent data relating to the awarding of points for non-economic loss under the compulsory third party insurance scheme. The actuaries were instructed to propose options which, first, would not reduce the size of the existing pool of persons who could claim non-economic loss—that is, not increase the threshold test so as to make it more difficult to lodge a claim—and, secondly, they were instructed to consider options that would increase the compensation levels for more seriously injured persons, while at the same time arranging for offsetting savings to be generated by reducing the level of compensation for less seriously injured persons.

The solution was to provide a different monetary multiplier for each of the 10 points on the nought to 60 point scale. The actuaries proposed different options. The option embodied in the bill was selected because it achieves material savings, it retains a level of compensation even in minor injury cases, and it delivers greater compensation to the most seriously injured.

The next question asked by the Hon. Terry Cameron was, 'By reducing minimum compensation payouts by one-third, what percentage of the overall cost of non-economic compensation will be saved?' As to general insurers other than the Motor Accident Commission, which presently pays damages on a common law basis, it is not possible to predict the dollar effect of moving to the point scale, because there is no centralised pool of statistics of claims settled by these insurers, but one can anticipate a substantial reduction.

As to the Motor Accident Commission, based an analysis of the data, claims in the nought to 10 point range are anticipated to cost about $38.17 million in non-economic loss payments in one year. This calculation assumes a fixed monetary multiplier of $1 710. Under the new sliding scale, the cost of claims for nought to 10 points is expected to reduce to $25.63 million because of the reduction in the value of a point from $1 710 to $1 150. Therefore, the amount of the non-economic loss saving to the CTP fund for nought to 10 points equates to an estimated $12.54 million. Of course, some of this saving must be offset against the increase in payments to the more seriously injured. The net overall saving to the CTP fund is expected to be about $10 million annually. In terms of the percentage of the overall savings to non-economic loss, the reduction is anticipated to be about 18 per cent.

The Hon. Terry Cameron also asked questions about the statistics relating to damages for personal injury in this state in the years 1997 to 2001, including, 'How many points were awarded for non-economic loss in these cases, how would the sliding scale have affected these payments, and what would be the flow-on to insurance premiums?' Very simply, there are no records that would enable the government to answer these questions as they have been framed. Apart from motor accident cases, bodily injury claims for damages are covered by private insurers. The great majority of such cases are settled out of court by the agreement of the parties. There is no obligation on the parties to submit a breakdown of their agreed settlement to any authority and, indeed, the parties may agree to keep the settlement confidential. As to bodily injury claims in general, therefore, no answer can be offered.

Insurers did disclose a good deal of information about injury claims experience for the purpose of the Trowbridge report, and I refer the honourable member to the statistics there published. However, because that report represents the experience of about 30 per cent of the market, I acknowledge that they do not give a full answer to his question.

As to the Motor Accident Commission, it has data which is collected by its claims agent SGIC of the number of CTP cases which were finalised in each of the years from 1997 to 2001. For each of these years, starting with 1997, the number of claims finalised were 8 370, 6 980, 6 219, 7 805, and 8 151 respectively. However, not all these claims received an award for non-economic loss, as, for example, they may not have satisfied the threshold test which is replicated in the bill.

Of those claims which did receive such an award, again starting with 1997, there were 4 260, 4 041, 3 840, 5 118, and 5 089 respectively. Based on the available recent CTP data, about $56 million in one year would have been paid under the fixed scale—that is, based on the monetary fixed multiplier for 2001 of $1 710. However, had the same points been awarded for those cases under the proposed sliding scale, about $46 million would have been paid.

The Hon. Angus Redford asked about the decision in the case of Astley v Austrust Ltd and the possible effects of proposed new section 24N. He noted that in that case the High Court had held that contributory negligence could not be taken into account in an action for breach of contractual duty of care. He was concerned that this decision should be overcome and that contributory negligence be taken into account in actions affected by this bill. As members will recall, this issue was addressed by the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 which repealed the provisions of the Wrongs Act considered in the Astley case and set out the law as to contributory negligence.

That act makes clear that contributory negligence of the plaintiff can be considered in every case where damages are claimed on the basis of fault. This term is defined to include a breach of a duty of care that arises under the law of torts, a breach of a contractual duty of care and a breach of a relevant statutory duty of care. Claims for damages for personal injury under the Wrongs Act are likely to be based on one or more of these types of breaches. In all such cases, the court is to take into account the plaintiff's contributory negligence, defined as a failure to take reasonable care for one's own protection.

Proposed new section 24N, then, simply directs the court as to how it is to calculate the award to the plaintiff in a case where there is contributory negligence, in particular both ordinary and statutorily presumed contributory negligence. The Hon. Angus Redford also asked some questions of the

Treasurer concerning the particular effects of the various provisions of the bill, setting limits to the quantum of damages. I will do my best to respond, although the Treasurer is better placed than I to do so and may wish to elaborate on my response in due course.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: All right. The honourable member asked what effect the various measures to restrict the quantum of claims would have on insurance premiums and what effect they have had in respect of motor accident claims. It may be helpful to address these questions together as the experience of the Motor Accident Commission is probably the best indication we have of what can be expected in the context of other injury claims. As to the threshold, the MAC's experience has been that 40 per cent of finalised claims do not attract an award for non-economic loss. In some cases, this may be because of the threshold but there may also be other explanations, for example, the claim was one that did not include a non-economic loss component. As to the application of the point scale, the government expects that this is the measure likely to have the single most significant effect.

The experience of the Motor Accident Commission was that the introduction of the point scale, coupled with the threshold, produced a significant reduction in non-economic loss payments from what would have been awarded at common law. The total sum paid out by the compulsory third party fund for claims arising in 1986, that is, the year before the point scale took effect, was $88 million. The total sum paid out by the fund for claims arising in 1988, that is, the first full year after the point scale took effect, was $30.6 million. This represents a saving of over $57 million or 65 per cent of total economic loss payments.

Even in the last year, the MAC still paid out only $53 million in non-economic loss, well below what it was paying in 1986. As mentioned in response to the Hon. Terry Cameron's questions, the Motor Accident Commission anticipates a further saving from the revised point scale of the order of $10 million per annum. Non-economic loss is a very significant component of total claims costs, both for the MAC and for private insurers. The Trowbridge report analysis of a sample of some 260 claims (around 50 from each of five insurers) suggests that the claims between $5 000 and $100 000 non-economic loss is the largest single component of claim cost, representing over 40 per cent of the total claim cost.

Even in larger claims—in the range of $100 000 to $500 000—it represents something like 25 per cent of the total cost. If the experience of the Motor Accident Commission can be directly applied to other bodily injury insurers, it would not be unreasonable to expect that, in injury claims, insurers could save up to two-thirds of this component of the claim in each case. As to the restriction in the categories of persons able to claim for nervous shock, this cannot be predicted because there is no way of knowing how many persons would have been eligible to make a claim for nervous shock but for the imposition of these restrictions.

It is fair to say that nervous shock claims are fairly few in number and that the persons most likely to make such claims would be the core group whose entitlement is not affected by the amendment. The effect of the cap on damages for loss of earning capacity is difficult to assess simply because most claims for loss of earning capacity do not exceed or even approach $2.2 million. As I explained, the Motor Accident Commission's experience thus far has been that the cap on future earning capacity instituted in 1988 has not delivered savings as such because there have been no claims since then that would have exceeded this cap.

There might be more such claims in future because the cap will now include both past and future loss, but this cannot be predicted. It is impossible to know how many very large claims will arise in future. However, the benefit provided by this cap is not so much in reduced claims payments but in the certainty of protection against inordinate depletion of the premium pool by an unpredictable but very large loss. A known limit is far more useful to an insurer in providing for anticipated losses than is the uncertainty contingency of a vast loss. Therefore, this cap is expected to deliver a benefit in terms of certainty and predicability for insurers and some benefit in terms of insurance premiums. Both of these should flow on to premiums.

As for the discount rate, MAC has made calculations as to what would be the effect if the existing 5 per cent discount were instead 3 per cent. These calculations suggest that this would cost the commission an extra $24 million per year, that is, a 12 per cent increase in total claims costs, estimated to be approximately $200 million per year. The effect of the discount rate increase, therefore, may well be the second most significant factor in this package after the application of the point scale in reducing claims costs. As to management fees, these arise only in the most serious cases, but when they are awarded they can be significant.

In the case of Burford v Allen (referred to in debate) in which a child was rendered a quadriplegic, the court awarded management fees of $230 000. Again, as there is no reliable way of estimating the number of very serious injury cases that will arise in future, it is not possible to calculate a saving: rather, this is again an unpredictable contingency that will no longer need to be provided for. As to the abolition of interest on past non-economic loss, it has not been possible to quantify the effect of this, but insurers could make their own calculations based on their claims experience and the present interest rate of 4 per cent.

In all, I suggest that the application of these limitations on damages can be seen to have made a very significant difference in motor accident cases. It is therefore entirely reasonable to assume that they will make a significant difference in other cases. I point out that this approach, that is, the application of existing limitation laws from the CTP scheme to other types of claims, is the approach recommended in the Trowbridge report. As to the dollar value of the flow-on effect to insurance premiums, a matter raised by both the Hon. Terry Cameron and the Hon. Angus Redford, the government is not in a position to form an estimate.

The premium calculations of private insurers are commercially sensitive data. Insurers will look at the whole of the industry or field covered (not limited to South Australia), including risk management and claims experience. They will also take into account anticipated investment earnings of premiums. The government believes that there should be a significant impact. In its letter to the Treasurer dated 14 August 2002, the Insurance Council states:

> Our assessment is that this should produce savings in claims costs, particularly with the new point scale. The full impact has not been quantified.

More recently, a major insurer, Suncorp GIO, has announced that it will now make public liability insurance available to a much broader range of businesses, consumers and community organisations in the light of the reforms in New

South Wales and Queensland and of our bills. Suncorp GIO Chief Executive, General Insurance, John Trowbridge, said:

> We think the reforms will lead to a reduction in costs in the public liability system and this gives us an opportunity to provide public liability insurance at reasonable prices to more consumers.

Suncorp GIO states that many businesses and community groups, which had previously been unable to source public liability insurance and which had faced the prospect of having to close their doors, will now be able to get solid, secure insurance cover. It is incumbent on insurers to do their part by passing on their savings, as evidenced by the actions of Suncorp GIO. The government believes that insurers are well aware of this. The government expects to see premium reductions. The Hon. Angus Redford also asks whether the government has plans to legislate to modify the common law in respect of loss of property. So far as I am aware there are no such plans at present.

The government awaits the report of the Ipp Committee, due at the end of September, which is to deal with the law of negligence generally. It may well be that reforms coming out of that process will have effects in relation to property claims, at least those based in negligence, but it is too early to say. The Hon. Angus Redford also asked about the possibility of publication of legal fees charged to clients by lodgement of returns in the Supreme Court after a case is completed. The government has no such intentions at this time. The government does support the full and fair disclosure up front of the lawyer's proposed charges to the client and, indeed, the professional conduct rules already deal with this.

I also point out that the Motor Accident Commission does keep records of both plaintiff and defendant legal costs and that these are published in its annual reports. As to the Hon. Angus Redford's request that the Treasurer table correspondence with insurance companies and correspondence questioning claims by insurance companies, I will refer this request to the Treasurer. I note that the opposition will move to amend this bill to provide for the Economic and Finance Committee of the parliament to investigate and report after two years on the impact of the amendments on the availability and cost of public liability insurance.

I foreshadow that the government has no difficulty in supporting this amendment. Now that South Australia has made changes we will accept no excuses from insurers. These amendments have been supported by insurers and the public is entitled to have insurers do their part to deal with the apparent insurance crisis. Again, I thank members for their contributions to the debate and I commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: I thank the minister for the lengthy reply to the second reading debate. I have a general question for the minister that will specifically arise in clause 3 and new section 24A which provides that the new amendments will apply to damages for personal injury arising from a motor vehicle accident or from an accident caused by negligence, some other unintentional tort on the part of the person other than the injured person and by a breach of a contractual duty of care. I ask the minister whether any consideration was given by the government in the preparation of this amendment to including actions for defamation, which are, of course, a deliberate rather than an unintentional tort.

I raise the issue because the Premier of New South Wales, Mr Bob Carr, has recently indicated that the state of New South Wales will examine that issue because it could well be argued that by capping damages for personal injury, not only in motor accidents, as was previously the case, but now also in relation to a very wide range of actions, we have the situation where a plaintiff in a defamation action might receive unlimited damages, whereas a person who is grievously injured, say, in the worst possible case, might receive $241 000—I think that is the maximum one can receive for pain and suffering.

I am mindful of the fact, for example, that, in an action between two members of this parliament recently, $65 000 was awarded in the District Court. That was at a time when the most that anybody could get for pain and suffering in this state for any injury sustained in a motor accident was just over $100 000. So, for the worst form of paraplegia at the moment one might get about $102 000, whereas for defamation one can get $65 000. One might argue that there is a disproportionality there—and I say nothing about the appropriateness of the particular damages award.

Members may also have seen in the *Weekend Australian* in June a report of a case in Victoria where the Deputy Chief Magistrate, Ms Popovic, sued the *Herald Sun* for damages for libel and she was awarded $246 000. The *Australian* newspaper pointed out that, if Ms Popovic had lost her sexual organs in a workplace accident, she would have received $75 000, yet for damage to her feelings she received $246 000 in a libel action. So, my question to the minister is: was consideration given in the preparation of this measure to the inclusion of defamation actions, and does the government agree that, now that we are capping damages for all forms of personal injury, a case might be made for placing similar caps on damages for defamation?

The Hon. P. HOLLOWAY: The answer to the question is no, that the consideration of the government has just been in relation to bodily injury, because this package of measures is, of course, limited to public liability insurance. Personally, I do not have any problem with the suggestion that the honourable member is making. Obviously, feelings are very expensive things and perhaps in this place we should all be more considerate of each other, knowing that they are more expensive than losing arms, legs and other parts of the anatomy. But, seriously, I guess there is an important point behind that, and that is what led Bob Carr to make that statement. I am not aware of any action being taken in that matter by the Attorney but, personally, I would not be disappointed if he did.

Clause passed.

Clauses 2 to 6 passed.

New clause 7.

The Hon. R.D. LAWSON: I move:

> After clause 6—Insert new clause as follows:
>
> Report on implications of these amendments
>
> 7. As soon as practicable after the expiration of 2 years from the commencement of the Act, the Economic and Finance Committee must investigate and report to the Parliament on the effect of the amendments on the availability and cost of public liability insurance.

I was gratified to hear in the minister's second reading summing up that the government will support this amendment, which will require the Economic and Finance Committee of the parliament to investigate and report on the effect of these amendments on the availability and cost of public liability insurance, and that investigation is to report as soon as practicable after the expiration of two years. A similar

clause was inserted into the recreational services bill which passed all stages earlier this evening.

New clause inserted.

Title passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

APPROPRIATION BILL

In committee (resumed on motion).

(Continued from page 965.)

Clause 1.

The Hon. R.I. LUCAS: In the interests of expediting the program today, I had a discussion with the Leader of the Government prior to the dinner break. I understand that the Under-Treasurer and possibly some senior Treasury officers have been waiting around for some hours for other important legislation to be processed by the Legislative Council.

An honourable member: Not as many hours as the fishermen have been waiting.

The Hon. R.I. LUCAS: No, that is true. I indicated to the Leader of the Government that I did not want to be the cause of the Under-Treasurer and others waiting around until whatever hour it was going to be this evening. I was not sure what time that would be. I indicated to the Leader of the Government that, rather than delay the committee stage, I would convey the questions I was going to put to the minister and Treasury officers by way of a letter. I could send it to the Leader of the Government, but it would probably be simpler to send it directly to the Treasurer (Kevin Foley) and seek his response in that way.

From that viewpoint, I do not think that I have had the opportunity to thank the Leader of the Government and the officers for the information they provided at the conclusion of the second reading debate. It answered a significant number of the questions we were unable to put through lower house members in the House of Assembly estimates committees. I still have not seen the answers to questions put in the estimates committees, albeit they were meant to have been provided by 16 August. Therefore, I can only assume that we will see answers to those questions in the not too distant future. After looking at those answers and after having also considered the responses provided by the Leader of the Government earlier today to questions raised during the second reading, I will convey any further questions to the Treasurer by way of correspondence.

There are two other points that I want to make. One is that when we reconvene in October this chamber will have the opportunity to debate the Public Finance and Audit (Honesty and Accountability in Government) Amendment Bill. A significant number of the questions I wanted to address to the minister, and obviously taking advice from the Under-Treasurer in particular, can be addressed during that debate. They relate to the detail of how mid-year budget reviews and pre-election budget statements are to be conducted.

As I have placed on the public record on a number of occasions, I have significant concerns about what this parliament and the community have been exposed to in relation to what is known as the 14 March mid-year budget review update and some elements that have been included in that, and I continue to express my concerns. As I have said, whilst those issues could have been pursued as part of this committee stage (and that was my original intention), I indicate that I can at least pursue those elements of the questions during debate on the Public Finance and Audit (Honesty and Accountability in Government) Amendment Bill. I will direct the other questions to the Treasurer by way of correspondence after the discussions I had and the understanding I reached with the Leader of the Government in relation to the consideration of this bill.

Another issue for discussion and debate during the Public Finance and Audit (Honesty and Accountability in Government) Amendment Bill and future appropriation bills will be the role of the committee stage of future appropriation bills in the Legislative Council. I gave notice two weeks ago that I want to see the reintroduction of the opportunity for members of the Legislative Council to question ministers (with government officers available) during the committee stage of the Appropriation Bill debate.

I indicate to the Leader of the Government that I place on notice that I hope that next year, during debate on the Appropriation Bill, given the timing, events will be organised so that the committee stage of the Appropriation Bill will not occur on the very last day of the parliamentary session. Obviously, the last day of a parliamentary session involves a considerable number of urgent bills to be ushered through the parliament, with motions to be debated and discussed. Tempers get a little frayed and all sorts of pressures mount on ministers and the government and, as a result, the Legislative Council as well.

It would certainly have made sense, even in this compressed time frame, if the committee stage of the Appropriation Bill had been debated yesterday or the day before. However, we have had problems with illness, particularly this week, with certain members of the Legislative Council, but that certainly is not the fault of government ministers in this chamber. Given that we hope that that will not occur with future appropriation bills, I indicate that the Liberal Party and other members in this chamber will be seeking to expedite the committee stage of the Appropriation Bill debate so that it does not occur on the last day of the session. We would then have the opportunity to consider an appropriate committee stage debate of the Appropriation Bill.

The other issue tied up with constitutional reform will be the debate about the committee debate of the appropriation of the budget. I know there has been a suggestion that members of the Legislative Council would in some way cohabit with members of another place during the House of Assembly estimates committees. Whilst I can understand that there are some arguments for that, equally there are arguments against, including practical and logistical issues that would need to be resolved. As I have said before, I do not have a fixed view one way or another.

I place on the record my view that there is potentially one alternative which members, as they look at constitutional reform, might contemplate. It is certainly not a policy of the Liberal Party at this stage, but I put it on the table as something to be considered or contemplated. The Legislative Council might have a permanent or ongoing budget estimates committee of the Legislative Council, not one that works only on a quarterly basis as occurs in some other jurisdictions, but one that would allow budget oversight through a 12-month period, upon decision or recommendation of the Legislative Council or, indeed, of the committee itself, where ministers and senior officers of departments might make themselves available for questioning by members of the Legislative Council with regard to budget issues and how budgets are progressing through a 12-month period. Again, I do not have

a fixed view about that. I am aware that there are certainly arguments against that particular model as well, but I think it is at least worthy of contemplation, as we go through the process of debate about constitutional reform and our procedures. With that, I indicate that I will not be asking any further questions in the Appropriation Bill committee debate.

Clause passed.

Remaining clauses (2 to 8), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

SEXUAL OFFENCES

The House of Assembly concurred with the Legislative Council's resolution and informed the Legislative Council that it would be represented on the joint committee by three members, of whom two shall form the quorum necessary to be present at all sittings of the committee.

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

That the members of the council on the joint committee be the Hons A.L. Evans, G.E. Gago and R.D. Lawson.

Motion carried.

SHOP TRADING HOURS

Adjourned debate on motion of Hon. M.J. Elliott (resumed on motion).

(Continued from page 977.)

The Hon. A.L. EVANS: I move:

That the first meeting of the select committee be convened after the report is tabled of the Select Committee on the Shop Trading Hours (Miscellaneous) Amendment Bill.

The Hon. SANDRA KANCK: On behalf of my colleague the Hon. Mike Elliott, I indicate my thanks for the agreements that have been reached to allow this committee to be set up on what is a matter of great importance to him.

The Hon. T.G. ROBERTS: We will be cooperating with the select committee. I will be on it, of course, so I will have to cooperate! I take into account the sincerity with which the motion for the formation of the committee was moved and the depth of feeling that the mover obviously had. We will facilitate the process and bring back a report as soon as we can.

The Hon. Mr Stefani's amendment carried; the Hon. Mr Evans' amendment carried; motion as amended carried.

The council appointed a select committee consisting of the Hons M.J. Elliott, A.J. Redford, T.G. Roberts, T.J. Stephens and Carmel Zollo; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 20 November 2002.

[Sitting suspended from 10.30 to 11.57 p.m.]

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

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

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

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

WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT BILL

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

ADJOURNMENT DEBATE

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

That the council at its rising adjourn until Monday 14 October.

In moving this motion, I will make a few brief comments. This is the end of what one could describe as the first session of the new government, in which the government has just presented and passed its first budget. We adjourn now for six weeks, and I take the opportunity to thank you, Mr President, for the way in which you have conducted the council over the past three or four months. I thank the leaders of all parties for their cooperation in that time, the Whips John Dawkins and Carmel Zollo for their help and, indeed, all members for their cooperation.

I also thank our table staff—Jan and Trevor—and the other staff in the chamber and, indeed, all the staff in the parliament for their work. I appreciate that the past few weeks, especially, have been very difficult for members due to the legislative workload and the pressures caused by external events. On behalf of the council, I wish the Hon. Nick Xenophon a speedy recovery from his current ill health. I thank the Hon. Mike Elliott for his assistance in the passage of legislation during an obviously difficult time.

We would normally be breaking for winter after the budget, but I guess it is more accurately described as a spring break, because we have only one day of winter left. Perhaps it says something, with some of the illnesses that we have had here lately: that winter is not a good time for parliament to be sitting. However, I hope that everyone will return healthy and refreshed when we come back here in six weeks.

The Hon. R.I. LUCAS (Leader of the Opposition): I support the comments made by the Leader of the Government. Thank you, Mr President, on behalf of Liberal members for your patience, on most occasions, with most of us. I thank the Leader of the Government, the leaders and members of the other parties and the Independents. In particular, I thank John Dawkins and Carmel Zollo for their very efficient whipping work.

I also thank the staff on behalf of Liberal Party members, and I join with the Leader of the Government in wishing colleagues good health, especially the Hon. Mr Xenophon, who is obviously not at his best at the moment—I guess that is an understatement. He is suffering very poor health, and I am sure that all members join with the Leader of the Government and me in wishing him a speedy recovery. Through his staff, we send him a message. This is not said with any hidden barb at all: tell him, please, not to return until he is fully recovered because, with the sort of problem that the Hon. Mr Xenophon is facing, if he tries to return too soon, because of the pressures of work and those sorts of things, it

will be to his own personal cost and that of his family, and that is the last thing we would wish for him.

As my colleague, the Hon. Mr Dawkins interjected, we wish the Hon. Mr Elliott in his absence a happy 50th birthday, I understand, today. We obviously did not have a chance to wish him well for his personal milestone. Again, I am sure all members would join the Leader of the Government and myself in saying that our thoughts and best wishes are with him at this difficult time for him, and we wish him well and hope that when we can catch up in six weeks or so he is feeling much better and able to participate in the proceedings of the Legislative Council.

The PRESIDENT: At this point we normally have a contribution from the Leader of the Democrats, and it has been well covered as to why that will not occur tonight. On behalf of the staff, and on my own behalf, I congratulate all members on their general conduct in the council. I said when I was first elected that it was my intention to uphold the practices, procedures and protocols of the council, and to try to maintain its dignity. I congratulate all members on their general acceptance of those principles. Most of the situations that we have had have been handled with good humour.

I particularly to congratulate the new members of the Legislative Council: Mr Gazzola, Ms Gago, Mr Ridgway, Mr Stevens and Mr Evans. I have been impressed with their contributions and their general demeanour. They have shown good sense in not being corrupted by some of the older members. By and large, I want to thank members for their conduct in the last four days. These occasions are always very difficult, and I thank them for their forbearance, their good humour and their patience. I hope you all have a good break and return refreshed so that we can continue the good work of the Legislative Council in the very near future.

Motion carried.

ADJOURNMENT

At 12.06 a.m. the council adjourned until Monday 14 October at 2.15 p.m.