LEGISLATIVE COUNCIL

Wednesday 30 June 2004

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

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I have to report that the managers have been to the conference on the bill which was managed on behalf of the House of Assembly by the Minister for Health (Hon. Lea Stevens), the Hon. D.C. Brown and the Hon. R.B. Such, Mrs Kotz, Ms Chapman and Ms Thompson, and they there received from the managers on behalf of the House of Assembly the bill and the following resolution adopted by that house:

That the disagreement to the amendments of the Legislative Council be insisted upon.

Thereupon the managers of the two houses conferred together and agreed on what we should recommend to our respective houses.

Consideration in committee of the recommendation of the conference.

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

That the recommendation of the conference be agreed to.

The Hon. A.J. REDFORD: I rise to support the motion. For those members who were not involved in the conference, can I report that it has been a substantial victory for the Legislative Council. Of the 24 amendments moved, 20 were acceded to by the House of Assembly and, of the four that were not acceded to by the House of Assembly, the minister (and I congratulate the minister in this respect) agreed to come up with an alternative form of words that the members of the deadlock conference felt improved the bill. It has been the practice of this government, if it can, not to take matters to deadlock conferences. I am not sure why it is so difficult about getting matters into the deadlock conference. I can assure members that, because of the way in which the negotiations were conducted between the government, the opposition and the crossbenches (and we were fortunate to have the Hons Nick Xenophon and Sandra Kanck on that conference), we were able to thrash out issues and, indeed, clarify certain issues.

In one respect, if I can point to amendments Nos 9 and 13 regarding the position of volunteers, we were able to come to a fairly good outcome that reflected the views of the government, the opposition and other crossbenchers that volunteers should not feel afraid of any investigative process that might be undertaken by the Health and Community Complaints Commissioner. In that respect, sitting around a table and thrashing out the issues is something that has to be commended. Indeed, I think that it demonstrates a real need for bills, before they go into the committee stage of debate in this parliament, to be referred to a scrutiny committee of some sort, which committee exists in almost every parliament in the commonwealth except for this parliament. I suspect that many of the issues in the Health and Community Complaints Bill, if we had undergone a parliamentary process like that, may well have been avoided.

The second major issue was in relation to the amendment moved by the Hon. Nick Xenophon. The government was concerned about duplication. We have come up with an amendment that I must say is a fairly complex one, but I am sure, having gone through the matter with the Hon. Nick Xenophon, that the general thrust of what he wanted was complied with. One final point that concerns the opposition and, I suspect other members of parliament, is this. The Ombudsman is currently under resourced and having difficulty keeping up with the enormous workload that he currently has. First, I understand that he has half a staff member who is notionally allocated to the health area and who is in fact doing general complaints. I would be concerned, in the promulgation of this bill, that the Ombudsman might lose that whole staff member and, thereby, increase pressure on his office.

The further problem that the Ombudsman conveyed to me is that he has one staff member who is from another agency and who is paid for by that other agency. The opposition is of the view that the Auditor-General should properly supervise the transfer out of the Ombudsman's office of any resources or staff, ensuring that the integrity of the Ombudsman's office and his capacity to properly investigate administrative actions is not unduly interfered with or adversely affected by the splitting of his functions into the Health and Community Complaints Commissioner.

I have had discussions with the Hons Nick Xenophon and Sandra Kanck, and it is my view—and I think it is shared—that within four months after the passage of the bill the Auditor-General should report to the parliament on whether the Ombudsman has sufficient resources to properly and effectively fulfil his or her responsibilities delegated to that office under the Ombudsman's Act and any other legislation, particularly freedom of information legislation, that affects the Ombudsman. I foreshadow that I will be moving a motion to that effect—not today, obviously—when we resume next month, so that the people of South Australia and this parliament can be confident that the Ombudsman has sufficient resources to undertake his important duties. With those few comments, I commend the motion.

The Hon. T.G. ROBERTS: In summary, this bill has been a long time coming and I am happy to see that we now appear to have reached a common position between the two houses. I wish to note some of the areas where there has been resolution. For example, the House of Assembly is no longer insisting on the name 'ombudsman' and has accepted this chamber's view to designate the position as 'commissioner'. The house has also agreed with the council's position on conciliation being a feature of the entire bill rather than just one part. I am also particularly pleased to see that a resolution has been reached in conference which clarifies the position of volunteers; that is, the commissioner must give particular attention to the position of volunteers and their value in providing services, and not necessarily involve them in proceedings under this legislation.

The bill now expressly exempts volunteers from the coercive powers, as described under part 6, division 2 of the bill. These measures, I am sure members would agree, offers clear protection to volunteers while still preserving the capacity of the commissioner to examine any complaint which might involve the alleged actions or inactions of volunteers. This is a workable and effective compromise. The overall position agreed to at a conference, regarding the application of the act (clause 4A) means that the integrity and scope of the legislation is preserved whilst making sound provisions for the protection of volunteers.

I also note that by agreement there has been a clarification on the interplay between this health and community services complaints commissioner and the State Ombudsman. I am sure this clarification will add to the efficiency of this legislation and greatly assist the work of both officers in the administration of their legislation. I understand that the minister in another place will also be making further statements concerning undertakings she made in the conference. I commend en bloc the report of the conference managers.

The Hon. SANDRA KANCK: Unlike the Hon. Angus Redford, I do not see what has been achieved as being necessarily a victory for this chamber. The issue for the Democrats always has been what would produce the best system of reporting, and acting upon the complaints of people who felt that they had been wronged by behaviour or practices within the health or community services systems. This issue has had a long history. In 1994, I think the bill we had before the parliament was called the South Australian Health Services Bill, and I successfully amended that bill to include the setting up of a committee within the Health Commission to monitor complaints about both the public and private health systems. Unfortunately, that bill was laid aside by then minister Armitage. The Hon. Lea Stevens (when in opposition) then introduced a private member's bill of her own to deal with this setting up of a separate complaints system. Obviously, that inspired then minister Dean Brown to introduce his own bill, which, I have to say, was somewhat underwhelming.

This bill has been with us, in one form or another, for 18 months, and I am very glad we have now reached a point where it is about to be passed. I am glad that compromises were able to be reached so that the bill can be passed. I now look forward to quickly having a system in place that will protect the consumers of health and the users of our community services in this state.

The Hon. NICK XENOPHON: I, too, commend the motion. I believe that the deadlock process was very constructive. I see the outcome as a victory for good public policy. I think it acknowledges, in a sense, the role of the Legislative Council in ensuring appropriate scrutiny of bills and thorough and comprehensive debate. I believe what we now have is a bill which is strong and sensible and which will deliver good outcomes for South Australians. It is important in the context of ensuring that health complaints are dealt with expeditiously, given that people's common law rights have been taken away to a certain degree with the implementation of the Ipp recommendations bill earlier this year. That is why it is important that we put that in context. Common law rights have been taken away, but at least a complaints mechanism is in place that hitherto was not available.

In relation to some of the amendments with respect to volunteers, I think the Hon. Angus Redford has previously expressed concerns. I hope he does not mind me saying this, given the work he did several years ago when he went to the United States to discuss the whole issue of volunteers and volunteer protection. I refer to a very powerful anecdote the Hon. Mr Redford gave in relation to one volunteer organisation which was gutted as a result of a small change of policy which scared people off from being volunteers for that organisation. I think it is important that we have improved the bill significantly because, hitherto, this bill in its original form would have meant that volunteers could have been subject to coercive powers and to having their homes raided. The example I gave was of the 'Lavender Ladies', but I think they are now safe from quite draconian powers.

It is important that the organisation is subject to the protocols and procedures of the commissioner, but I feared that forcing volunteers to be part of this process would have had a disastrous effect on the whole ethos and spirit of volunteering in this state. In that respect, I am very pleased that there has been a constructive amendment. I think the amendment with respect to the Ombudsman is important, and I know the Hon. Mr Redford and others had concerns about the Ombudsman's role.

I believe that this amendment, which is in a slightly amended form to the amendment passed in the Legislative Council, will go a long way towards ensuring appropriate scrutiny of the commissioner's role in terms of procedural fairness via the Ombudsman's office. The Ombudsman's office has a very powerful role as a safety valve to ensure that the commissioner's office does the right thing in relation to procedural fairness, and that is a very important amendment. Overall, I think the process was a good one, and it shows that the Legislative Council had a very constructive role to play. I believe that this bill will be good for South Australia in ensuring better outcomes with respect to health complaints.

The Hon. J.M.A. LENSINK: This was the first deadlock conference with which I had an opportunity to be involved, and I am very pleased to have seen it in action. I think the people of South Australia would be pleased to know that our systems in this state work effectively. I congratulate all those involved, particularly the Hon. Angus Redford and the Hon. Dean Brown, who took the running on behalf of the Liberal Party, and also the government and the minor parties involved in the deadlock conference.

As previous speakers have said, I think it is a much more workable bill. I had the opportunity to look at it from the other side of the fence, as a person within the community who represented the nursing home industry. At that time, we had a very large number of concerns. It was a particularly draconian bill—draconian, I presume, being a word that the government now takes as a compliment—and I would have to say that it is quite an ideologically driven bill which did not appreciate the fact that complainants might at times have been belligerent. That is certainly the experience of some in the nursing home industry with whom I spoke as recently as two weeks ago and who have their own federal system of complaints. I am very pleased that we have taken volunteers out of this system and that we have a much more workable bill. I think our system has proven to be quite effective in that regard.

Motion carried.

STATUTES AMENDMENT (INTERVENTION PROGRAMS AND SENTENCING PROCEDURES) BILL

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I have to report that the managers have been to the conference on the bill, which was managed on behalf of the House of Assembly by the Attorney-General (Hon. M.J. Atkinson), Ms Chapman, Ms Redmond, Ms Thompson and Mr Rau. They there received from the managers on behalf of the House of Assembly the bill and the following resolution adopted by that house:

That the disagreement to the amendment of the Legislative Council be insisted on.

Thereupon the managers of the two houses conferred together but no agreement was reached.

The PRESIDENT: As no recommendation from the conference has been made, the council, pursuant to standing order 338, must either resolve not to further insist on its requirements or lay the bill aside.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That the council do not further insist on its amendment.

The Hon. R.D. LAWSON: I rise to speak against the motion proposed by the minister. To very briefly remind the council, this bill was introduced by the government to provide a statutory framework for some diversion programs that are applied in the Drug Court, the Mental Impairment Court, the Family Intervention Court and the Nunga Court. These are programs, I hasten to add, which are presently being operated and which have operated for some time. However, the government deemed it appropriate to provide a statutory framework for those programs.

An amendment was moved in this place to require an independent evaluation of those programs after a period of time. The government opposed the amendment made in this place on the grounds (as stated to me) that, first, these evaluations are already being undertaken, mainly by people within the government, and it is therefore unnecessary to have a statutory requirement, and, secondly, that it would be costly to have these evaluations done if they were done independently outside of the government. That view was adhered to strongly by the government—and I will not, of course, breach the confidentiality of the deadlock conference, but the government's view was made known to me and other members in discussions.

I make two points. First, the question is whether we were right to insist upon evaluation. We were right because the government said that these programs were already being evaluated, and it produced a bundle of evaluations. So the government cannot complain about evaluation on the ground that it is unnecessary—it acknowledges that it is necessary. Secondly, the Attorney-General said that it was too costly and that the government was not interested in supporting the consulting industry in South Australia. The government did not want to have independent evaluation—it was very happy to have internal evaluations by officers of the Attorney-General's department if that were necessary.

I believe that it is appropriate to have independent evaluations. Let us take the Mental Impairment Court, which is in one of these programs. Information supplied by the government said that this was already being evaluated, and it was being done by the Office of Crime Statistics at a cost of $160 000. The government is spending that money on a private internal investigation. My point is that these programs should be evaluated every now and then by someone outside the government. Officers of the Office of Crime Statistics—for whom I have the highest regard—are responsible to the Attorney-General, and I do not believe that they are in any way independent of government. Likewise, in respect of the Drug Court program, information supplied was that that program was already being evaluated by the Office of Crime Statistics at a cost of $120 000.

The Attorney-General's Department produced the report that they had done, which had a covering sheet stating 'There is nothing embarrassing in this. You can release it, if you like', but the minister noted that it was not necessary to issue any press release. Those reports are important; they should come to the parliament so that the parliament is aware of how these programs are going. The Family Violence Intervention Pilot Program was independently evaluated by Morgan Disney and Associates at a cost of $60 000. I remind the council that that was half the cost of the internal evaluation of the drug court report and less than half the cost of the internal evaluation of the mental impairment program. The council was right to insist on independent evaluation—evaluation is necessary. I think it is regrettable that the Attorney adopted the attitude that 'If you are going to have independent evaluation, I will pull the bill. Forget about the bill.' If that is the attitude that is going to be adopted by the government to amendments suggested in this place, let it be on the government's head—not the head of this chamber.

The Hon. P. Holloway: It is on your head, Robert.

The Hon. R.D. LAWSON: The minister says it is on my head. I am very happy for it to be on my head; we are happy to wear the responsibility. We made the offer to the government that, if it did not want to have an evaluation in 12 months or some shorter time, or if it thought that we were seeking to have an evaluation before the next election for electoral purposes, we were happy to consider extending the time frame for that evaluation to take place at a time when there would be no political advantage, disadvantage or embarrassment—a concession that was offered to the government but rejected out of hand. It was rejected on the grounds that this government was not interested in supporting the consulting industry in this state.

The appropriate thing, as acknowledged by the government, is that these programs are evaluated and continue to have evaluations. Those evaluations should, in accordance with the amendment agreed to in this place, be tabled in this place so that parliament is aware of how these programs are going, so that evaluations are not received by ministers and buried and to give this parliament the opportunity to comment constructively on the program. It is a pity that the government has adopted the 'dog in the manger' attitude that it has, but so be it.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): The reason why the government is opposing this is that there is no precedent for a review of this kind in South Australian legislation and no reason to see one in the future. Let us just see—

An honourable member: We are world leaders.

The Hon. P. HOLLOWAY: World leaders in stupidity—that is what it would be.

Members interjecting:

The Hon. P. HOLLOWAY: The members opposite appear not to want to know why we are opposing it. This act establishes no statutory regime, body or regulatory system that could be reviewed. The amendments that were moved by the Hon. Robert Lawson do not require a review of the operation of the act. The centre of disagreement under the act is this provision that requires some review of programs that can be established by a court but are not part of the act. We are not talking about a review of the act itself. It is not a review of some statutory body or regulatory system. There is no statutory regime: it is simply a review of programs under the act. As it has been pointed out, those programs are already reviewed. The previous government, like this government, supported and maintained evaluations of intervention programs, but the need for an external independent investigation and review of the services provided to support such programs in addition to the evaluation of the programs themselves has not been demonstrated. We are not

just talking about evaluating the programs. This is an external independent investigation and review of services provided to support such programs.

This bill, or the need to recognise the legislative framework for intervention that it proposes, is supported by all members. It should not be defeated by the opposition's insistence that taxpayers' money be used to fund additional independent reviews of aspects of programs that are already routinely and comprehensively reviewed.

I do not believe that the opposition has challenged the appropriateness or transparency of existing review mechanisms, the objectivity of previous reviews, or their assessment of the value and effectiveness of programs and services provided to offenders undergoing interventions. It has not been established during the debate. Before us is an amendment by this council that would require, in a quite unprecedented way, a review of programs that might exist under the legislation. Unlike any other bill that has reviews as part of the legislation, it does not have the legislation itself or the statutory regulatory systems established under the act. It is a very bad precedent, and for that reason the government will not support that amendment.

The PRESIDENT: I will now put the motion moved by the minister. We are not in committee, and that concludes the debate.

An honourable member interjecting:

The PRESIDENT: Order! Members should listen carefully.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That standing orders be so far suspended as to enable other members to speak in this debate.

The PRESIDENT: There is an absolute majority present. The council is in charge of its own affairs.

Motion carried.

The Hon. CARMEL ZOLLO: As a member of that conference, I want to make a short contribution. I rise to support—

An honourable member interjecting:

The Hon. CARMEL ZOLLO: It is just a lack of communication. I rise to support the motion of the minister. I am disappointed to see this good piece of legislation laid aside. It is a piece of legislation that basically provided the administrative framework for some excellent social intervention programs within our legal system. I think we are seeing the inability of members opposite to perhaps understand the role of opposition and to be constructive rather than obstructive. The Public Service continually—

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Well, members opposite and other members. Basically, we have the Public Service continually assessing itself and producing reports on those programs. As has been said by ministers both in this council and in the other place, we are not about fuelling the consultancy industry in this state. We have reduced spending to about a quarter of the spending of the previous government, and it is going to stay that way. To the Hon. Mr Lawson I say that it was his amendment, and I think that littering legislation for political point scoring is not the way to go; it does not make good statute law. The good thing about all this is that the programs will continue—albeit without their administrative framework; but they will continue. They are good programs which act as arresters to prevent future anti-social behaviour and criminal behaviour recurring. It is about giving people the opportunity for a new start in life, so I am pleased that those programs are still there.

The Hon. IAN GILFILLAN: I indicate Democrat support for the motion. I do not think that is any surprise to the council. We do not see any significant advantage in having an independent private entity assessing the program. It is without precedent, in my opinion, and we can expect the robust exchange of question, answer and analysis to properly assess programs which in no way should be stalled because of the pedantry of the original amendment which, as I said, we do not believe would help the situation in any case. We support the motion.

The Hon. NICK XENOPHON: I indicate that, with regret, I continue to oppose the motion, for the following reasons. The Hon. Mr Gilfillan said that it is a case of pedantry and that it is without precedent. With the greatest respect to the Hon. Mr Gilfillan, these programs are, in a sense, without precedent in that they are a new regime for dealing with offenders, and I commend the government for that. The stumbling block appears to be whether there ought to be—

The Hon. Ian Gilfillan: Are you going to stall it?

The Hon. NICK XENOPHON: The Hon. Ian Gilfillan asked whether it is a question of stalling. It is not about stalling: it is about, as I see it, good public policy. It is about new programs that will cost millions of dollars. I certainly do not begrudge the government's spending that money, but let us see that we achieve good outcomes. We are talking about people who have been offending time and again, where there are diversion programs in place to turn people's lives around, and that is for the benefit of the entire community. I understand the government's position that it wants to spend a lot less than the previous government in terms of consultancies, and that is part of the debate; to spend it on programs. But I would have thought that it would be a false economy not to have some form of evaluation of these programs to ensure that they are doing what they are—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Xenophon does not need any assistance from any quarter of the council. He is quite capable of articulating his own position.

The Hon. NICK XENOPHON: I am sorry that it has come to this. I will not be supporting the government's motion, but I urge both the government and the opposition to keep talking about this issue. It seems that people have boxed themselves into a corner—

An honourable member interjecting:

The Hon. NICK XENOPHON: I think that there is room for some constructive discussion, and I urge both the government and the opposition to do so.

Members interjecting:

The Hon. NICK XENOPHON: The honourable member said 'thanks' to me. If we are to spend millions of dollars on a new program and what is, in some respects, a sea change with respect to dealing with offenders, let us ensure that it is working. Let us ensure that we achieve the best outcome for the offenders and for the community at large. I would have thought that, given that there is a constant review of these programs by the Office of Crime Statistics and within the Attorney's department, simply having an overview of that—having an independent assessment—was not asking for too much. I know that some in the government are saying that

this is dead. I urge the parties to at least sit down one more time to see whether we can achieve a good outcome. I would like to think that there could be some room for both parties to move in relation to this, rather than both parties being in their respective corners. For those reasons, with regret, I do not support the motion but I would like to think that there is room for both parties to move so that there is a good outcome at the end of the day.

The Hon. A.J. REDFORD: I have not previously contributed to this debate in the public sense, although I have had a number of things to say privately to both the shadow attorney-general and the Attorney-General. I have appeared as a legal practitioner in the Drug Court on a number of occasions, and I have some very real concerns about the way in which the Drug Court operates and the message that it sends to offenders. In some respects, offenders who commit quite serious offences are not dealt with in a way that I suspect the public would expect them to be dealt with. Indeed, I have seen instances (and I will not talk about individual circumstances) where some people who are charged with some very serious offences have had the charges withdrawn because they have been relatively drug free.

Again I will not go into the details because I will identify the individuals, but I have also seen individuals who at the beginning of the process did have a drug problem who, in fact, had a worse drug problem at the end of the process, albeit with a substituted substance, and those people were having their charges withdrawn or no convictions recorded. You do not make public policy because the Hon. Angus Redford has been down at court a couple of times and made those observations, but they are observations that I have. I have some concerns about the Drug Court. I would have thought that an independent evaluation of how these programs work would be unarguable. Indeed, I directly raised with the Attorney-General some 18 months ago my concerns about how the Drug Court operates, and he privately expressed certain concerns to me.

Again, unless we all troop down there ourselves and watch the Drug Court in action, we are not in a position to make any adequate or appropriate judgment. It seems to me that, whether it is an in-house or out of house, independent assessment about how the Drug Court operates, that should be welcomed. For the life of me, I cannot understand why the government is afraid of an appropriate evaluation. I stress that it does not have to be by highly paid private consultants: it can be done internally within the public sector; as long as it is transparent. Our amendment never sought to tie the government's hands in that respect. The program is a current program: it is a continuing program and is likely to continue for some time into the future. So, the failure of this bill, if it has to come to that, is not going to make much of a difference in relation to how these offenders are dealt with in the court.

The single biggest issue in relation to this bill is how we evaluate these programs. Do we ensure that people who are charged with serious offences such as armed robbery are treated the same as ordinary members of the community who are charged with armed robbery and not treated leniently simply because they happen to be addicted to a drug? I suspect that if there was greater media and public scrutiny of what was going on in the Drug Court, what is going on down there would not be accepted as sublimely as some of our bureaucrats and so-called experts would say. I well remember going to the Drugs Summit where the Drug Court was held up to be a fantastic and wonderful initiative. It has a failure rate of something like 80 or 85 per cent, something of that order, although I might be wrong in those figures. It has been put to me that that is a pretty good outcome, given that you are dealing with a hard core, hard edge drug addict.

That may well be appropriate and may well be acceptable, but an independent evaluation would make us all in this place feel a lot more comforted by what is happening down in the Drug Court. It is disappointing that on an earlier occasion we could come to a compromise with the House of Assembly in relation to health and community complaints but we cannot seem to in relation to this minister. I know that there are other matters with this minister where the opposition is seeking to negotiate an outcome and we are not getting on all that well. All I can say is that in time, when people are judged, I think that people will judge the Attorney-General poorly for his inability to get a bill of some sort through this parliament.

The council divided on the motion:

AYES (9)

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

NOES (12)

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

Majority of 3 for the noes.

Motion thus negatived.

Bill laid aside.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 25th report of the committee.

Report received.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Industry, Trade and Regional Development (Hon. P. Holloway)—

Regulations under the following Acts—
- Emergency Services Funding Act 1998—
  - Land Remissions
  - Motor Vehicles and Vessels Remissions
- Legal Practitioners Act 1981—Practising Certificate Fees
- Liquor Licensing Act 1997—Long Term Dry Areas—
  - Mount Gambier
  - Port Pirie
- Passenger Transport Act 1994—Maximum Taxi Fares
- Road Traffic Act 1961—Compulsory Blood Testing
- South Australian Museum Act 1'976—General and Vehicular Controls
- Southern State Superannuation Act 1994—Enterprise Agreements

Rule under Acts—
- Legal Practitioners Act 1981—Legal Practitioners Education and Admission Council

City of Charles Sturt—Underdale Campus Master Plan—Design Plan Amendment Report

City of West Torrens—Underdale Campus Plan Amendment Report

Third Party Premiums Committee Determination

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

Reports, 2002-03—
Aboriginal Lands Trust
Animal and Plant Control Commission South Australia
Intellectual Disability Services Council
Native Vegetation Council
Regulations under the following Acts—
Consent to Medical Treatment and Palliative Care Act 1995—Forms
Development Act 1993—Commercial Forestry
Dog and Cat Management Act 1995—Identification of Dogs
Education Act 1972—Exemptions
Fisheries Act 1982—Fees
National Parks and Wildlife Act 1972—Protected Animals
Physiotherapists Act 1991—Qualifications
Water Resources Act 1997—
Commercial Forestry
Various
Workers Rehabilitation and Compensation Act 1986—Schedule A & B Charges
Rule under Act—
Local Government Act 1999—Local Government Superannuation Scheme—Salarylink Insured Benefit.

DNA TESTING

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I lay on the table a copy of a ministerial statement regarding expanded DNA testing made on 28 June by the Premier.

CHILD OFFENDER REGISTER

The Hon. P. HOLLOWAY (Minister for Industry Trade and Regional Development): I lay on the table a copy of a ministerial statement regarding the national child offender register made on 28 June by the Deputy Premier.

CHILD ABUSE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement regarding an inquiry into the sexual abuse of children in state care made today by the Hon. Jay Weatherill, Minister for Families and Communities.

CHILD PROTECTION

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement regarding the child protection recruitment initiative made on 28 June by the Hon. Jay Weatherill, Minister for Families and Communities.

QUESTION TIME

GARRAND, Mr R.

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government a question regarding Mr Ray Garrand.

Leave granted.

The Hon. R.I. LUCAS: Members would be aware that concerns have been expressed by a number of people about the appointment of Mr Ray Garrand to the senior position of Chief Executive of the Department of Trade and Economic Development. Mr President, you would be aware that I have expressed some concerns about Mr Garrand's connection and ongoing relationship with the South Australian Labor Party. As a result of that controversy and ensuing media interest in the story, the opposition has been contacted by a number of constituents who have expressed concern and outrage at the appointment of Mr Garrand to the Chief Executive position.

An honourable member: Cowardice!

The Hon. R.I. LUCAS: Cowardice?

An honourable member interjecting:

The Hon. R.I. LUCAS: I am happy to do it outside, but after question time.

Members interjecting:

The PRESIDENT: Order! There is too much audible discussion. The Hon. Mr Cameron has obviously come into the council today to be offensive to the chair, and I am warning him.

The Hon. R.I. LUCAS: I thank you for your protection, Mr President. As I have said, the opposition has been contacted by a number of people who have expressed concern and outrage at this appointment. A number of those constituents have provided further information to the opposition about the past relationship of Mr Garrand with the South Australian Labor Party, which will, of course, be a matter for another day. In particular, I will pursue one issue with the Leader of the Government. One very senior source with knowledge of the appointment process and the minister's and the Premier's role in this issue indicated that the background to the appointment was that the government appointed Hudson Global Resources to help select the Chief Executive of the Department of Trade and Economic Development.

A series of advertisements were lodged in national newspapers in late January and early February this year, under the title 'Hudson Global Resources,' advertising for expressions of interest for the position of Chief Executive of the Department of Trade and Economic Development. The opposition has been advised that Hudson was employed to manage this process and to recommend a successful applicant. The opposition has been further advised that Hudson Global Resources, after this comprehensive national search for a chief executive, recommended three short-listed applicants to the minister and the Premier for consideration as the chief executive. The opposition has also been advised that Mr Ray Garrand was not one of those three recommended applicants.

My questions to the minister are, first, was Hudson Global Resources appointed by the government to recommend applicants for the position of the chief executive, Department of Trade and Economic Development, and what was the cost of that consultancy? Secondly, is it correct that after this long process Hudson Global Resources recommended three applicants, and the name of Mr Ray Garrand was not among them? Thirdly, if that is correct, why did the minister and the Premier ultimately appoint Mr Ray Garrand to the position of chief executive, Department of Trade and Economic Development?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): The answer to the second question is no, and so there is no need to answer the third question, but I will outline to the council what happened. An expert panel with private-sector representation was originally appointed in relation to the appointment of a new chief executive officer of the Department of Trade and Economic Development. At the conclusion of substantial screening, interviewing, and after reviewing applications and

references of 60 applicants from Australia and overseas, recommendations were made that there were two candidates suitable for appointment. Let me remind the council that this was at the first stage. Regrettably, both of those candidates—for a range of personal reasons unrelated to remuneration or the requirements or context of that position—recently withdrew at the final stages of the process.

Hudsons, the executive search firm employed for this appointment, continued with its search activities after those two applicants withdrew, and their subsequent activities revealed three additional candidates for particular consideration. One candidate, who appeared to have the necessary qualifications and experience, was a federal public servant with experience in Canberra and overseas. That candidate had a preliminary interview with Hudsons but, unfortunately, the candidate indicated that he would be unable to start in the position until at least August or September. The second candidate was an ex federal public servant whose further consideration would have been lengthy and who would have required relocation, which would have further delayed any appointment. The third candidate was Mr Raymond Garrand. At the time, Raymond was the deputy chief executive of DTED. While he is not an original applicant for the position, he was an extremely suitable candidate, particularly given his background, skills, experience and recent leadership roles in economic development agencies. He has subsequently been appointed to the position.

As always, the Leader of the Opposition made a mistake in his question. The Hon. Terry Cameron is also wrong with his comment. The Leader of the Opposition is wrong in his assumption that Mr Raymond Garrand was not one of those three people recommended by Hudsons.

The Hon. R.I. LUCAS: I have a supplementary question arising out of that answer. Will the minister confirm whether Mr Ray Garrand was one of the original 60 or so applicants whom he indicated were interviewed or considered by Hudsons in response to the national advertising?

The Hon. P. HOLLOWAY: I just said that: he was not one of the 60; he did not apply for the—

The Hon. R.I. Lucas: He was not one of them. He didn't even apply.

The Hon. P. HOLLOWAY: Why don't you listen, big mouth! Stop lying and shut your mouth!

The PRESIDENT: Order! The minister is answering the question. The Leader of the Opposition knows his responsibilities to the council. He asked the question in silence, and the minister is entitled to answer it in silence. I will not tolerate people yelling over one another in the council. I am in a pretty fractious mood today, I might tell you, and I am just about ready to apply the rules quite rigidly.

The Hon. P. HOLLOWAY: I think the disgusting behaviour that we just heard from the Leader of the Opposition is typical of his whole behaviour in this place. He really should get out of here and climb back into the sewer where he belongs. First of all, let me say that, in fact, of the 60 applicants, Mr Garrand was not an original applicant for the position. As a result of that process there were only two candidates who were suitable, and both of them withdrew from the position. Subsequently, it went back to Hudsons to search for other suitable candidates. They came up with three suitable candidates, of whom Mr Garrand was chosen and appointed to the position.

ANANGU PITJANTJATJARA EXECUTIVE BOARD

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about the Anangu Pitjantjatjara Executive Board.

Leave granted.

The Hon. R.D. LAWSON: On 22 June the General Manager of the AP Council, Mr Robert John Buckskin (usually called John Buckskin) received a letter signed by the chairman of the AP Council terminating his employment. As one of the reasons for the dismissal of Mr Buckskin, the letter stated:

> . . . at a meeting of the Aboriginal Lands Parliamentary Standing Committee on 8 June 2004, you advised the Committee that the traditional owners of the lands wanted an election of the APYLC. You were not authorised to make such a statement as it is clearly outside your area of responsibility, which is administration. Your action in doing so showed that you are not acting in the interests of APYLC, and in a manner, which undermines the APYLC Chairman who was present; and the Executive body he represents.

When asked a question by me about this matter, the minister acknowledged the fact, as stated by the Hon. Bob Collins, that serious doubts exist about the legitimacy of the APY executive, and have done so since their failure to go to an election at the last annual general meeting in December, and that the government has introduced legislation which has not yet passed to remedy that situation. I was present with the Hon. Kate Reynolds and the minister. I was going to say that the Hon. John Gazzola was there, but he was not present when Mr Buckskin attended before the Aboriginal Lands Parliamentary Standing Committee on the lands on 8 June, when he did make a statement that he wished to speak with the committee privately and, subsequently, he did. My questions are:

1. Is the minister aware that the APY Council has used the fact that Mr Buckskin spoke to the standing committee on 8 June as a ground for his dismissal?

2. Does the minister agree that it is the right of any citizen in South Australia to attend, without fear or favour, before a parliamentary committee?

3. Does the minister agree that the effectiveness of the Aboriginal Lands Parliamentary Standing Committee will be compromised if persons with actual knowledge of particular affairs are dismissed from their employment for speaking with the committee?

4. What action will the minister take in relation to this matter?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question but, in relation to the method in which the honourable member is going about gaining information, this is probably not the appropriate forum for the discussion of matters that may or may not be breaching the confidentiality of the committee. In fact—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: It is already a public matter. If it comes before parliament, it no longer remains private; it can be placed in the public arena. It is a matter whereby other individuals coming before the committee from time to time might find it too threatening to give evidence. It is a committee which we hoped would have been set up on bipartisan grounds for us to investigate on merit, without prejudice and which had an inquisitorial approach to solving

the problems in the Aboriginal communities, in particular, the AP lands.

If the committee is going to be a clearing house for issues from which people want to make political footballs, I am afraid it puts the committee in a position where a lot of people will think twice about coming and giving open evidence to us. It is possible for the committee to receive in-house evidence. They can go off the record if they like, and we can take that evidence in camera, but, when it comes to the advertising—if you like—of individual's grievances (we have many) in this council, it devalues the currency of the committee.

I would hope that bringing before the parliament an individual's grievances against an elected body brought about by a paid employee is not something that we will see a lot of in the future. It is no business of the standing committees as to how an elected body treats its paid employees. That will be the business of an industrial court if the matter is taken before an industrial court. If we had to pursue every grievance brought before the committee that is made an issue in relation to personal grievances, the committee would do no work in the responsible area of delivering services to those people to whom we have a responsibility.

The honourable member asked a number of other questions in relation to the grounds for dismissal. That is not a matter for me as the minister, or for this parliament, to decide. It will be a matter that will be decided in another forum if action needs to be taken. I am not quite sure whether the individual member has taken any action. The matter is before a parliamentary committee which discussed the issue this afternoon before parliament sat. I do not have the words which the committee will use to describe its position but, in short, it is not supporting any action on behalf of the committee in relation to the particular incident or the particular action recommended by the honourable member inherent in his question.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: The vote has been taken. The committee has already made its decision. If it is the committee's wish—and I understand it is—that I bring before the parliament—the committee has the right to do that—the issue in question, that is what I will do. There have been some words circulated by the secretary of the committee which will go to each committee member. At the next committee meeting we will finalise what the committee's attitude is.

The PRESIDENT: The Leader of the Opposition makes a valid point. When you start talking about the deliberations of the committee, the Hon. Mr Lawson did raise the matter in connection with the committee, but he did not raise the proceedings of the committee. It is incumbent upon all members that, until the committee reports, it is not to debate or refer to the proceedings of the committee. Referring to the vote does breach standing orders. I am sure that the minister did it inadvertently and will concentrate on not doing it again.

The Hon. T.G. ROBERTS: The situation is that it has been handled by the committee, and the committee will make a determination as to what my role will be after those words have been circulated. In relation to the question of whether I was aware, the answer is that I am aware of the issue: I have the same correspondence as the honourable member. I have said in this council before that Mr Buckskin has a lot of value to add by way of his skills with respect to Aboriginal communities throughout this state. I certainly hope that he pursues the work that he does very well in other communities. I would certainly like to see the committee work to overcome its differences with Mr Buckskin because there is a lot of work to be done, particularly within the AP community.

I certainly wish to raise the issue of the committee's structure being a clearing house for the opposition's using information, particularly when individuals are concerned, which is raised in here to get answers to questions which are quite easily pursued by asking either the minister who is chairing the committee—which is me—or collectively or individually writing to departmental heads or others before making it public in this place. Mr Buckskin's situation now will be compromised. His future employment opportunities will be compromised, and there are a whole lot of other issues relating to this matter that I think could have been handled in a far more sensitive way.

The Hon. R.D. LAWSON: Sir, I have a supplementary question. Does the minister contend that Mr Buckskin was, to use his words, 'agitating a personal grievance' when, as the letter of 22 June suggests, Mr Buckskin advised the committee that the traditional owners of the lands wanted an election?

The Hon. P. HOLLOWAY: Mr President, I rise on a point of order. Given your earlier ruling that it was out of order for the minister to refer to anything in the committee, how then can it be in order for a question to be asked that specifically refers to the points made in the committee?

The PRESIDENT: It is the proceedings of the committee. Is that a letter to the committee?

The Hon. R.D. LAWSON: No, it is a letter from the AP executive to Mr Buckskin dismissing him.

The PRESIDENT: That is not a deliberation of the select committee. It is a private matter.

The Hon. P. Holloway interjecting:

The PRESIDENT: If it is not placed before the select committee, it does not fall under the standing order that prohibits discussion.

The Hon. P. Holloway interjecting:

The PRESIDENT: No, the Hon. Mr Lawson is talking about the AP lands committee. Is that the committee that you were referring to, or the select committee?

The Hon. R.D. LAWSON: It is the AP Lands standing committee. The select committee has already reported. I am referring not to the deliberations of the committee but to a letter—

The Hon. G.E. Gago: It was tabled in the committee.

The Hon. R.D. LAWSON: It is not a letter that was tabled to the committee at all.

Members interjecting:

The PRESIDENT: Order! If the letter has been tabled in the committee, it is part of the proceedings of the committee and it falls under the purview of the standing orders. In that case, the point of the Minister for Industry, Trade and Regional Development is valid.

The Hon. R.D. LAWSON: Mr President, I assure you that this letter was not obtained by me from the committee. The letter is in public circulation. I am not specifically aware whether or not it has been tabled in the committee.

Members interjecting:

The PRESIDENT: Order! If the letter is in public circulation I am advised that it is public knowledge, even if it has been tabled. Otherwise, we would have a situation whereby people would table it to get the coverage of the parliamentary committee and avoid—

The Hon. P. Holloway: Does that mean that the minister, therefore, can answer in whatever way he likes in relation to the question because it is public knowledge?

Members interjecting:

The PRESIDENT: Order! If the minister feels that it is part of the deliberations of the committee—and he is the Chairman of the committee—he can do as all ministers can do in the public interest and in accordance with the standing orders: he can decline to answer the question.

The Hon. T.G. ROBERTS: Thank you, Mr President—

An honourable member: He does that every day.

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I think the question that was put to me was whether I understood that it was agitating a personal grievance against the AP council, as the chair has indicated in his letter to Mr Buckskin. It is not for me to make a judgment on what the honourable member's intentions were. The question would have to be placed to that individual, and that may be done at a later date and in another forum. As far as the correspondence is concerned, it is not in my province to comment.

BARLEY MARKETING

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about barley marketing.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have received advice that the ABB (Australian Barley Board) has had legal advice that the proposed barley legislation will trigger a compulsory shareholder vote within the ABB that could result in all shares converting to B class—that is, growers losing control of the company—and that this uncertainty may jeopardise the proposed merger between the ABB and AusBulk. The proposed merger between ABB and AusBulk has the potential to provide $16 million worth of benefits to South Australian barley producers, the flow-on effect of which to the economy of South Australia is estimated to be at least four to one; that is, $4 to every $1 generated by barley. Does the minister agree that this legislation, if proceeded with, will have a far greater impact on the economy of this state and, therefore, his portfolio responsibilities than the withholding of $2.9 million of incentive payments?

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

The Hon. CAROLINE SCHAEFER: On a point of order, Mr President, I clearly asked that question of the Minister for Industry, Trade and Regional Development, and I referred in my explanation and question to his portfolio because I believe this question actually affects the economy of the state.

The PRESIDENT: The question was put to the minister: he declined to answer on the basis that he believes that it is in the portfolio area covered by the other minister. That is how they have determined to answer the question.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Redford is neither the President nor a paid commentator. He will remain silent.

ECHUNGA GOLD FIELDS HERITAGE AND BIODIVERSITY PROJECT

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the Echunga Gold Fields Heritage and Biodiversity Project.

Leave granted.

The Hon. CARMEL ZOLLO: I understand that 10 young people from the state government's Youth Conservation Corps will begin work this week on a state government project to restore the heritage and biodiversity of the former Chapel Hill and Jupiter Creek gold mining fields near Echunga. Can the minister provide details of this important project?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The Echunga Gold Fields Heritage and Biodiversity Project will continue until December 2004. Echunga, which is the site of Australia's first gold rush, is widely promoted as a regional attraction and is used by bush walkers, fossickers, bird watchers and many others. This project will significantly improve the historical mine site while at the same time allowing young people to contribute to the community and gain valuable employment skills. This is an important heritage mining site, with Echunga being the location for the first major discovery of gold in Australia in the mid-nineteenth century and then becoming South Australia's major producer of gold by the turn of the century.

The flora and fauna of these reserves is also unique. There has been minimal disturbance to the vegetation since the end of mining there in the 1930s, with there being no agriculture or grazing at either site. This project is designed to improve visitor safety, protection and interpretation of this significant mining heritage, and also to maintain the high biodiversity values at both reserves. This project will see the participants involved in the construction of trails, correcting erosion, building railway sleeper footbridges across creeks, erecting and maintaining interpretive and safety signage as well as fencing around mine shafts.

They will map and control weeds within the reserves using minimal disturbance techniques, develop trail maps, undertake flora and fauna research and bird surveys for promotional material, and even have the opportunity to pan for gold with prospectors on hand to show them the old techniques used. The Youth Conservation Corps members will also facilitate a public forum to research and develop a visitors' action plan and liaise with users of the site to keep them up to date with the work as it progresses. This is a tremendous multi-faceted opportunity for the young people involved, and it will provide them with formal training in conservation and land management, business, occupational health, safety and welfare, communication and team building, and senior first aid. The 10 Youth Conservation Corps members are contracted through Conservation Volunteers Australia, which also provides for the supervision of staff. I am pleased to say that Primary Industries and Resources SA is supplying the resources and providing direction for the project.

MINTABIE

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Mintabie lease.

Leave granted.

The Hon. KATE REYNOLDS: On 18 June in budget estimates, in reply to a question about the status of the Mintabie lease, the Hon. Paul Holloway said:

> My advice is that resolution of the negotiations for the new town lease is near. Delays have arisen due to the current circumstances in the AP lands. However, it is anticipated that a new town lease will be executed by December this year. Much work is still required before arrangements can be finalised, and it is important to be thorough and fully consultative before entering into a lease of up to 20 years.

A select committee of this council recently tabled the report of its review of the Pitjantjatjara Land Rights Act. That report included the recommendation that the Aboriginal Lands Parliamentary Standing Committee (of which I am a member) investigate if and how ongoing operations at Mintabie negatively impact on the wellbeing of Anangu persons and disturb nearby Anangu communities.

Within the main body of the select committee report, three pages are devoted to the subject of Mintabie. They suggest that Mintabie is having an extraordinarily negative impact on Anangu communities and, most especially, the community at Indulkana or Iwantja, as it is called by the local people. For example, page 82 of the report states that the committee heard that communities close to Mintabie believe that all they got from the settlement was 'grief, drugs, second-hand cars that are over-priced and under-performing, alcohol and dodgy operators who hang onto their key cards' or ATM cards.

The 1988 report of the Pitjantjatjara Lands Parliamentary Committee noted that Mintabie is used as a base for grog running onto the AP lands, and this recent select committee heard that these operations have expanded to include the production and selling of marijuana. All those problems, which the select committee first heard about in 2002, continue today, as members of the standing committee heard during its recent visit to the AP lands. The select committee also heard that, as a consequence of what had happened, and is happening, at Mintabie, traditional owners on the APY lands are reluctant to consider opening up their country for more mining ventures. My questions are:

1. How many people live at Mintabie?

2. When and how have the residents of Indulkana, or Iwantja, been directly consulted about the possible extension of the Mintabie lease?

3. Have any of these residents and/or the Iwantja Community Council expressed their support for or opposition against any extension of the Mintabie lease?

4. Is the minister confident that the requirements of the Pitjantjatjara Land Rights Act, in particular division 4, are being followed in relation to all applications, decisions and actions by government regarding any extension to the Mintabie lease?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The Mintabie lease is a vexed question that must be faced by government across departments, with sensitive negotiations with the Mintabie miners, the Mintabie Progress Association and the Aboriginal communities represented by APY and, in particular, consultation with the Iwantja or Indulkana community because of the closeness of that community to Mintabie.

Accusations have been made for some considerable time about alcohol and drugs being moved through Mintabie, but I suspect that the same accusation could be made in relation to Coober Pedy or Alice Springs. It is very hard to get a proper fix on just what influence the presence of the Mintabie township has on those matters. The relationship of Mintabie to the lands generally is that it is leased as a mining area within the AP lands, and as such it has to be renegotiated every 20 or 25 years, I think, and the lease has been under negotiation for some considerable time. I do not have the latest time frame foreshadowed for finalisation, but I understand that it is in the latter part of this year.

The Hon. Kate Reynolds interjecting:

The Hon. T.G. ROBERTS: Yes, December. As I have said, there are a number of sensitivities. A lot of the fixed assets in Mintabie are owned by Mintabie miners and they have been accumulated over a long period of time. The relationship the township has with the community waxes and wanes. Over the years, there has been quite a lot of support from the Aboriginal community for the Mintabie township, but on other occasions the relationship has broken down. I think we are now at a time where there are mixed feelings about the renewal of the lease, so those sensitivities have to be observed.

My observation on visiting the township recently, as part of the standing committee's report, was that it was a very active township, and there appeared to be a lot of activity around the stores and hotel area. I am told that the number of people varies from as low as 12 to as high as 250 to 300, depending on the seasonal impact of mining. A lot of people do not like mining during the peak periods of summer, and they return to the metropolitan area or wherever they are based and then return to the Mintabie area at a later date. I will endeavour to get those figures. I am not quite sure how it impacts on the requirements of the act. My understanding is that the lease has to be renewed as part of the agreements that have been struck in the past.

If Mintabie is to be taken out of the AP lands and the lease not renewed, that would be a major step and it would have to be agreed to by the Progress Association. From past statements made by the Progress Association, I am sure that it would not agree. The association's view is that the township has the right to exist, regardless of whether or not there is mining activity there. Therein lies the question. In the case of Coober Pedy, Mintabie and other townships which were set up for opal mining and precious stones, when the precious stones and opal run out, the towns then have to find a new life through tourism development or find another reason for their existence, and in that regard the Mintabie question is being discussed. I understand that some precious stones are still available in the area, and people are confident that there will be other finds within there.

Certainly, its role and relationship to the people within the lands has to be examined, and policing is a key question in relation to defining whether Mintabie does play a part in the lawlessness that may be extended into the lands in relation to grog-running and marijuana-selling. If that is the case, then it is certainly a matter for police rather than taking any other action in relation to why it exists.

DOMESTIC VIOLENCE

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, a question about domestic violence.

Leave granted.

Some time ago a constituent contacted me and raised an issue concerning support for families in rural centres in relation to supervised visits. In her correspondence she stated

her concern at the lack of services for families which required assistance in the area of supervised visits for a child in an instance where the family is experiencing family breakdown as a consequence of domestic violence. It is my understanding that there are only three services in South Australia, and only one is located outside the metropolitan area.

Will the minister advise whether the government intends to expand funding and resources into rural communities to offer services to families that require assistance to facilitate supervised access visits, particularly in instances of domestic violence: if not, why not?

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

WATER SUPPLY, GLENDAMBO

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Local Government, a question regarding the water supply crisis at Glendambo.

Leave granted.

The Hon. T.J. STEPHENS: Members may be aware that on 6 May this year I asked the minister a question regarding the deteriorating water supply situation in the regional community of Glendambo. Subsequent to that I wrote a letter to the minister outlining the proposal from the Glendambo community and asked him for an urgent response. To the minister's credit he did reply not long thereafter. He responded that he would handball the issue to the Minister for Local Government. As of today I am yet to receive any correspondence from the local government minister regarding this extremely urgent situation. My questions are:

1. Has the minister given consideration to the proposal?

2. Will the minister reply to the Glendambo community and me as a matter of urgency?

3. Why has the government failed to respond to this issue in a timely and consultative manner?

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

DEATHS IN CUSTODY

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about a death in custody.

Leave granted.

The Hon. A.J. REDFORD: On 10 February this year the Chief Executive Officer of Corrections, Mr Peter Severin, reported to the Correctional Services Advisory Council that an investigatory review committee had been established in relation to recent deaths in custody and, in particular, the Margaret Lindsay case. It was reported that the recommendations had budgetary implications. Mr President, you may recall that on 18 December last year the Coroner considered the tragic death of Margaret Lindsay and made a series of recommendations in his report, including revamping of the standard operating procedures, improved training, improved communication, safe cell principles being adopted as a matter of urgency, and the issue of cell sharing being adopted. In general terms, he pointed out that many of the issues arising from the Royal Commission into Aboriginal Deaths in Custody and from subsequent inquests into deaths in custody did not seem to have been considered applicable to the Adelaide Women's Prison. He gave the example of the concept of unrecorded observations being permitted, in defiance of all recommendations and instructions to the contrary.

I know that the Hon. Ian Gilfillan, in his usual diligent manner, has raised this issue and, indeed, has made some successful amendments to the Coroners legislation to ensure that this sort of thing does not occur again. For that, he is to be congratulated. I think we will miss him after the next election; I know that he is not going on. My questions are:

1. Have the recommendations been acted upon?

2. What has been allocated in this year's budget in relation to the recommendations of the Coroner?

3. What recommendations made by the Coroner are currently outstanding?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question. Unfortunately, I do not have the degree of detail that the honourable member chooses on the particular case. In relation to deaths in custody, as outlined in this council on a number of occasions, any death in custody is one which impacts on the correctional staff within each of our custodial areas. We have had a good record in this state over the years, although we have had deaths in custody in a number of our correctional services areas. When compared to the other states the statistics are reasonably good, but there is cause for concern and we have an ongoing process for dealing with them.

There have been 65 deaths in custody in South Australian prisons since the start of the 1990 financial year; of those, 33 or 50 per cent of the deaths have been from suicide; 23 or 36 per cent of the deaths have been from natural causes; 6 or 9 per cent of the deaths have been from overdoses; and 3 or 5 per cent of the deaths have been from murders. Thirteen, that is, 20 per cent of those who have died, were Aboriginal and, of these, four have died from natural causes. These deaths have occurred despite the vigilance of staff and the ready availability of medical services beyond that to which most of these offenders would have been accustomed in the community.

Every possible action is taken to identify and treat those offenders at risk of self-harm. Prisoners have a risk assessment completed when they enter the prison system. They have access to medical and psychiatric help and can have access to programs designed specifically to assist them to cope within prison. We are concentrating on those areas: the assessment processes and the running of programs within prisons to help specific categories of prisoners and, from the recommendations, the removal of hanging points throughout the prison system. That has been an issue that the correctional services department has been working on for some considerable time.

Each financial year moneys are apportioned to removing those risks but, in some of our older prisons, some of those issues are slow in being dealt with. From memory, I think that there has been one coroner's report where it was recommended that hanging points be taken out of particular areas within prisons, and that was very slow in being dealt with, but now moneys have been apportioned to take up that particular issue. I do not have the budget figures with me, but I will endeavour to provide the honourable member with the total figure for the funding allocations for removing the risk of deaths in custody in relation to hanging points and other

matters. I will try to get that report with those figures back to the honourable member as soon as I can.

The Hon. A.J. REDFORD: I have a supplementary question. Could the minister give an assurance that the recommendation of the coroner made on 18 December last year, some seven months ago, has now been fully implemented? The recommendation states:

The 'safe-cell' principles should be adopted and pursued in prisons throughout South Australia as a matter of urgency.

The Hon. T.G. ROBERTS: I will seek a report about that matter from the department and bring back a reply.

ABORIGINAL RECONCILIATION

The Hon. G.E. GAGO: I seek leave to make a brief statement before asking the Minister for Aboriginal Affairs and Reconciliation a question about reconciliation.

Leave granted.

The Hon. G.E. GAGO: In recent months there has been a great deal mentioned about the demise of ATSIC and ATSIS. I am aware that the ATSIC regional councils will continue until June 2005. My questions are:

1. Will the minister outline how the government will continue to work with regional councils?

2. Is the minister aware of any plans of any regional councils for the upcoming year?

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

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Well, we do not carry every bit of information with us into question time in relation to questions to be asked by honourable members. Standing orders allow us to reply to questions in a way that supplies the best possible information to the members. I gave him that undertaking in reply to his question. In relation to the Hon. Gail Gago's question, I have the information, and I will supply it directly so that parliament is also the beneficiary of the reply that I am able to give.

On Friday 25 June, I launched the Patpa Warra Yunti Regional Plan 2004-05. The region represents many language groups and communities including Kaurna, Ngarrindjeri and the Narungga people. The Patpa Warra Yunti Regional Council developed a regional plan that outlines policy and advocates intentions to achieve better outcomes for indigenous South Australians. It has funding streams, and responsibility for funding is a key issue within Aboriginal communities. Since the demise of ATSIS and the winding up of the ATSIC regional bodies, the government is grateful to be able to have regional and structural plans drafted by the regional bodies and work in partnership with them. It is important that governments are able to engage elected leaders as well as communities and make the linkages between those people who are capable of putting themselves forward and who are in a position to be elected and to work in conjunction with communities. That is what the government is trying to do.

The regional plan put forward is important, because the future arrangements for indigenous affairs, as determined by the commonwealth government in April this year, are uncertain. We know that the recent announcement to abolish ATSIC and ATSIS has caused much confusion and anguish. I take this opportunity to acknowledge all who have worked tirelessly on behalf of the communities and the many achievements of ATSIC and ATSIS in South Australia which are too often unrecognised in the wider community. We are too quick to condemn those who have failed, and we are very slow in recognising the work done by many under resourced individuals within the state who have worked tirelessly to bring about better conditions for indigenous people in the state.

Aboriginal people represent the most disadvantaged group in our community. Almost 64 per cent of South Australia's Aboriginal population resides within the Patpa Warra Yunti regional area. That is, the population has a younger than average age profile, and the number of Aboriginal people moving to the metropolitan area is increasing. It has been developed through consulting with communities that have identified the issues and priorities for people in the region. Hopefully, we will be able to work cross-agency with the Patpa Warra Yunti Regional Plan and other plans that will be put forward to us. The Labor government is committed to working together with Aboriginal communities and elected leaders.

Finally, I congratulate the Patpa Warra Yunti Chairman, Tauto Sansbury, its Deputy Chairperson, Pat Buckskin, and its Alternate Deputy Chairperson, Cheryl Axelby, for their commitment to their community and all the elected regional councillors whose work in the communities has culminated in this regional plan. I hope that we have a cooperative building program through the regional plan developments, the regional cross-agencies and through the commonwealth so that we can get the funding streams right and hit the targets.

PORT STANVAC OIL REFINERY

The Hon. SANDRA KANCK: I seek leave to ask the Minister for Industry, Trade and Regional Development, representing the Treasurer, a question about the Port Stanvac Oil Refinery.

Leave granted.

The Hon. SANDRA KANCK: Members will be aware that Mobil was given until July 2006 to indicate that it will reopen the Port Stanvac Oil Refinery. Should it approach the state government at that time and seek an extension on the moth-balling of the plant, it will need a convincing case or, in the words of the Treasurer, 'Goodbye Mobil'. My office has received information that Mobil recently sold some of its buoys to a Queensland scrap metal merchant. If Mobil is selling all its buoys, this is persuasive evidence that it has no intention of reopening the refinery, because the buoys are essential to the operation of the product wharf and, if the wharf is not operational, nor is the refinery. My questions are:

1. Has Mobil sold buoys used at the Port Stanvac refinery? If so, what buoys have been sold, to whom, and for how much?

2. Has Mobil completed its site contamination assessment? If not, why not?

3. Has Mobil given the state government any indication of its intention to quit the site?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will take those questions on notice and get an answer for the honourable member.

The Hon. NICK XENOPHON: I have a supplementary question. What were the precise undertakings given to the Treasurer by Mobil, and have all those undertakings being carried out?

The Hon. P. HOLLOWAY: I will take that question on notice, and get a reply for the honourable member.

MEDICAL SCHOOLS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, questions about South Australian medical schools.

Leave granted.

The Hon. T.G. CAMERON: A recent article in *The Advertiser* reported that a lack of South Australian students at the state's medical schools is likely to lead to long-term doctor shortages. Figures released by the Committee of Deans of Australian medical schools show that our two medical schools have the highest proportion of interstate enrolments of any Australian state. Many of these students are expected to return to the attractive pay rates and conditions of the eastern states once they graduate.

Of the 174 students attending medical schools in South Australia in 2003, 85 (or 49 per cent) were from interstate. This compares to the Australian average of just 22 per cent. That is a major concern. Australian Medical Association state president Dr William Heddle was quoted in *The Advertiser* as saying that most people from interstate tend not to stay. His view is supported by Mr Bruce Dowton, Chairman of the Committee of Deans of Australian Medical Schools in a letter to the *Medical Journal of Australia*. He said:

> Some level of interstate mobility brings positive benefits. However. . . this can create problems when interstate medical graduates choose to return to their home states when they enter their intern training years.

While South Australia is crying out for more doctors, it is obvious that South Australian universities should be admitting more local students into our medical schools. In addition, a number of South Australian students were denied acceptance to South Australian universities for medicine yet were accepted by interstate universities. I just do not understand it. My questions to the minister are:

1. Why does South Australia have the highest number of interstate medical students of any Australian state?

2. Over the past three years, how many interstate medical students completing their studies have chosen to return to their state of origin?

3. In the long-term health interests of South Australians, will the government negotiate with the universities to ensure that a minimum quota of places is set aside for local students?

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

HISTORY TRUST

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about the History Trust.

Leave granted.

The Hon. J.M.A. LENSINK: In the 22nd annual report of the History Trust of South Australia for the year ended 30 June 2003, comment is made in relation to maintaining heritage buildings that are under the responsibility of the heritage trust. The report states:

> Some of the trust's OHS&W issues arise from long-term maintenance problems with the suite of heritage buildings housing our museums. Building audits have now been completed for each of the three museum sites and they reveal a long list of structural issues, some of which are now extremely urgent. For some years the trust's budget allocation in this area has been woefully inadequate, with insufficient funds to undertake even routine maintenance, let alone the more extensive conservation work now required at several sites.

My questions are:

1. Does the minister agree with the assessment that the budget allocation is woefully inadequate?

2. Is the minister concerned about these issues, and what is the minister doing to rectify these problems?

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

BARLEY MARKETING

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Agriculture, Food and Fisheries, a question about barley marketing.

Leave granted.

The Hon. IAN GILFILLAN: As I understand it, the government made a submission to the National Competition Council in defence of the single desk marketing regime which applies in South Australia and which is substantially supported by a vast majority of the barley growers. Members in the industry have commented to me that they have serious doubts about the quality of input into that report. Will the minister make the report available for the parliament and public to peruse and, if not, why not?

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

MATTERS OF INTEREST

SEA RESCUE FOUR

The Hon. J. GAZZOLA: Last month, on behalf of the Minister for Emergency Services (Hon. Patrick Conlon), I had the pleasure of commissioning the first boat assigned to the Copper Coast flotilla of the South Australian Sea Rescue Squadron, *Sea Rescue Four*. Many distinguished guests were present for the opening, including Mr John Meier MP, two representatives from the office of the Attorney-General, Commodore Joan Stanton, Mayor of the District Council of Copper Coast, Paul Thomas, and CEO John Shane, representatives of the South Australian police department, including Chief Inspector Kym Zander and Sergeant Peter Sims, and personnel representing other marine volunteer organisations as well as emergency services members and SA Sea Rescue Squadron members.

The history of the flotilla's new boat is, indeed, interesting, the preparation of *Sea Rescue Four* being more than a year in the planning. The commissioned boat was purchased with funds from the emergency levy—state emergency

service—and needed refitting and refurbishing to the high standards and specifications required by the South Australian Sea Rescue Squadron. In opening the event, South Australian Sea Rescue Squadron Commodore Joan Stanton outlined some of the important aspects undertaken in establishing the new Copper Coast flotilla and rescue service. She drew attention to the team of dedicated members and highly trained volunteers who have worked tirelessly to provide assurance to the commercial and recreational boating community in the region of the Spencer Gulf.

For the past 40 years, the South Australian Sea Rescue Squadron has provided excellent around the clock service to South Australians and visitors in monitoring general boating activities, marine distress frequencies and undertaking quick response search and rescue operations. In addition, the South Australian Sea Rescue Squadron spends many thousands of additional operational hours advising and training. The flotilla is an integral part of the squadron, particularly given an increase in tourism. Figures indicate that 47 per cent of visitors engage in some form of marine-based activity. This figure reaffirms the need for a rescue service for Yorke Peninsula.

As a proud member of the South Australian Sea Rescue Squadron, I know of the valuable hours that volunteers put into training and the maintenance of equipment to ensure that the service is of the highest standard. I was also pleased to see the strong rapport and good working relationship the squadron has developed with South Australia Police. I also acknowledge the efforts of the District Council of Copper Coast for its support of the Copper Coast flotilla.

One member in particular who has made a wonderful contribution to the squadron has set the level of volunteerism at a high standard. This person is Commodore Joan Stanton. We all extended our thanks for her splendid service to the squadron. I also had the pleasure of presenting Commodore Stanton with a cheque for $10 000, a donation from the Cruising Yacht Club of Australia, to further assist the South Australian Sea Rescue Squadron. Mayor Paul Thomas had the honour of officially opening the radio and operations base and unveiling a commemorative plaque in memory of the event.

The Hon. A.J. Redford interjecting:

The Hon. J. GAZZOLA: No, it was not mine. I personally thank the South Australian Sea Rescue Squadron for its valuable service and its committed volunteers for their dedicated work, and I commend the flotilla's vessel *Sea Rescue Four* and the Copper Coast flotilla.

Time expired.

ESTIMATES COMMITTEES

The Hon. A.J. REDFORD: Over the past two weeks, the House of Assembly has engaged in the scrutiny of the budget or the Appropriation Bill in the process known as estimates. Last Saturday, Greg Kelton in *The Advertiser* described this process as a farce and six wasted days. The member for Enfield was particularly scathing in his description of the process, and I would urge all members to read his contribution on this topic. Mr Kelton expressed the view that this farcical process was the same when the Liberal Party was last in government. I thought I should look back and see what happened three years ago, in June 2001, in my portfolio areas and compare it with the current process.

First, in relation to WorkCover, estimates were heard in conjunction with SA Water, with four officers from SA Water and two from WorkCover. The examination covered nine pages of *Hansard*. In that period, the then shadow minister asked 15 questions on SA Water and government backbenchers asked four. In relation to WorkCover, which at that time had a negligible unfunded liability compared to the $500-odd million this government has lost, the government members asked seven questions and the opposition 11, taking up four pages of *Hansard*, a total of 18 questions on WorkCover. All the questions that were asked had some answer given with a free exchange between members and the CEO of WorkCover.

This year, WorkCover estimates occupied four pages, of which nearly two pages were taken up by the minister's opening statement. Of the two remaining pages, the opposition asked five questions, the government one question, and the Speaker asked a question based on a wrong premise and then proceeded to make a short speech about claims management, which had nothing to do with the budget of WorkCover. The opposition had prepared a total of 16 questions, thus 11 questions were not asked. Of the questions asked by the opposition, the minister said he would respond later to all five of the questions. Not one answer. The end result was an opening lecture and a statement that all questions would be answered later.

Whilst estimates may not have been perfect under the former government, they were a lot better than the way in which they currently operate. I turn now to Corrections. Estimates in 2001 covered just over seven pages. In 2004, they covered just over six. In 2001, there were 21 questions from the opposition, three from the government and no opening statement. Of the 21, 20 were answered and one was referred to be answered later. This year, there was an opening statement, although not as long as minister Wright's. The opposition asked five questions and the government asked five: a quarter of the questions that the former opposition asked. Some of the questions I wanted to be asked related to some serious issues. I had 17 more questions I would like to have asked.

For example, we did not get the opportunity to ask about the effect of budget cuts in Corrections in previous years, improvements to the women's prison, the methadone program, DNA testing in prisons and the Pit lands facility. This is a budget of some $130 million: five opposition questions, each question worth $26 million and no scrutiny. Racing is not a big ticket item as far as expenditure is concerned, although it is an important industry. It covers some $500 000. The minister was allocated 30 minutes. We got three questions there. His opening statement and answers to government questions took up 2½ pages of the 3½ pages of *Hansard*. It is outrageous, and no wonder the member for Enfield is calling the process a farce. It was never a farce, even at its worst, under the previous administration.

There we have it: WorkCover with a $500 million unfunded liability, five opposition questions, $100 million per opposition question asked. In Corrections, with a $130 million budget, five questions, at $26 million per opposition question asked. Racing, with a $500 000 budget, a $1 billion industry, three questions, $300 million of industry per question. With the greatest respect to *The Advertiser*, it is not simply a matter of going back and saying 'a pox on you all': it is the duty of Greg Kelton and others in *The Advertiser* to carefully scrutinise this government's performance at estimates and go through and list every single unanswered question. You would probably need an extra Saturday feature to go through what was not answered.

The government should not get away with spin doctoring its way out of the fact that it failed to allow the estimates process to operate in any appropriate fashion at all. I note that the Hon. Terry Roberts is sitting opposite with a big grin on his face, but this is too serious—

The Hon. T.G. ROBERTS: I rise on a point of order and ask the honourable member to withdraw that accusation. I have let others go through from time to time, but—

The Hon. A.J. Redford: You did have a grin.

The PRESIDENT: I do not think he did.

The Hon. A.J. REDFORD: So that I can finish, I withdraw it. But this is a serious matter. I think that the government ought to have a good hard look at itself and *The Advertiser* ought to prod it along a bit.

NARACOORTE LUCINDALE COUNCIL

The Hon. R.K. SNEATH: There is something terribly wrong with the leadership, management and governance of the Naracoorte Lucindale council. Four senior officers have resigned in less than 12 months. Why? The council is involved in an action in the Industrial Court. Why? Several councillors continue to be victimised for asking Mayor Richard Bourne and CEO Dennis Hovenden questions of council regarding management and finance. Why? The council has no budget estimates for its rural roadworks. Why? Mr Geoff Bolling and Mr Glenn Sanford both resigned from council last year, but three managers have suddenly been hired to replace them, at great expense to ratepayers. Why three?

Speculation in the South-East and gossip around shops, bars, saleyards and events in Naracoorte suggest that long-term loyal staff can no longer cope with the bullying, intimidation and general incompetence found at the top of the organisation, but they are too frightened to speak out. Indeed, the levels of bullying and intimidation do not stop with staff behind supposedly closed doors. They transfer into council meetings, as we can see from recent reports in *The Border Watch* and *The Naracoorte Herald*. As long ago as August there was a report in *The Border Watch* about councillor David Hood being blasted for nitpicking by the Mayor, and he was humiliated by the Chief Executive Officer; yet councillor Hood simply raised ratepayers' concerns about council's sending notices to all dog owners with incorrect information about the law.

Last November we saw the Mayor blasting his entire council for asking questions on notice. Is it not the role of councillors to ask the council questions on behalf of ratepayers? In January there were media reports of valuable council documents being found in the council rubbish skip. They were handed to councillor David Hood who in turn, through a question on notice, asked the CEO what they were doing there. According to media reports, the CEO decided to report councillor Hood to council's own code of conduct committee for damaging council's reputation in the eyes of the public. The council's meeting minutes show that the code of conduct report is confidential, but how much did it cost ratepayers in legal fees alone? Why are they not entitled to know what it says?

Some staff and councillor Hood are not the only ones who have been victimised by the current council leadership. According to media reports, councillor Ashley Jared has run foul of the CEO. The reports indicate that the CEO failed to answer the councillor's questions on notice, failed to include his questions on notice on the council agenda, and was opening confidential mail to council members. As recently as last month, the Mayor again launched an attack on his council's behaviour for the second time in six months. He accused members of trying to destabilise the council and he complained about the level of rudeness, arrogance and intended undermining which polluted the chamber. Why are council members being accused of rudeness, arrogance and attempted undermining for asking basic questions? As a result of comment around Naracoorte and media reports, it seems those basic questions are usually about the activities or non-activities of the CEO.

In another instance, Ms Penny Fairweather, who was the Executive Officer with Limestone Coast Tourism, was hired and ready to start work at Naracoorte District Council, but she is now suing the council. If members talk to people around Naracoorte they will hear that councillor Liz Travers also applied for the position which Ms Fairweather was meant to take up. They will also hear that Ms Fairweather was told by the CEO, after she had resigned from her position with Limestone Coast Tourism and rented a house in Naracoorte, that he did not think she would be loyal to him. It is interesting when one listens at the shops, the hotels, the saleyards and at various events about what is going on in the Naracoorte Lucindale Council. The saleyards are one of the council's few positive news stories, where the manager, Richard James, is left to his own devices to run a very good operation. I must say that the outside work staff run another very good operation.

This problem seems to exist only in top level management from the Mayor to the CEO, but talk also finds a long list of concerns regarding the council management and leadership. It seems that the CEO and the Mayor think that leadership is all about bullying and intimidation. Naracoorte is alive with rumours that both staff and councillors get taken into back rooms where they are subjected to angry attacks of bullying and intimidation if they dare to rock the boat. There is yet another report in *The Border Watch* about the Mayor's blasting a ratepayer. It is obvious that the ratepayers do not have access to the Mayor unless they agree with him. There will be more to come.

Time expired.

McGUINNESS McDERMOTT FOUNDATION

The Hon. T.J. STEPHENS: I congratulate the Hon. Bob Sneath on his praise and protection for David Hood and Ashley Jared, two very fine members of the Liberal Party—well done! I rise to speak today regarding a very important event that has implications for countless people. Of course, I speak of the State of Origin Slowdown held on Sunday 27 June. I am sure that members would have been relieved to see the Vics beaten, once again, by some of yesterday's heroes in a close and generally fairly high quality match.

The reason I mention it today is not for the football but, rather, for the reason why it has been held. I think we all agree there are very few people who have not been either directly or indirectly touched by cancer. It is even more tragic when a child is faced with this horrible disease. With this in mind, the McGuinness McDermott Foundation this year launched the State of Origin Slowdown. The McGuinness McDermott Foundation was launched on 30 May 1996 by Tony McGuinness and Chris McDermott. Tony and Chris are both ex star players and captains of the Adelaide Crows football team. It was whilst playing with the Crows that they came to know two very fine young boys with cancer. Chris

met Nathan Maclean, who had been diagnosed with a rare brain tumour. Their friendship endured until Nathan sadly passed away in February 1993. Likewise, Tony McGuinness met Nicholas Berry who was battling kidney cancer, whilst he was at a fun day at Glenelg organised by the hospital. Sadly, Nick passed away on 6 December 1994.

Both Chris and Tony were so touched by the boys they had befriended over this time and their untimely passing that they decided to use their talents and skills to launch the McGuinness McDermott Foundation with a goal of improving oncology treatment facilities for children in South Australia. Since 1997 the foundation has been successful in raising some $3.8 million and completing a number of extremely worthwhile projects. These projects include the Ronald McDonald Clinic, the Brookman Ward, a new dialysis unit, a new adolescent ward, enhancing the x-ray department, a water filtration plant, a paediatric holding bay, an endocrine unit, an HPLC machine and an MRI machine. The foundation is currently attempting to raise some $1.3 million for a world-class endoscopic unit.

The Adelaide Women's and Children's Hospital is to have the first theatre suite in Australia to specialise in keyhole surgery for children. Nowhere in either Australia or New Zealand is there a surgical theatre suite designed specifically for this cutting-edge style of surgery for children. The Women's and Children's Hospital is fortunate to have Professor Hock Tan, who is Professor of Paediatric Surgery at the Adelaide University and on staff as the Director of the Department of Paediatric Surgery at the Women's and Children's Hospital, Adelaide. He is a world leader in this type of paediatric surgery, and his powers and ability to treat patients will be greatly enhanced when this unit is completed.

This type of surgery eliminates the need for large incisions. The advantages of keyhole surgery include a reduction of pain and disability for patients, and small incisions, meaning a quicker recovery time. This is especially relevant for children undergoing chemotherapy treatment, as they take longer to recover from surgery than other children, and it delays their return to the chemotherapy schedule. It also reduces scarring. A build-up of scar tissue can cause problems later in life, especially if further surgery is required. There is also a reduced risk of infection. Endoscopic surgery is the leading edge in its field, and the Women's and Children's Hospital needs every possible advantage to be available to its patients.

One of the great things about South Australians is their generosity. You often hear on radio appeals for particular causes, such as children who need specialised treatment or wish to do something or to see someone, and these appeals are extremely well supported. I take this opportunity to warmly thank Mr Chris McDermott and Mr Tony McGuinness for their generosity, leadership and sincerity. I strongly urge all honourable member not only to support organisations such as the McGuinness McDermott Foundation but also to urge their constituents and people they know to support these worthy causes. Once again, my thanks go out to two truly great South Australians.

ADELAIDE PARKLANDS PRESERVATION ASSOCIATION

The Hon. IAN GILFILLAN: Honourable members might well have heard of the Adelaide Parklands Preservation Association, and I take this opportunity to ask those listening to or reading *Hansard* that they seek membership of that organisation. The issue of the Adelaide parklands occasionally erupts in the media and public conscientiousness when there is a drama afoot or, in this case, legislation is pending in this place which is portrayed as a measure that will substantially protect the parklands from the predations of commercial and political interests which have cut back over a third of the original area.

There are several matters which I will take this opportunity to at least briefly cover, one of which is the Britannia Corner 'upgrade'. Once again, the parklands is the bunny that will be injured severely because of kowtowing to the demands of the motor vehicles and transport system on the periphery of the parklands. Honourable members may not know, but it is expected that 4 000 square metres of parklands will be lost as a result of the reshaping of that corner. Victoria Park and that precinct suffer a constant barrage of threats. We all know the pressure that has been on for permanent motor sport facilities to be located in the parklands, and that battle has been only half won. There is contamination caused by temporary infrastructure for very close to six months every year because of the Clipsal 500.

The recent proposal is that a billabong be established in the southern part of the Victoria Park area. Billabongs are great in their natural setting but are certainly not when artificially constructed on the parklands. It is a very thinly disguised measure by the SAJC to acquire a source of water for watering its facility. Once again, the general ambience and availability of the parklands is the sacrifice being asked to be made. With a little imagination, honourable members could see a billabong being used to water turf where it is first of all slushy mud, as the water is taken down below its full level, and then eventually a bare and baked dry area.

I will now move onto other matters. There is a constant stream of issues coming before the Adelaide Parklands Preservation Association, which it has to deal with one by one. The Adelaide Bowling Club, which was quite properly moved from Kintore Avenue to its present site on the parklands, next to Dequetteville Terrace, has been struggling for membership. Apparently, the solution put forward, with the endorsement of the club, was that the club expand from being purely a bowling club (which is in the terms of its lease) to a general purpose function facility. In its striving to increase membership, the club will virtually embrace any activity it believes will draw people in and from which it could make money.

I am sure that honourable members who have any concern for the parklands would agree with the association that the parklands is not an area for commercial exploitation from which private enterprises can profit, nor is it the location for organisations which cannot survive under their own auspices and which, in my view, use any device to trespass on the parklands. The only substantial long-term defence would be to have the Adelaide parklands declared on the world heritage list. One of the preliminary steps is to have it declared on the state heritage list. It is a scandal that an application has been made by various bodies to have it listed on the state heritage list since 1986 but, until last year, none had been actioned. The irony is that the Adelaide parklands is prominently displayed on national heritage lists. The tragedy is that not enough people care about the parklands and, if more people do not care, in another generation and another century the parklands will no longer exist.

ELECTRONIC VOTING

The Hon. T.G. CAMERON: I rise today to inform the council about issues surrounding electronic voting. New technologies have been introduced in the past 30 years, some good and some not so good, which have revolutionised the way in which votes can be cast and counted. We now have the technology to computerise existing electoral booths at the local school, library or town hall. The widespread adoption of the internet has the potential to turn every home, library and shopping centre into a voting booth. However, whilst we have that technology, the question is: what benefit does e-voting have and what are the costs and risks?

There is no doubt that e-voting has many benefits. People can vote from the comfort of their own home or the convenience of the local library or shopping centre. Computerised voting can aid people with a disability in casting their vote in privacy and with confidence. Accidental informal votes could be prevented by the computer warning the voter; errors in counting would be almost eliminated; and results would be known instantaneously. This would give far more certainty on election night. However, no-one can deny watching the results slowly coming in, booth by booth, over the course of the evening is perhaps one of the most enjoyable times of an election.

The Hon. T.G. Roberts: Except for the last election.

The Hon. T.G. CAMERON: Yes, except the last election. I sat there watching the results, not being certain who had won, up until midnight.

An honourable member interjecting:

The Hon. T.G. CAMERON: Yes, it was all part of the fun of an election. However, e-mail would kill all of that suspense and enjoyment. Speed, accuracy and convenience are the benefits. Now, let us look at the risks. One of the most significant risks of e-mail voting is security. How do we know that our vote will not be tampered with? When votes are recorded and stored in electronic format there is no ballot paper that can be checked and verified. Even with secure encryption, the security against hackers, both to the central vote tallying computers and the internet connections that provide the voting booths, cannot be guaranteed. VoteHere, a US-based e-voting company, has identified internet voting as particularly vulnerable to fraud and hacking, as did *Wired* magazine just last year. Only by printing a hard copy of the vote can this system be kept in check but, of course, this almost defeats the purpose of e-voting.

Alienation of older and less computer literate voters, as well as those without internet access, is also a problem. The complexity, new registration processes, passwords and other similar issues may overwhelm older and computer illiterate voters. We cannot expect to change the voting culture overnight, especially for people who may be confused or apprehensive about this technology. Another significant problem with electronic voting is the cost of implementing the system statewide. A report by Victorian and Australian electoral officials estimated that the cost of replacing one voting booth with one terminal would be between $2 000 and $7 000, and that does not include the server for the booth or the statewide server. Internet voting needs centralised vote counting systems, dedicated encryption programs, firewalls, and technicians on stand-by during the voting and counting in order to ensure that all goes smoothly. All these costs need to be taken into account when considering a change to e-voting.

Where does this leave the future of e-voting? We should not fall into the trap that just because we have the internet and computers, and it is more convenient than what we have now, we should use it to vote: in other words, change to it. Any electoral system must have the confidence of the people. Any proposal to change the way we cast or tally votes must have their confidence, and the benefits must outweigh the costs. My personal opinion is that widespread implementation of e-voting at this time fails both tests.

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS DEPARTMENT

The Hon. J.F. STEFANI: Today I wish to speak about the incompetent actions of the compliance office of DIMIA in Adelaide. To best express my concerns about this important matter I will quote from a letter which I wrote on 5 June 2003 to the then minister, the Hon. Philip Ruddock MP. The letter reads:

Valbona and Ergi Kola

As you are aware, I have been involved in assisting Mrs and Mr Kola since 26 March 2002 when I first wrote to you about their special circumstances and the support which both the South Australian Italian and Vietnamese community have offered to this young couple. I have continued to provide some personal support to Mr and Mrs Kola working closely with their migration agent, Ms Marion Le.

I know that strong representations have been made to you and your department over a long period of time in relation to this case. These representations have included the valuable support of Senator Brian Harradine and Mr Stephen Phillips, the director of the South Australian State Opera. Mrs Valbona Kola is presently engaged by the State Opera, in the current performances of the Cavalleria Rusticana and I Pagiacci being performed at the Festival Theatre.

Mr and Mrs Kola have been required to report daily at the South Australian immigration office, and in my view this is an unreasonable imposition which is causing them great distress and is also an unnecessary financial burden on their limited resources. During their daily reporting to the Adelaide office, this young couple have been treated with contempt and disdain.

To further aggravate their difficult position, during my telephone contact with a senior officer at your office at approximately 4.00 pm on Wednesday 4 June 2003 I was advised that Mrs Kola was due to appear on criminal charges in the South Australian Court on Wednesday 11 June 2003 at 9.30 am. I must say that this caused me great concern because I found the allegations to be almost unbelievable.

I immediately rang the Commissioner of the South Australian Police (who three days ago had been present at the reception for the National Day of Italy, where Mrs Kola performed a solo rendition) and sought his advice. I also rang the registrar of the District (Criminal) Court, who advised me of the following court listings:

1. Wednesday 11 June 2003—9.30 am
   SA District (Criminal) Court
   Ms Albina Kola
   20 Lincoln Avenue
   Fulham Gardens
   Date of Birth—25/5/1940
   Drug related charges
2. Thursday 19 June 2003—9.30 am
   SA District (Criminal) Court
   Ms Rajmonda Kola
   25 Downer Street
   Kilkenny
   Date of Birth—2/6/1970
   Drug related charges

It is important for me to confirm that Mrs Valbona Kola was born on 2/11/1974 and resides at 4 Colwood Avenue, Fulham with her husband Ergi Anton Kola.

Having obtained the above information, I rang the senior officer at your office who confirmed that the information about the pending charges was provided to your office by the compliance officers from the department's office in Adelaide. When I informed your senior staff that the information provided was false and represented an appalling measure of incompetence on the part of the staff of the

Adelaide office, I was advised that: 'I can blame the South Australian Police for supplying the incorrect information to the immigration department officer/s in Adelaide'.

I find this deplorable statement totally inexcusable. The fact is that the officers in the Adelaide office did not do their job properly, and as a consequence they have provided inaccurate and false information to your office in Canberra. Through this shocking incompetence, the enforcement officers in Adelaide have impugned an innocent person without any proof, because they have failed to do their homework.

As a consequence, I have informed the Commissioner of the SA Police about the accusation made regarding the reliability of the police information. This allegation will be subject to further investigation. In any event, I cannot accept or excuse the behaviour and incompetence of the compliance officer/s of the Adelaide office, because the information which I was able to obtain and was readily available to me, I know was equally and more readily available to the officer/s of your Department.

PITJANTJATJARA LAND RIGHTS (EXECUTIVE BOARD) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1. New clause, page 2, after line 4—
Insert:
1A—Commencement
This act will come into operation on a day to be fixed by proclamation.
No. 2. Clause 8, page 6, lines 28 and 29—
Delete '(and the community administrators in relation to each electorate may provide assistance in relation to such publicity)'
No. 3. Schedule 1, page 14, line 6—
Delete 'assent to' and substitute:
commencement of

STATUTES AMENDMENT (MISCELLANEOUS SUPERANNUATION MEASURES) BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): 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 seeks to make amendments to the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994*, and the *Superannuation Act 1988*, the Acts which establish and continue the superannuation schemes for police officers, public servants, teachers and other government employees.

The Bill deals with three matters. The first and most substantial matter dealt with in the legislation is superannuation surcharge. The second matter is member investment choice. The third matter is the interaction between superannuation pension payments and weekly payments of workers compensation.

In relation to superannuation surcharge, the Bill seeks to provide a facility for those persons who are members of one of the lump sum schemes established under these Acts, to pay any surcharge debt out of their superannuation benefit. The proposal will bring members of any of the government's lump sum schemes into line with members of the State Pension Scheme, Parliamentary Scheme and the Police Pension Scheme who already have the ability to leave part of their retirement benefit in the scheme and use it to extinguish a surcharge liability.

The superannuation surcharge is an additional tax of up to 15% levied on the value of employer contributions paid or payable into a scheme to finance the benefits accruing to members on higher incomes. The surcharge is in addition to normal taxes applied to superannuation benefits.

In private sector schemes, the fund itself is liable for the surcharge tax, and after paying the tax, reduces the accrued benefits of the member who is subject to the surcharge. In government superannuation funds, where tax is not levied on the fund as benefits accrue but applied to the member's benefit when it is received, the member is personally liable for the surcharge debt. In schemes like those established by the State government, the member liable for a surcharge debt can choose between paying the surcharge debt as it accrues, or deferring the debts raised until a benefit is paid from the scheme. The Commonwealth applies interest to a deferred debt until such time as it is paid.

The legislative proposal set out in the Bill will provide an option for members subject to a surcharge liability to estimate their surcharge debt at retirement, based on assessment notices already issued by the Australian Taxation Office. Members will then be required to request the relevant Superannuation Board to withhold part of their retirement benefit equal to the surcharge estimate, until receipt of their final notice to pay the surcharge debt from the Australian Taxation Office. On receiving the notice requiring payment of the surcharge debt within 3 months in accordance with the provisions of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cth), the member can request that the withheld amount be applied towards payment of the surcharge debt. The lump sum to be provided to extinguish the surcharge debt will be paid as a commuted value of a pension purchased by the withheld lump sum. By paying the amount as commutation, the lump sum will not be classed as an eligible termination payment in terms of the *Income Tax Assessment Act* (Cth). This will result in the member being treated the same as a member of one of the government's pension schemes when it comes to paying a surcharge debt. The surcharge debt will be paid from a pre tax benefit, which is the same basis as already applies to an employee in the private sector with a superannuation surcharge debt.

The Bill also provides a facility for the special surcharge payment option to be utilised by the spouse or legal representative of a member of a lump sum scheme who dies before receiving a surcharge notice or before being able to claim the withheld amount and apply it to extinguish a surcharge debt.

Unless these provisions are incorporated into the State's lump sum superannuation schemes, members of these schemes will be disadvantaged compared to those employees in a pension scheme, or employees subject to superannuation surcharge in the private sector.

The Bill also seeks to introduce member investment choice as an option for members of the State lump sum scheme.

Member investment choice, as an option within a superannuation scheme, has spread in popularity throughout the superannuation industry such that investment choice has become a standard design option within accumulation style schemes.

This legislative proposal will provide member investment choice as an option for the member contribution account or employee component of the benefit, in the State lump sum scheme. Member investment choice will not be available for the employer component of the benefit as this is a defined benefit in the State lump sum scheme.

Member investment choice already exists in the Triple S Scheme so this proposal will bring the State lump sum scheme into line with the Triple S Scheme, where members have the opportunity to switch between the various investment options on offer. This facility will enable members to elect to move to a more conservative investment strategy as they approach retirement in order to protect their accrued benefit especially in times of volatility with low to negative returns.

The Bill also seeks to address a situation where persons aged between 60 and 65, in receipt of weekly payments of workers compensation, and members of either the State Pension Scheme or Police Pension Scheme, are able to receive a superannuation pension without restriction. A person in this situation is able to receive a weekly income representing more than 150% of their employment salary. Clearly it was never intended that government employees in receipt of weekly payments of workers compensation be able to have unrestricted access to their superannuation pension whilst still in receipt of workers compensation weekly payments. Both the *Police Superannuation Act* and the *Superannuation Act*, currently provide

that any superannuation pension payments received before age 60 are reduced by the amount of weekly payments of workers compensation, but the income test does not extend beyond the age of 60. The income test in the current statutes did not extend beyond the age of 60 because it was always assumed that the normal age of retirement for government employees covered by one of the generous subsidised pension schemes was age 60. A recent decision of the full bench of the Workers Compensation Tribunal ruled that weekly payments of workers compensation were payable to a former police officer beyond the age of 60 and until the age of 65, despite the long standing practice of ceasing workers compensation payments at age 60. The proposed amendment to both the *Police Superannuation Act* and the *Superannuation Act* therefore seeks to provide that all superannuation pension payments will be reduced by the amount of weekly payments of workers compensation. The legislation also provides that where weekly payments of workers compensation have been redeemed or commuted to a lump sum, the fact that they have been redeemed or commuted will not affect the eligibility for full payment of a superannuation pension after the age of 60.

The unions and the Superannuation Federation have been consulted with respect to this Bill and have indicated their support.

I commend this Bill to the House.

Explanation of clauses

Part 1—Preliminary

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation on a day to be fixed by proclamation. However, sections 10 and 20, which amend the provisions of the *Police Superannuation Act 1990* and the *Superannuation Act 1988* dealing with the effect of workers compensation payments on pensions payable under those Acts, may not be brought into operation before 1 July 2004.

Clause 3: Amendment provisions

This clause is formal.

Part 2—Amendment of Police Superannuation Act 1990

Clause 4: Amendment of section 4—Interpretation

This clause inserts into the interpretation section of the *Police Superannuation Act 1990* a number of new definitions necessary for the purposes of the measure. A "**deferred superannuation contributions surcharge**" in relation to a contributor is the amount the contributor is liable to pay the Commissioner of Taxation under section 15(6) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* of the Commonwealth. A "**surcharge notice**" is a notice issued by the Commissioner of Taxation under section 15(7) of that Act.

Clause 5: Insertion of sections 26A, 26B and 26C

A number of new sections are inserted by this clause.

26A.Commutation to pay deferred superannuation contributions surcharge—contributor

A contributor liable to pay a deferred superannuation contributions surcharge may apply to the Police Superannuation Board to receive part of his or her benefit in the form of a commutable pension and then commute the pension. A contributor who has become entitled to a benefit, or will shortly become entitled to a benefit, may estimate the amount of the surcharge and request the Board to withhold that amount from the benefit and pay the balance to the contributor.

The Board must, after receiving advice from the contributor that a surcharge notice has been issued, convert the withheld amount into a pension (unless the amount of the surcharge is less then the withheld amount, in which case only a portion of the withheld amount is to be converted), then commute the pension and pay to the contributor the lump sum resulting from the commutation in addition to the balance of the withheld amount.

The Board must comply with a request from a contributor under section 26A unless it is not satisfied that the resulting lump sum will be applied in payment of the surcharge or the contributor fails to satisfy the Board that he or she has, or will have, a surcharge liability.

The commutation factors to be applied by the Board in a commutation of a pension will be determined by the Treasurer on the recommendation of an actuary.

26B.Commutation to pay deferred superannuation contributions surcharge following death of contributor

If a contributor dies after having made a request under section 26A but before receiving a surcharge notice, or after having received a surcharge notice but before requesting commutation of his or her pension, the contributor's spouse or legal representative may make application to the Board to receive the amount withheld by the Board on behalf of the deceased contributor in the form of a commutable pension and to fully commute the pension.

If a contributor dies without having made a request under section 26A, the contributor's spouse or legal representative may estimate the amount of the surcharge the spouse or estate will become liable to pay and request the Board to withhold that amount from the benefit and pay the balance to the spouse or estate.

The procedures to be applied in relation to commutation and payment under section 26B are similar to those applicable under section 26A.

26C.Withheld amount

An amount withheld by the Board under section 26A or 26B must be paid by the Treasurer into the Consolidated Account or a special deposit account. The amount will be charged against the relevant contributor's contribution account as if the amount had been paid to the contributor and will be credited with interest at a rate determined by the Treasurer. The amount may be paid to the contributor in accordance with section 26A or 26B or at the direction of the Board if the Board has not, within 2 years of withholding the amount, been advised that a surcharge notice has been issued in respect of the contributor or considers, at any time, there is other good reason for doing so.

Clause 6: Amendment of section 35A—Commutation to pay deferred superannuation contributions surcharge

The amendments made to section 35A by clause 6 are consequential on the substantive amendments made to the Act

Clause 7: Substitution of heading to Part 5A

This clause substitutes a new heading to Part 5A. This is necessitated by the insertion into Part 5A of a number of new sections relating to rollover accounts and investment choice. The existing sections of Part 5A now comprise Division 1. A divisional heading is therefore also inserted by this clause.

Clause 8: Amendment of section 38D—Investor's accounts

This amendment is consequential on the introduction of investment choice for contributors who are also investors under Part 5A Division 1. Division 3, which is inserted by clause 9, allows contributors to nominate the class of investments, or the combination of classes of investments, for the purposes of determining a rate of return under Part 5A. The amendment to section 38D made by this clause has the effect of requiring the Board, when determining a rate of return, to have regard to the net rate of return achieved by the class of investments, or combination of classes of investments, nominated by an investor.

Clause 9: Insertion of Part 5A Division 2 and Division 3

This clause inserts two new Divisions into Part 5A. Division 2 comprises sections 38EA and 38EB. Section 38EA provides that the Board may accept the payment of benefits on behalf of a contributor from another superannuation fund or scheme. (This provision is substantially the same as existing section 42B, which is repealed by clause 11.) Money that is rolled over to the police superannuation scheme from another fund or scheme must be paid to the Treasurer. The Treasurer must pay periodic payments (reflecting the payments made to the Treasurer under the section) into the Police Superannuation Fund from the Consolidated Account or from a special deposit account.

Section 38EB provides that the Board must maintain a rollover account in the name of a contributor for whom an amount of money has been carried over from another superannuation fund or scheme. Under subsection (4), the Board should, in determining a rate of return, have regard to the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by a contributor who has made a nomination under Division 3.

Division 3 comprises section 38EC, which provides that the Board may permit contributors to nominate the class of investments, or combination of classes of investments, for the purposes of determining a rate of return under Part 5A. A class of investments, or combination of classes of investments, nominated by an investor for the purposes of determining a rate of return under Division 1 must be the same as any class of investments (or combination) nominated by the investor for the purposes of determining a rate of return under Division 2. The Board may charge a fee to a contributor's contribution account if the contributor, after nominating a class of investments under subsection (1), subsequently varies the nominated class of investments.

Clause 10: Amendment of section 40—Effect of workers compensation etc on pension

Clause 10 amends section 40, which deals with the consequences for a contributor under the age of 60 who is receiving, or entitled to receive, a pension under the Act and is also receiving, or entitled to receive, income that consists of weekly payments of workers compensation or is from remunerative activities engaged in by the contributor. Section 40(1) is amended by this clause so that the relevant provisions of subsection (1) apply in relation to a contributor *of any age* entitled to a pension and in receipt of (or entitled to receive) weekly payments of workers compensation or a *relevant contributor* who is receiving, or entitled to receive, income from remunerative sources. "**Relevant contributor**" is defined in new subsection (6) to mean a contributor who has not reached the age of 60 and whose entitlement to receive a pension under the Act does not relate to a pension granted on the basis of his or her age.

Section 40(4) currently provides that a contributor who has commuted his or her entitlement to weekly payments of workers compensation will be taken, for the purposes of section 40, to be receiving those payments. The amendment made by this clause to subsection (4) has the effect of excluding contributors who have reached the age of 60, and spouses of deceased contributors who would have reached that age if they were still alive, from this deeming provision. That is, a contributor who has reached the age of 60 and has redeemed his or her entitlement to weekly payments of workers compensation will not be taken to be in receipt of ongoing payments.

The remaining amendments to section 40 are consequential on the recasting of subsection (1).

Clause 11: Repeal of section 42B

Section 42B is redundant as a consequence of the enactment by clause 9 of section 38EA and is therefore repealed.

Clause 12: Amendment of section 48—Power to obtain information

The Board may, from time to time, require a workers compensation authority to supply the Board with any information it reasonably requires for the purposes of the Act. For the purposes of any other Act or law, a workers compensation authority will be taken, when acting under section 48, to be disclosing information in the course of official duties. The term *workers compensation authority* includes any person or authority with power to determine or manage claims for workers compensation.

Part 3—Amendment of Southern State Superannuation Act 1994

Clause 13: Amendment of section 3—Interpretation

This clause inserts into the *Southern State Superannuation Act 1994* a number of new definitions necessary for the purposes of the measure. A "**deferred superannuation contributions surcharge**" in relation to a member is the amount the member is liable to pay the Commissioner of Taxation under section 15(6) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* of the Commonwealth. A "**surcharge notice**" is a notice issued by the Commissioner of Taxation under section 15(7) of that Act.

Clause 14: Insertion of sections 35AA, 35AAB and 35AAC

A number of new sections are inserted by this clause.

35AA.Commutation to pay deferred superannuation contributions surcharge—member

A member liable to pay a deferred superannuation contributions surcharge may apply to the South Australian Superannuation Board to receive part of his or her benefit in the form of a commutable pension and then commute the pension. A member who has become entitled to a benefit, or will shortly become entitled to a benefit, may estimate the amount of the surcharge and request the Board to withhold that amount from the benefit and pay the balance to him or her.

The Board must, after receiving advice from the member that a surcharge notice has been issued, convert the withheld amount into a pension (unless the amount of the surcharge is less then the withheld amount, in which case only a portion of the withheld amount is to be converted), then commute the pension and pay to the member the lump sum resulting from the commutation in addition to the balance of the withheld amount.

The Board must comply with a request from a member under section 35A unless it is not satisfied that the resulting lump sum will be applied in payment of the surcharge or the member fails to satisfy the Board that he or she has, or will have, a surcharge liability.

The commutation factors to be applied by the Board in a commutation of a pension will be determined by the Treasurer on the recommendation of an actuary.

35AAB.Commutation to pay deferred superannuation contributions surcharge following death of member

If a member dies after having made a request under section 35AA but before receiving a surcharge notice, or after having received a surcharge notice but before requesting commutation of his or her pension, the member's spouse or legal representative may make application to the Board to receive the amount withheld by the Board on behalf of the deceased member in the form of a commutable pension and to fully commute the pension.

If a member dies without having made a request under section 35AA, the member's spouse or legal representative may estimate the amount of the surcharge the spouse or estate will become liable to pay and request the Board to withhold that amount from the benefit and pay the balance to the spouse or estate.

The procedures to be applied in relation to commutation and payment under section 35AAB are similar to those applicable under section 35AA.

35AAC.Withheld amount

An amount withheld by the Board under section 35AA or 35AAB must be retained in the Southern State Superannuation (Employers) Fund. The amount will be credited with interest at the rate of return determined by the Board under section 11. The amount may be paid to the member (or spouse or legal representative) in accordance with section 35AA or 35AAB or at the direction of the Board if the Board has not, within 2 years of withholding the amount, been advised that a surcharge notice has been issued in respect of the member or considers, at any time, there is other good reason for doing so.

Clause 15: Amendment of section 41—Power to obtain information

The Board may, from time to time, require a workers compensation authority to supply the Board with any information it reasonably requires for the purposes of the Act. For the purposes of any other Act or law, a workers compensation authority will be taken, when acting under section 41, to be disclosing information in the course of official duties. The term *workers compensation authority* includes any person or authority with power to determine or manage claims for workers compensation.

Part 4—Amendment of Superannuation Act 1988

Clause 16: Amendment of section 4—Interpretation

This clause inserts into the interpretation section of the *Superannuation Act 1988* a number of new definitions necessary for the purposes of the measure. A "**deferred superannuation contributions surcharge**" in relation to a contributor is the amount the contributor is liable to pay the Commissioner of Taxation under section 15(6) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* of the Commonwealth/. A "**surcharge notice**" is a notice issued by the Commissioner of Taxation under section 15(7) of that Act.

Clause 17: Amendment of section 20A—Contributors' accounts

This clause amends section 20A by inserting new subsection (4a), which has the effect of allowing a new scheme contributor to nominate a class of investments, or combination of classes of investments, for the purpose of determining the rate of return. The Board may permit new scheme contributors to do so on such terms and conditions as the Board thinks fit. Subsection (4b) provides that a fee, to be fixed by the Board, may be charged by the Board if a contributor varies a nominated class of investments.

Clause 18: Insertion of sections 32B, 32C and 32D

A number of new sections are inserted by this clause.

32B.Commutation to pay deferred superannuation contributions surcharge—contributor

A contributor liable to pay a deferred superannuation contributions surcharge may apply to the South Australian Superannuation Board to receive part of his or her benefit in the form of a commutable pension and then commute the pension. A contributor who has become entitled to a benefit, or will shortly become entitled to a benefit, may estimate the amount of the surcharge and request the Board to withhold that amount from the benefit and pay the balance to the contributor.

The Board must, after receiving advice from the contributor that a surcharge notice has been issued, convert the withheld amount into a pension (unless the amount of the surcharge is less then the withheld amount, in which case only a portion of the withheld amount is to be converted), then commute the pension and pay

to the contributor the lump sum resulting from the commutation in addition to the balance of the withheld amount.

The Board must comply with a request from a contributor under section 32B unless it is not satisfied that the resulting lump sum will be applied in payment of the surcharge or the contributor fails to satisfy the Board that he or she has, or will have, a surcharge liability.

The commutation factors to be applied by the Board in a commutation of a pension will be determined by the Treasurer on the recommendation of an actuary.

32C.Commutation to pay deferred superannuation contributions surcharge following death of contributor

If a contributor dies after having made a request under section 32B but before receiving a surcharge notice, or after having received a surcharge notice but before requesting commutation of his or her pension, the contributor's spouse or legal representative may make application to the Board to receive the amount withheld by the Board on behalf of the deceased contributor in the form of a commutable pension and to fully commute the pension.

If a contributor dies without having made a request under section 32B, the contributor's spouse or legal representative may estimate the amount of the surcharge the spouse or estate will become liable to pay and request the Board to withhold that amount from the benefit and pay the balance to the spouse or estate.

The procedures to be applied in relation to commutation and payment under section 32C are similar to those applicable under section 32B.

32D.Withheld amount

An amount withheld by the Board under section 32B or 32C must be paid by the Treasurer into the Consolidated Account or a special deposit account established by the Treasurer for that purpose. The amount will be charged against the relevant contributor's contribution account as if the amount had been paid to the contributor and will be credited with interest at a rate determined by the Treasurer. The amount may be paid to the contributor in accordance with section 32B or 32C or at the direction of the Board if the Board has not, within 2 years of withholding the amount, been advised that a surcharge notice has been issued in respect of the contributor or considers, at any time, there is other good reason for doing so.

Clause 19: Amendment of section 40A—Commutation to pay deferred superannuation contributions surcharge

The amendments made to section 40A by clause 19 are consequential on the substantive amendments made to the Act

Clause 20: Amendment of section 45—Effect of workers compensation etc on pension

Clause 20 amends section 45, which deals with the consequences for a contributor who has not reached the age of retirement, is receiving, or entitled to receive, a pension under the Act and is also receiving, or entitled to receive, income that consists of weekly payments of workers compensation or income from remunerative activities engaged in by the contributor. Section 45(1) is amended by this clause so that the relevant provisions of subsection (1) apply in relation to a contributor of *any age* entitled to a pension and in receipt of (or entitled to receive) weekly payments of workers compensation or a relevant contributor who is entitled to a pension and is receiving income from remunerative activities engaged in by him or her. "**Relevant contributor**" is defined in new subsection (7) to mean a contributor who has not reached the age of retirement and whose entitlement to receive a pension under the Act does not relate to a pension granted on the basis of his or her age.

Section 45(4) currently provides that a contributor who has commuted his or her entitlement to weekly payments of workers compensation will be taken, for the purposes of section 45, to be receiving those payments. This amendment to subsection (4) has the effect of excluding contributors who have reached the age of retirement, and spouses of deceased contributors who would have reached that age if they were still alive, from this deeming provision. That is, a contributor who has reached the age of retirement and has redeemed his or her entitlement to workers compensation will not be taken to be in receipt of ongoing payments.

The remaining amendments to section 45 are consequential on the recasting of subsection (1).

Clause 21: Amendment of section 54

The Board may, from time to time, require a workers compensation authority to supply the Board with any information it reasonably requires for the purposes of the Act. For the purposes of any other Act or law, a workers compensation authority will be taken, when acting under section 54, to be disclosing information in the course of official duties. The term *workers compensation authority* includes any person or authority with power to determine or manage claims for workers compensation.

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

PROFESSIONAL STANDARDS BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is part of the third stage of the Government's legislative response to the insurance crisis. Over the last 12 months and longer, the Government has been approached by professional and occupational groups worried about steep increases in the cost of professional indemnity insurance. The Government has been told that as a result of these cost increases, risky but important professional services may either become prohibitively expensive to insure or be withdrawn from sale. The Government was concerned at this because of the consequences for the public if professional services become uninsurable or unavailable. It therefore invited comment on the possibility of professional standards legislation, such as that in force in New South Wales, first in a discussion paper published in February and later in a consultation letter sent out in October, 2003. Both consultations resulted in support.

The Government has meanwhile also taken part in national discussions that have resulted in agreement by all jurisdictions to enact consistent professional standards legislation modelled on the New South Wales *Professional Standards Act*. Accordingly, this Bill comes before the House. It is based on the New South Wales Act, though some modifications have been made.

In summary, the Bill would enable an occupational or trade group (not limited to a profession in the strict sense) to apply to register a professional standards scheme. A registered scheme would apply to all the members of the professional association, or to particular classes of members specified in the scheme. It would have a life of up to five years, subject to extension. In essence, a scheme would require those to whom it applies to adopt specified risk management practices and adhere to a complaints and disciplinary regime, so as to improve professional standards and reduce the likelihood of claims. In return, the scheme would cap the professional liability of the practitioners covered at a figure not less than the minimum cap fixed by law, in this case $500 000. The scheme would then require practitioners who wanted the benefit of the cap to maintain insurance cover or business assets, or a combination of these, sufficient to meet claims up to the cap.

The Bill contemplates the establishing of a Professional Standards Council. The Council is to consider proposed schemes and decide whether they should receive approval. The Bill sets out, by clause 11, the matters to be considered by the Council. They include the claims history of the members of the association, the cost and availability of insurance to those people, the effect of the scheme on people who may be affected by it, for example, consumers, and the comments and submissions made by the public after consultation on the scheme. Having regard to these and other matters, the Council would decide whether to approve the scheme.

Schemes can be approved for any profession, occupation or trade for liability for breach of a duty of care resulting in economic loss. The Bill would not, however, allow the limitation of liability for injury (even if the injury caused economic loss). This means that health professionals, carers or other practitioners whose chief liability risk is injury would not be able to limit that liability. The same approach has been taken in other jurisdictions.

If the Council approves a scheme, it must then be considered by the Minister, who may authorise the scheme by publication in the Gazette. Once this occurs, the scheme will take effect on a date set in the Gazette notice or, if no date is set, two months from the date of publication of the notice.

The scheme can, however, be disallowed by Parliament in the same way as subordinate legislation. It can also be the subject of a legal challenge, before it starts, by an affected person, on the ground that there has been a failure to comply with the Act.

A person covered by an approved scheme would have to disclose this in all advertising materials distributed and all business letters sent to clients, as well as on any website maintained by the business. Failure to do so will be a criminal offence. This is intended to ensure that consumers can make an informed choice about whether they wish to deal with a professional whose liability is capped.

The Bill does not, however, permit a professional and client to contract out of a scheme. If a professional is covered by a scheme, that scheme will apply to all the work done by the professional and falling within the scope of the scheme. I point out, however, that unlike the approach taken in interstate models, this will not affect a cause of action arising out of a contract made before the commencement of the Act, unless the parties otherwise agree.

The Bill is intended to strike a balance between maintaining adequate consumer protection against harm and keeping risky but vital professional services available to consumers. Note that, if a client sues a professional in negligence, in the absence of professional standards legislation, a consumer may not have any recourse because the professional may not have adequate insurance or assets to meet such a claim. The proposed legislation therefore increases protection to such consumers, by ensuring that a claim can be met, at least in part. It should also help to raise the standards of practitioners so that they are more alert to risks and better able to avoid them. It is about prevention at least as much as cure.

The Government has consulted widely on the measure, which appears to have support from stakeholders. Several commentators have argued that it should be accompanied by a complementary measure, proportionate liability. The Government has indicated its intention to introduce legislation for proportionate liability in economic loss and property damage claims, which I expect will be the subject of a future Bill.

The present Bill is consistent, though not identical, with measures taken in New South Wales and Western Australia, and with a Bill now before the Victorian Parliament. Similar measures can be expected to be introduced into other Australian Parliaments after the discussions of Insurance Ministers nationally. Complementary amendments to the Commonwealth *Trade Practices Act*, the *Corporations Act* and the *ASIC Act* are also expected in view of commitment given by the Federal Government to support State and Territory professional standards legislation. This will remove the principal impediments to the effectiveness of professional standards legislation.

I point out that it is the intention of Ministers that the legislation in progress around Australia should be complementary and should result in a national scheme relying on a single Professional Standards Council giving advice to all Ministers. Discussions are continuing and it is possible that some amendments to the measure could be required at a later stage to achieve these ends.

As a result of the measures being taken by States and Territories and by the Commonwealth, it is hoped that professionals across Australia will be encouraged to adopt schemes that will improve the quality and safety of their service to clients, while protecting the professional from exposure to catastrophic liability risks in the course of professional practice. The measure should, therefore, offer benefits both to professionals and to their clients.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides for the commencement of the Act by proclamation.

3—Objects of Act

This clause specifies that the objects of the Act are to—

- enable the creation of schemes to limit the civil liability of professionals and members of occupational associations and groups; and
- facilitate the improvement of occupational standards of such persons; and
- protect the consumers that receive their services; and
- establish the Professional Standards Council (the Council) to supervise the preparation and approval of schemes and to assist in the improvement of occupational standards and protection of consumers.

4—Interpretation

This clause contains definitions for the purpose of the Act. Some key definitions are as follows—

occupational association is defined as a body corporate that represents the interests of persons who are members of the same occupational group and membership of which is limited principally to members of that occupational group;

occupational group includes a professional group and a trade group;

occupational liability is defined as civil liability that arises directly or vicariously, in tort, contract or otherwise, from any act or omission by a member of an occupational association performing his or her occupation;

scheme is defined as a scheme for limiting the occupational liability of members of an occupational association.

5—Application of Act

This clause provides that the Act will apply to actions under the law of torts, for breach of a contractual duty of care, or under statute. The Act will not apply for damages arising from—

(a) the death of, or personal injury to, a person; or
(b) the acts or omissions of a legal practitioner in acting for a client in a personal injury claim; or
(c) an intentional tort; or
(d) a breach of trust; or
(e) fraud or dishonesty.

The Act does not apply to liability that may be the subject of proceedings under part 18 of the *Real Property Act 1886*.

The Act will not affect contractual arrangements entered into before the commencement of this Act (unless the parties make provision for the application of the Act after its commencement).

6—Relationship of this Act to other laws

This clause provides that to the extent of any inconsistency, Parts 3, 4 and 5 are to take effect subject to the provisions of other Acts. Otherwise, the Act is to have effect despite any other law to the contrary.

7—Act binds Crown

This clause provides that the Act binds the Crown. The Crown is not liable to be prosecuted for an offence under this Act.

Part 2—Limitation of liability

Division 1—Making, amendment and revocation of schemes

8—Preparation and approval of schemes

This clause provides that the Council may approve a scheme, upon application by an occupational association, to limit the occupational liability of its members. An application may be prepared by the Council (upon the request of the association) or by the occupational association itself.

9—Public notification of schemes

This clause requires the Council, before approving a scheme, to publish a notice in a daily newspaper circulating throughout the State. This notice must explain the nature and significance of the scheme, advise where a copy of the scheme may be obtained or inspected and invite comments and submissions not less than 28 days after publication of the notice.

10—Making of comments and submissions concerning schemes

This clause allows any person to make a comment or submission concerning a scheme following publication of the notice. Any comment or submission must be made within the period specified for that purpose in the notice or such further time allowed by the Council.

11—Consideration of comments, submissions and other matters

This clause lists matters the Council must consider before approving a scheme. These matters include all comments and submissions made under clause 10, the position of persons who may be affected by a scheme, the nature and level of claims made against members of the occupational association relating to occupational liability, risk management strategies of the occupational association concerned, the means by which those strategies are intended to be implemented, the cost and availability of insurance against occupational liability, the requisite insurance standards referred to in clause 29 and provisions relating to complaints and disciplinary measures. The Council may consider other relevant matters.

12—Public hearings
This clause enables the Council to conduct public hearings concerning a scheme. The public hearing may be conducted if the Council considers it appropriate and in a manner determined by the Council.
13—Submission of schemes to Minister
This clause provides for the Council to submit schemes it has approved to the responsible Minister.
14—Gazettal, tabling and disallowance of schemes
This clause enables the Minister, after carrying out the consultation required by clause 13, to authorise the publication of a scheme submitted by the Council in the Gazette. A scheme will then be tabled in Parliament and may be disallowed as if the scheme were a regulation.
15—Commencement of schemes
This clause provides that a scheme will commence on a date specified by the Minister or, if no date is specified, after the expiration of 2 months after Gazettal, unless the scheme is subject to any order of the Supreme Court (the court) under clause 16.
16—Challenges to schemes
This clause enables a person who is, or is reasonably likely to be, affected by a scheme to challenge its validity in the court on the ground that it does not comply with the Act. An application for an order is to be made before the scheme commences. The court may stay the commencement of the scheme until it makes a further order. The court can make an order to void a scheme, decline to make an order, give directions to ensure the scheme may commence or make any other order that it sees fit.
17—Review of schemes
This clause provides that the Council, on direction of the Minister or on its own initiative, may at any time review the operation of a scheme. The Council must comply with a direction given by the Minister. A review may be conducted to determine whether a scheme should be amended or revoked or whether a new scheme should be made. The Council may also review the operation of a scheme if an occupational association proposes altering the standards applying to an insurance policy that would, in the Council's opinion, be less stringent than standards previously approved by the Council.
18—Amendment and revocation of schemes
This clause allows an occupational association, the Council (on application of an occupation association), or the Minister upon a direction to the Council, to prepare an amendment or revocation of a scheme that relates to its members. The Council is required to approve such an amendment or revocation of a scheme. Further, clause 18 makes the provisions of clauses 8 to 16 apply to the amendment and revocation of schemes.
Division 2—Contents of schemes
19—Persons to whom scheme applies
This clause provides that a scheme can apply to all persons within an occupational association or to a specified class or classes of persons within that association. An occupational association may exempt a person from the scheme on application by that person.
20—Officers or partners of persons to whom a scheme applies
This clause specifies that where a scheme applies to a person or a body corporate, the scheme will apply to each partner of the person or each officer of the body corporate. However, the scheme will not apply to a partner of that person or officer of the body corporate, if the partner or officer is entitled to be a member of the same occupational association as the person, but is not a member of that occupational association.
21—Employees of persons to whom a scheme applies
This clause specifies that a scheme will apply to each employee of a person to whom the scheme applies, unless the employee is entitled to be a member of the same occupational association as the person, and the employee is not a member.
22—Other persons to whom a scheme applies
This clause extends the application of a scheme to persons who are prescribed by regulations, for the purposes of clause 31, to be associated with persons to whom a scheme applies.
23—Limitation of liability by insurance arrangements
This clause provides that a person to whom the scheme applies will not be liable for damages above the amount of the monetary ceiling specified in the scheme as part of a proceeding relating to occupational liability. However, the person must be able to satisfy the court that the person has the benefit of an insurance policy—

(a) that insures the person against that occupational liability; and

(b) under which the amount payable in respect of occupational liability (including any amount payable by way of excess) is not less than the amount of the monetary ceiling specified in the scheme, relating to the class of person and kind of work, at the time the act or omission giving rise to the cause of action occurred.

24—Limitation of liability by reference to amount of business assets
This clause provides that a person to whom the scheme applies will not be liable for damages above the amount of the monetary ceiling specified in the scheme as part of a proceeding relating to occupational liability. However, the person must be able to satisfy the court that—

(a) the person—

(i) has business assets; and the net current value of these business assets is not less than the amount of the monetary ceiling specified in the scheme at the time the act or omission giving rise to the cause of the action occurred; or

(ii) has business assets and the benefit of an insurance policy that insures the person against that occupational liability (including any amount payable by way of the excess); and

(b) if combined, the value of these business assets and the amount payable under the insurance policy, is not less than the amount of the monetary ceiling specified in the scheme, relating to the class of person and kind of work, at the time the act or omission giving rise to the cause of action occurred.

25—Limitation of liability by multiple of charges
This clause provides that a person to whom the scheme applies will not be liable in damages above the "limitation amount" specified in the scheme as part of a proceeding relating to occupational liability. A scheme may also specify a minimum cap that may be higher than the "limitation amount"; in such instances, damages will be limited to the amount specified by the scheme as the minimum cap. However, the person must be able to satisfy the court that—

(a) the person—

(i) has the benefit of an insurance policy—

· that insures the person against that occupational liability; and

· under which the amount payable in respect of occupational liability (including the amount payable by way of excess), relating to the cause of action, is not less than the "limitation amount" at the time the act or omission giving rise to the cause of the action occurred; or

(ii) has business assets and the net current value of these business assets is not less than the "limitation amount"; or

(iii) has business assets and the benefit of an insurance policy that insures the person against that occupational liability; and

(b) if combined, the value of these business assets and the amount payable under the insurance policy in respect of occupational liability (including the amount payable by way of excess), is not less than the "limitation amount".

The "limitation amount" means the reasonable charge for the services that the person provided or failed to provide, to which the action relates, multiplied by the multiple specified in the scheme that relates to the class of person and kind of work.
In determining the amount of a reasonable charge, a court must have regard to—

(a) the ordinary scale of charges accepted by the occupational association; or

(b) if there is no such scale, the amount that a competent person of the same qualifications and experience would be likely to charge in the same circumstances.

This clause does not operate to limit the liability of a person, for an amount of damages less than the amount specified for that purpose in the scheme.
26—Specification of different limits of liability

This clause enables a maximum liability to apply to all cases to which the scheme applies or different amounts for different cases, classes or purposes. An occupational authority is also granted a discretionary authority to specify a higher maximum liability than would otherwise apply.

27—Combination of provisions under sections 23, 24 and 25

This clause provides that where clause 25 and clause 23 and/or clause 24 apply, at the same time, to a person in relation to the same occupation, the scheme must specify that damages will be determined under clause 25. However, any damages awarded must not exceed the monetary ceiling specified in the scheme in accordance with clause 23 or 24.

28—Amount below which liability cannot be limited

A limitation on liability for damages, arising from a single claim, must not be less than $500 000.

In determining the liability amount, the Council must have regard to the number and amount of claims made against persons within the occupational association and the need to provide adequate consumer protection.

29—Insurance to be of requisite standard

This clause requires an insurance policy to be of a kind which complies with standards determined by the occupational association concerned. An occupational association may submit to the Council for approval revised standards applicable to an insurance policy while a scheme remains in force. The Council retains discretion to approve or refuse a proposal submitted to it by an occupational association. Where the Council refuses to approve a proposal, the standards remain as previously determined by the occupational association.

Division 3—Effect of schemes

30—Limit of occupational liability by schemes

This clause provides that a scheme limits the occupational liability of a person to whom a scheme applies from the date of its commencement, for an act or omission, for the period in which the scheme remains in force.

A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with clause 19.

31—Limitation of amount of damages

This clause provides that the limitation of liability is a limitation of the amount of damages which may be awarded for a single claim. It is not a limitation of the amount of damages which may be awarded for all claims arising out of a single event. However, claims by persons who have a joint interest and claims by the same person arising out of a single event against associated persons (such as body corporate officers, partners, co-employees and persons in an employer/employee relationship) are to be treated as a single claim.

32—Effect of scheme on other parties to proceedings

This clause provides that the scheme does not apply to limit the liability of a party to proceedings if the scheme does not apply to that person.

33—Proceedings to which a scheme applies

This clause provides that a scheme in force under the Act will apply only to liability that arises after the scheme's commencement.

34—Duration of scheme

This provides that an application of a scheme is to cease after a period determined by the Council of not more than 5 years, in most cases, so that schemes are regularly reviewed by the Council. The Council may revoke or extend a scheme, by notice, for a period not greater than 12 months.

35—Notification of limitation of liability

This clause requires a person whose civil liability is limited under Part 2 to disclose that fact on all documents given by the person to a client or prospective client that promote or advertise the person or the person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation, and similar documents. The disclosure will also be required on any website established by the person to promote his or her business. Further, a member of a scheme is required to provide a copy of the scheme to a client or prospective client where a request is made. Such documents do not include a business card.

Part 3—Compulsory insurance

36—Occupational association may compel its members to insure

This clause enables an occupational association to compel its members to hold insurance against occupational liability and may specify different insurance arrangements for different categories of members.

37—Monitoring claims

This clause enables an occupational association to establish committees to monitor and analyse claims against its members. Occupational associations may establish a common committee. Committee members need not be members of the occupational association concerned.

An occupational association (or such committee) can provide to its members, practical advice to minimise claims for occupational liability.

Part 4—Risk management

38—Risk management strategies

This clause requires an occupational association that seeks Council approval to a scheme to provide, as part its application, information on proposed risk management strategies and detail the means by which those strategies intend to be implemented in respect of its members.

39—Reporting

This clause requires an occupational association to report annually (and more frequently if requested by the Council) as to the implementation, monitoring and changes to its risk management strategies. The occupational association's annual report must report findings or conclusions of a committee established by it.

40—Compliance audits

This clause provides that the Council may conduct, or require the occupational association to conduct, a compliance audit of its members in respect of the association's risk management strategies at any time. The association, and its members, is required to give the Council information and/or documents that the Council reasonably requires to conduct the compliance audit. The Council is required to provide a copy of the audit report to the association. Where the association is responsible for conducting a compliance audit, it is required to provide a copy of the audit report to the Council.

Part 5—Complaints and disciplinary matters

41—Complaints and discipline code

This clause enables the occupational association to incorporate, as part of a scheme, the code set out in Schedule 1. The occupational association may amend the code before its approval by the Council. The code contains provisions concerning the making and determination of complaints against members of occupational associations and the taking of disciplinary measures against members.

Part 6—The Professional Standards Council

Division 1—Establishment of Council

42—Establishment of Council

This clause establishes a body corporate to be known as the Professional Standards Council with the full legal capacity of a body corporate.

Division 2—Membership and procedure of Council

43—Membership of Council

This clause enables the Minister to appoint persons to the Council. Membership of the Council is to comprise of up to 11 persons having appropriate experience, skills and qualifications.

44—Provisions relating to members of Council

This clause is a formal provision that gives effect to Schedule 2. That Schedule contains detailed provisions relating to the appointment, term and tenure of office and remuneration of members.

45—Provisions relating to procedure of Council

This clause is a formal provision that gives effect to Schedule 3. That Schedule contains detailed provisions relating to the procedures and determinations of the Council.

Division 3—Functions of Council

46—Functions of Council

This clause specifies the functions of the Council. The Council is to—

- advise the Minister concerning the publication in the Gazette of a scheme, or of any amendments or a notice of revocation, submitted by the Council to the Minister;
- advise the Minister on matters relating to the operation of the Act;
- advise, encourage and assist occupational associations regarding insurance policies, the improvement of occupational standards and the development of self-regulation of such occupational associations;

· monitor the occupational standards of members of occupational groups and compliance, by an occupational association, with its risk management strategies;

· collect and analyse information concerning the occupational standards of persons to whom the Act applies.

Division 4—Miscellaneous

47—Requirement to provide information

This clause enables the Council to require an occupational association to supply it with information needed in order to exercise its functions.

48—Referral of complaints

This clause enables an occupational association to refer to the Council any complaint or other evidence of a member or former member of the association who has committed an offence under clause 35. It is also the intention of this clause to confer upon an occupational association, any person acting under its direction and the association's executive body, a partial immunity against an action, liability, claim or demand where the act is done in good faith pursuant to this clause (for example, in an action for defamation).

49—Committees of Council

This clause enables the Council to establish Committees to assist it in the exercise of its functions. The Council is responsible for determining the procedures and arrangements for committee meetings and the conduct of business.

50—Engagement of consultants

This clause enables the Council or a committee to engage the services of suitably qualified and experienced consultants.

51—Accountability of Council

This clause requires the Council to exercise its functions in accordance with the general direction and control of the Minister and any written directions given by the Minister. The Minister may also direct the Council to provide, or provide access to, any information in its possession relating to a matter specified in the direction.

52—Professional Standards Council Fund

This clause establishes the *Professional Standards Council Fund*. Any money appropriated by the Parliament for the purposes of the Fund, any fees paid to the Council and any other money to which the Council is lawfully entitled must be paid into the Fund. The Council may expend this Fund to carry out its functions under the Act.

Part 7—Miscellaneous

53—Characterisation of Act

This clause provides that this Act is to be regarded as part of the substantive law of the State, so that when the law of the State is applied in another jurisdiction, the limitation on liability provided for in the Act will also be applied.

54—No contracting out of Act

This clause prevents persons to whom a scheme applies from contracting out of the provisions of the Act after the scheme applies to them.

55—No limitation on other insurance

This clause provides that the Act does not limit the insurance arrangements a person may make, apart from those arrangements that are made for the purposes of the Act.

56—Minister's power of delegation

This clause provides a Ministerial power of delegation.

57—Regulations

This clause relates to the making of regulations for the purposes of the measure.

58—Review of Act

This clause requires the Act to be reviewed within 5 years so as to ensure that the policy objectives of the Act retain their validity.

Schedule 1—Model code

This schedule contains the *Occupational Associations (Complaints and Discipline) Code*.

Schedule 2—Provisions relating to members of Council

This schedule contains provisions relating to the members of the Council.

Schedule 3—Provisions relating to the procedure of the Council

This schedule contains provisions relating to the procedure of the Council.

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

STATUTES AMENDMENT (COURTS) BILL

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

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this bill be now read a second time.

The government is again delivering on a key energy commitment through new legislation to establish the Australian Energy Market Commission to strengthen the quality, timeliness and national character of the governance of Australia's energy markets for the benefit of South Australians and all Australians. The Australian Energy Market Commission Establishment Bill will establish a new commission with responsibility for rule-making and market development across the Australian energy sector. As honourable members would be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets in response to the Council of Australian Governments Energy Market Review 2002 (the Parer review). In December 2003, the Ministerial Council on Energy responded to the Parer review by finalising policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on Energy Market Reform. All first ministers, including the South Australian Premier, endorsed the Ministerial Council's Report.

The Ministerial Council on Energy agreed that the existing legislative framework giving effect to the rules of the National Electricity Market and the network access regimes for electricity and gas are to be simplified and amended to clearly establish the council's responsibility for national energy market governance and policy. Accordingly, a national legislative framework is being established on a collaborative basis between the commonwealth, states and territories under a new inter-governmental agreement, the Australian Energy Market Agreement, which has been endorsed by the Ministerial Council on Energy.

It is planned that all first ministers will execute this agreement within the next two weeks. The Ministerial Council on Energy is to assume a national policy oversight role for the Australian energy market, including for electricity and gas, superseding the National Electricity Market Ministers Forum. Two new regulatory bodies are to be created: the Australian Energy Regulator and the Australian Energy Market Commission. The council will oversee the policy framework under which the new regulatory bodies will operate but will not be engaged directly in the day-to-day operation of the market or conduct of the two agencies.

Under the Australian Energy Market Agreement, the Australian Energy Regulator will be established as the national energy market regulator, including both electricity and gas. The AER will become responsible for the regulation of distribution and retailing (other than retail pricing) during 2006, following development of an agreed national framework. The Australian Energy Regulator will be established through commonwealth legislative amendments to the Trade Practices Act 1974. Although it will operate under the

umbrella of the Australian Competition and Consumer Commission, it will be established separately and be independent in its deliberations.

South Australia is the lead legislator with respect to the Australian Energy Market Commission. As such, the new commission will be established by this bill in the South Australian parliament, though it will be physically located in Sydney. The Australian Energy Market Commission will be given powers by the amended National Electricity Law and Gas Pipelines Access Law which, in turn, will be applied by the amended Application Act in the state and territories. In this way, the Australian Energy Market Commission Establishment Bill 2004 will give rise to a new national rule making and market development agency which, over the next year, will have jurisdiction across Australia.

The Australian Energy Market Commission will be accountable to and subject to the power of policy direction from the MCE. The object of the Australian Energy Market Commission is to make code changes, undertake reviews and carry out other Australian energy market development functions as conferred on it under relevant commonwealth state and territory legislation. The electricity code's changed role of the existing national electricity code administrator will be transferred to the Australian Energy Market Commission as will the functions of the existing national gas pipeline advisory committee and the gas code registrar.

The Australian Energy Market Commission is a South Australian body, and will be subject to South Australian laws in relation to financial management and accountability and annual reporting. There will be a specific provision in the National Electricity Law and Gas Pipelines Access Law for a judicial review of decisions by the Australian Energy Market Commission.

The Australian Energy Market Commission will focus on electricity during the 2004-05 financial year, with gas following a year later. Similarly, the Australian Energy Regulator will only have initial responsibility for national electricity market matters. Honourable members should note that some elements that would normally be expected to appear in such an establishment bill, do not appear in this bill as they will instead be addressed in amendments for the National Electricity Law and Gas Pipelines Access Law. The specific energy objectives of the Australian Energy Market Commission, the commission's powers to request information from market participants, immunity from personal liability for commissioners and the mechanism for policy oversight by the Ministerial Council of Energy will appear in the reformed National Electricity Law and Gas Pipelines Access Law.

Under these national energy laws, the Ministerial Council on Energy will be provided with the power to issue policy directions to the Australian Energy Market Commission in respect to undertaking and electricity or gas market review. Funding arrangements for the Energy Market Commission do not appear in this bill, but will be addressed in separate legislation. Both the Australian Energy Market Commission and the Australian Energy Regulator will be funded by an industry levy.

Prior to the establishment of such a levy, New South Wales, on behalf of the national electricity market jurisdictions, will fund the Australian Energy Market Commission on an agreed basis. Any surplus from the National Electricity Code Administrator, once it ceases operation, will be passed to New South Wales to offset some of the interim expense.

Electricity and natural gas are essential services that impact upon the daily lives of all Australians. Reliable supply of electricity and gas and efficient prices is essential to the community and to the ongoing competitiveness of South Australian businesses—small and large.

The long-term interest of consumers will be established as a primary objective of the Australian Energy Market Commission through the national energy laws. Through the Ministerial Council on Energy, all states and territories have undertaken to work towards establishing the Australian Energy Regulator and the Australian Energy Market Commission by 1 July 2004. As lead legislator in respect of the Australian Energy Market Commission, South Australia is in the forefront of national energy market reform. Introduction of this bill to the South Australian parliament at this time will maximise South Australia's capacity to meet this undertaking. This has necessitated the bill being introduced prior to agreement by the Ministerial Council on Energy.

Any differences between this bill and that agreed by the Ministerial Council on Energy will be introduced as amendments in the House of Assembly. The government is also seeking to enact the Statutes Amendment (Electricity and Gas) Bill which will further strengthen the already robust regulatory regime established by this government in preparation for the transition of small customers of electricity and, shortly, gas into the fully competitive regional markets. That bill responds to the recommendations of the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, as contained in his March 2004 report, by ensuring a robust and transparent process for the setting of justifiable standing contract prices. The introduction of these two bills into the South Australian parliament at this time clearly illustrates this government's commitment to improving energy market regulation both at a state and national levels for the benefit of all South Australians and all Australians. I commend the Australian Energy Market Commission Establishment Bill 2004 to honourable members, and I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

Definitions are provided for terms used in the measure.

In the Bill, the Australian Energy Market Commission is referred to as the ***AEMC***.

MCE is the Ministerial Council on Energy established on 8 June 2001, being the Council of Ministers with primary carriage of energy matters at national level comprising Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory.

MCE (States and Territories) is the MCE when making decisions, in accordance with its procedures, with the participation only of Ministers representing the States and Territories.

National Energy Law is—

- a National Electricity Application Act
- the National Electricity Law
- the National Electricity Regulations
- the National Electricity Code
- a Gas Pipelines Access Application Act
- the Gas Pipelines Access Law
- the Gas Pipelines Access Regulations
- the National Third Party Access Code for Natural Gas Pipeline Systems.

Jurisdictional Energy Law is a law of the Commonwealth, or a State or Territory of the Commonwealth, that relates to energy and is prescribed by regulation.

4—Crown to be bound
The measure is to bind the Crown, not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
5—Australian Energy Market Commission
The Australian Energy Market Commission is established as a body corporate with the usual features of a body corporate.
6—Functions
The AEMC will have the following functions:
- the rule-making, market development and other functions conferred on the AEMC under National Energy Laws or Jurisdictional Energy Laws
- the provision of advice to the MCE as requested by the MCE.

7—Operations outside State
The AEMC may perform its functions and exercise its powers in and outside the State.
8—Objectives
The AEMC will be required to have regard to any relevant objectives set out in National Energy Laws in the performance of its functions.
9—Independence
The AEMC will not be subject to direction by the Minister in the performance of its functions. However, this will not limit any provision of the National Energy Laws about the giving of directions to the AEMC by the MCE.
10—AEMC may publish statements, reports and guidelines
The AEMC may publish statements, reports and guidelines.
11—Memorandum of Understanding
The AEMC may enter into a Memorandum of Understanding with other bodies for the purposes of facilitating and coordinating the performance of its functions.
12—Membership of AEMC
The AEMC is to consist of 3 Commissioners appointed by the Governor on the recommendation of the Minister, of whom—
- 1, who will be appointed to be the Chairperson, will be a person nominated for such appointment by the MCE (States and Territories)
- 1 will be a further person nominated by the MCE (States and Territories)
- 1 will be a person nominated by the Minister of the Commonwealth who is a member of the MCE.

13—Terms and conditions of appointment
A Commissioner will be appointed for a term of 5 years and on conditions as to remuneration and other matters that the Minister has recommended to the Governor in accordance with a resolution of the MCE.
14—Acting Chairperson
Provision is made for appointment of a Commissioner as an acting Chairperson.
15—Vacancies or defects in appointment
An act or proceeding of the AEMC will not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a Commissioner.
16—Chief executive
17—Other staff
Provision is made for the AEMC to employ a chief executive and other staff.
18—Public Sector Management Act not to apply
The *Public Sector Management Act 1995* will not apply in relation to the chief executive and other staff.
19—Consultants
The AEMC is empowered to engage consultants.
20—Delegation
Provision is made for the AEMC to delegate functions or powers to a Commissioner or the chief executive or some other member of the staff of the AEMC.
21—Meetings of AEMC
This clause regulates the procedures for meetings of the AEMC.
22—Disclosure of interest
A Commissioner will be required to disclose any direct or indirect interest in a matter before the AEMC that could conflict with the proper performance of the Commissioner's functions.
23—Common seal and execution of documents
This is the usual provision relating to the fixing of the common seal and the execution of documents.
24—Confidentiality
The AEMC will be required to protect the confidentiality of information given to it in confidence or obtained by compulsion in exercise of its powers. Provision is made for certain authorised uses of such information.
25—Annual performance plan and budget
The AEMC will be required to submit performance plans and budgets to the Minister.
26—Accounts and audit
The AEMC will be required to keep accounts in accordance with the *Public Finance and Audit Act 1987*. The accounts will be audited by the Auditor-General.
27—Annual report
The AEMC will be required to provide annual reports to the Minister and each of the other Ministers who are members of the MCE. The Minister is to table each annual report in Parliament within 12 sitting days after receipt of the report.
28—Regulations
This clause provides for the making of regulations.
Schedule 1—Temporary financial provision
1—Temporary financial provision
The Minister is empowered to give directions to the AEMC requiring the AEMC to enter into specified loan agreements and to make specified payments from its funds.
2—Transfer of assets etc of NECA or NEMMCO
Provision is made for transfer by the regulations to the AEMC of assets or liabilities of NECA or NEMMCO.

The Hon. R.I. LUCAS: Mr Acting President, I rise on a point of order. What is the bill that is required to be considered by this council and does the minisster have a copy of it for members? As a member of the council, I do not have a copy of the bill. I understand that it has been amended in another house. There have been no printed copies made available. What provisions has the minister undertaken to ensure that members have a copy of the amended bill, so we can consider it?

The Hon. P. HOLLOWAY: We certainly have the explanation of the clauses. We also obviously have the bill as it was in another place, and any changes made thereto. I understand the upgraded bill is still being printed.

The Hon. R.I. LUCAS: Can you make arrangements so that you can somehow, through your officers, provide members with an amended copy so that we can look at it?

The Hon. P. HOLLOWAY: Yes, we can do that.

The Hon. SANDRA KANCK: The juggernaut that is competition policy continues on its disastrous journey with this legislation. About eight years ago when we were dealing with legislation for corporatising ETSA and to set up a national electricity market, I pointed out that there would be an army of boards and regulatory bodies that deregulation of electricity would spawn and, indeed, that has happened. It was necessary because profit-taking would have seen corporations looking for loopholes in the market. Indeed, gaming of the market, although it had not been given that name at the time, was something that the Democrats predicted.

After the Olsen government announced its intention to privatise ETSA in February 1998, the Democrats and I conducted a public inquiry into the wisdom of that decision. One of the wisest people I met with as part of that investigation was Bruce Dinham, a former head of ETSA. It is a pity that more people, including the then Liberal government, did not pay attention to what he had to say. The consequence of our investigation was a decision to oppose that privatisation. We warned that electricity prices would go up and that service levels would go down. Competition policy was the driver for all these changes, based on an economic theory that

was promoted and accepted by both Labor and Liberal parties—like the emperor's new clothes.

This bill is basically a shell, with other legislation to follow. It creates a new commission with responsibility for rule making and market monitoring across the Australian energy sector. In a few months we will have further legislation that closes down the National Electricity Code Authority (NECA), and its powers will be transferred to the AEMC. The commission will be subject to the power of policy direction from the ministerial council on energy.

It appears, from the briefing I was given, that simple issues take 12 months to be resolved as they pass through the hands of NEMMCO, then NECA and then the ACCC, and it is argued that, by removing a layer of bureaucracy, this bill will improve things for the companies involved in the national electricity market. Unfortunately, I doubt whether the lot of either South Australian households or the environment will be improved by this latest bureaucratic creation. For South Australian households, which are buckling under the weight of the most expensive domestic electricity prices in the country, the minister had these tepid words to say: 'Reliable supply of electricity and gas at efficient prices is essential to the community.'

We all know that, but 'efficient' is such an ambiguous word, particularly in the context used here. 'Reasonable', 'affordable' or 'a commitment to achieving parity with the rest of the country' would have been preferable to us. The minister then went on to assure South Australians, 'The long-term interests of consumers will be established as a primary objective for the Australian Energy Market Commission through the national energy laws.' Unfortunately, we do not really get a say on the national energy laws. And 'long-term' is the weasel word in that sentence: that is effectively code for 'no relief in sight from exorbitant electricity prices in South Australia'.

Just as South Australian household budgets have been whacked by the creation of the national electricity market so, too, has the environment. Climate change is the single greatest threat to the environment and our prosperity and, indeed, our entire way of life. Greenhouse gases are driving us towards this climatic catastrophe. Yet the electricity industry produces 34 per cent of Australia's greenhouse gas emissions, and the deregulation of the electricity industry has resulted in an estimated 30 per cent increase in greenhouse gas emissions. However, the price of electricity in the NEM takes no account of the environmental cost of the production of electricity, nor does the market provide any encouragement for the development of renewable energy or demand management. In fact, in an environment where profitability is the only rationale, we see the use of polluting coal as the primary source of fuel for our power stations.

This bill does nothing that would improve environmental accountability, and I indicate that the Democrats will have amendments to alter that. The Democrats will also introduce amendments during the committee stage to ensure that the AEMC will have to consider the low income earner in its decision making. The creation of the AEMC is unlikely to substantially alter the experience of the national electricity market for consumers. Like other legislation related to the NEM, there is little opportunity for input. All has already been decided by COAG, and our job as legislators in the South Australian parliament is apparently to rubber stamp the COAG agreements. This is surely not government of the people by the people and for the people. The people have always been left out of this invention, the national electricity market, and the centralising of power in this bill will continue to produce more of the same.

Legislation such as this, which more or less shuffles the deck chairs on the *Titanic*, can be neither supported nor opposed. People can be certain that, whether or not it is passed, as long as the national electricity market is in existence the ordinary, average household consumer will not benefit. Humpty Dumpty fell off the wall a long time ago. The jury is still out on whether Humpty can be put back together again, but this bill will certainly not be the mechanism by which that will be achieved.

The Hon. R.I. LUCAS (Leader of the Opposition): I wish to make just a few comments at this stage and then I will seek leave to conclude my remarks. At the outset I indicate my very strong opposition to what I believe to be the disgraceful process that this parliament—in particular, the members of the Legislative Council—is being asked to go through in terms of considering what should be a major piece of legislation, even if one accepts the argument that the Hon. Sandra Kanck has just put, that the deal has already been done by the government on our behalf—although I note that the member has indicated that she will seek to amend that agreement.

It is 5 o'clock on Wednesday afternoon, and that is when the bill was introduced into the Legislative Council. It was first considered and passed by the House of Assembly yesterday afternoon. So, within 24 hours it has been delivered to the Legislative Council. The minister and his people are jumping up and down and insisting that the Legislative Council passes this piece of legislation straight away this afternoon. That behaviour by the minister is a disgrace. It is an affront to the Legislative Council as an institution and it is an affront to individual members of this chamber that the minister should behave in that way.

Even members of parliament salaries and superannuation legislation is not rushed through the chamber as quickly as we are being asked to rush through this important piece of legislation. So, I place on record my very strong concerns about that. Secondly, as the bill was introduced, members of this chamber did not even have a copy of the amended bill from the House of Assembly. I still do not have a copy of the second reading explanation. From what I heard of the second part of the second reading explanation, it would appear that some elements of it are the same as the explanation that was delivered in the House of Assembly. When it comes to the committee stage, we will ask some questions as to whether or not things have actually moved on since the second reading explanation which had originally been drafted for the minister in the House of Assembly.

We have been seeking for the last 24 to 48 hours, through web sites and various other sources, a copy of this intergovernmental agreement. The second reading explanation and the minister's answers in the debate in another house indicate that there is a signed intergovernmental agreement. If that is the case, why cannot members be given a copy of this agreement? As I stand here this afternoon, the critical intergovernmental agreement, which evidently indicates all the principles that have been agreed between the states and the commonwealth, is not available. I do not know whether the Hon. Sandra Kanck, who has just delivered her second reading explanation, has a copy of the intergovernmental agreement. I am led to believe that it is not signed by all parties.

That will be one of the questions that I will be putting to the minister during the committee stage of the debate. I am not suggesting that it therefore means that those parties that have not signed it are not going to sign it, but we in this parliament are being asked to vote on legislation and, as the Hon. Sandra Kanck indicates, to look at a shell of a bill that has none of the particular powers and provisions within it that indicate what is going to happen, and we are being told to wait until September and it will all be based on this intergovernmental agreement that has been agreed. The second reading explanation said something extraordinary like 'this is the bill as it currently sits and if the Ministerial Council on Energy agrees to further changes we will introduce the amendments in the House of Assembly.'

That is still in the second reading explanation that was just read out in the Legislative Council. The Hon. Sandra Kanck says she has a copy of the second reading explanation that was introduced in this place. I have only just been handed a copy. As I heard the leader of the government read out the explanation, he indicated to this chamber that the Ministerial Council on Energy was still to meet and is going to be moving further amendments, and that they would be considered in the House of Assembly. This chamber and we as members are being treated with contempt by this government and, sadly, by this particular minister who is in charge of the process. His attention to detail has been lazy. It has been incompetent. He has been negligent in terms of making information available to members so that we can properly consider this shell legislation as he indicates it.

At this stage I am just making some remarks before seeking leave to conclude, but I put the question to the minister whether he will confirm that the second reading explanation he has read out is in fact an accurate second reading explanation for the bill as it sits before us in the Legislative Council, and in particular in relation to his statement to this chamber that the Ministerial Council on Energy was still considering further amendments and that they would be considered by the House of Assembly. If that is the case, how is that process to be considered by this chamber and the House of Assembly? Will this minister, given that we have not been able to get it, give an undertaking that before we are forced to vote on the bill we can actually see a copy of this signed intergovernmental agreement?

Why is it secret? Why has it not been made available to members? We are being asked to vote on a shell. We are being told there is this secret intergovernmental agreement, yet no-one will provide us with a copy of it. It should not be secret. This government should not keep the copy of the agreement from members. It may well be that members of the House of Assembly have been prepared to consider the legislation without seeing a copy of the intergovernmental agreement, but I believe that it is the responsibility of this chamber that we are treated with respect and are able see a copy of the intergovernmental agreement before being forced by the government to vote on the legislation this week. In addition to that, as I indicated by way of a point of order, we are seeking through the government a copy of the amended bill from the House of Assembly.

In the greater scheme of things, that obviously is not as important as confirming whether or not the second reading explanation that the minister has read in the house is accurate and being given a copy of the intergovernmental agreement so that members can at least consider the provisions of the intergovernmental agreement. With that, as the spokesman on behalf of the Liberal Party in the other place has indicated, our position is grudgingly somewhat similar to that which appears to be the position of the Australian Democrats. That is, this deal has been done by this minister and, no matter how critical we may be of him and what we believe to be his incompetence in terms of handling those negotiations—and I will outline that in greater detail later in the debate on this bill—it is nevertheless an agreement, as we understand it, between the states and the commonwealth, and therefore the capacity for one particular state (in this case, South Australia) to breach that agreement that the government has reached on our behalf is, obviously, virtually negligible.

As I said, the leader of the Australian Democrats has indicated that she wants to amend the provisions in some part. Again, with the passage of time, and with no criticism of the Hon. Sandra Kanck, because the bill passed the House of Assembly only yesterday with further amendments from the government, I presume that she and parliamentary counsel have worked assiduously, because on my fax machine this morning, when I arrived, was a copy of a couple of pages of amendments from the Australian Democrats. I have not yet had the opportunity to go through those amendments in any great detail. Obviously, we will have to listen to the honourable member's arguments as we go through the committee stage. We indicate our willingness to listen to the arguments, albeit within the construct that we believe that it would be very difficult for one state to go on its own in relation to this issue, if there is this signed intergovernmental agreement between the states and the commonwealth. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

MEMBER'S REMARKS

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I seek leave to make a personal explanation.

Leave granted.

The Hon. P. HOLLOWAY: When I read the second reading explanation on the Australian Energy Market Commission Establishment Bill, I read from a—

The Hon. R.I. LUCAS: I rise on a point of order, sir. A personal explanation is where a member indicates that he has been misrepresented in some way. I ask you, sir, to ask the Leader of the Government where he claims to have been misrepresented.

The PRESIDENT: Are you claiming you were misquoted or misunderstood?

The Hon. P. HOLLOWAY: I want to correct the record, but I will do it at another stage if that is the wish of the council.

The PRESIDENT: Technically, you should seek leave to make a statement.

The Hon. P. HOLLOWAY: I seek leave to make a statement.

Members interjecting:

The PRESIDENT: Order! There are two procedures available to the minister, and one is a personal explanation. Standing orders 173 and 175 apply in this situation. A personal explanation is available under standing order 173, which provides:

> By indulgence of the council a member may explain matters of a personal nature.

That is not what we are doing. Standing order 175 provides:

> A member who has spoken may again be heard to explain himself in regard to some material part of his speech.

As a minister, you may make a statement at any time.

The Hon. P. HOLLOWAY: I seek leave to make a statement.

The PRESIDENT: As a minister, you do not need leave.

The Hon. P. HOLLOWAY: When I presented the second reading explanation on the Australian Energy Market Commission Establishment Bill, I did read from an earlier draft, which is different from the draft that should have been circulated to the Leader of the Opposition and other members. There has been one change from that and I would like to correct the record. I will read the relevant paragraph so that the record can be corrected. It states:

The Ministerial Council on Energy agreed that the existing legislative framework, giving effect to the rules of the national electricity market and the network access regimes for electricity and gas, are to be simplified and amended to clearly establish the council's responsibility for national energy market governance and policy. Accordingly, a national legislative framework is being established on a collaborative basis between the commonwealth, states and territories under a new intergovernmental agreement, 'the Australian energy market agreement', which has been endorsed by the Ministerial Council on Energy and now executed by all first ministers, other than the Prime Minister who is expected to execute it shortly.

The latter part was the correction. I must also say that the final page of that states:

This has necessitated the bill being introduced prior to agreement by the Ministerial Council on Energy. Any differences between that bill and that agreed by the Ministerial Council on Energy—

and it should read—

have been introduced as amendments in the House of Assembly.

The amendments, which were introduced yesterday and passed by the House of Assembly, address that point, that is, the differences between the bill and that agreed by the Ministerial Council on Energy. I apologise that I did not include that in the original statement.

STATUTES AMENDMENT (ELECTRICITY AND GAS) BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development) : I move:

That this bill be now read a second time.

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

Leave granted.

In preparation for the introduction of full retail competition in the South Australian electricity market on 1 January 2003, this Government established a legislative and regulatory framework designed to facilitate competition whilst at the same time protecting households and small businesses during the transition to this newly competitive environment.

As part of that new regime, the Essential Services Commission was established as a powerful regulator with a key objective of protecting the long term interests of small customers.

Almost two years have elapsed since this Parliament passed the legislative amendments required to establish that regulatory regime. During that time, South Australia has transitioned to a fully contestable electricity market with small customers now having the choice of remaining with their existing electricity retailer, AGL, or transferring to a market contract with one of the retailers currently marketing to the small customer market.

The indicators from the Essential Services Commission's latest Statistical Report are that more and more South Australian small electricity customers are feeling confident enough to seek a market contract that better suits their needs. As of 31 March 2004, there had been just over 38 000 small electricity customer transfers completed in South Australia, representing around 5% of the small customer base of around 740 000 customers. A further 20 000 (or 2.7%) transfers were in progress.

Whilst numerous small customers have elected to transfer to a market contract, the majority of small customers of electricity have remained on the standing contract with prices established under the Electricity Act provisions.

Consistent with the price justification regime established in 2002, the Commission undertook significant work in determining whether the standing contract prices AGL proposed would apply from 1 January 2003 could be justified as reasonable, having regard to the contributing cost factors and the overall objectives of the Commission.

The Commission's comprehensive review of the standing contract prices to apply from 1 January 2003 submitted by AGL resulted in an annual average increase of 23.7% from the previous year's prices. In its final report, the Commission found that these higher prices were primarily driven by higher network charges, which were locked in by the pricing arrangements established by the former Liberal Government to maximise the privatisation proceeds.

It was with reference to these considerable price increases, and the need to consider whether the standing contract prices were still justified for 2004, particularly given the changes in the National Electricity Market, that the Commission initiated an information review process in mid 2003 in the absence of a new price proposal from AGL.

As would be expected with such large price increases, the review attracted a great deal of interest from the public as well as numerous submissions, including one from the Energy Consumers' Council. The Energy Consumers' Council was sharply critical of the Commission's analysis and in particular, considered that recent reductions in wholesale prices should translate into a significant reduction in standing contract prices.

The Government is fully aware of the need for all electricity consumers to be confident that the standing contract price being charged is a justifiable one.

Accordingly, following the release of the Commission's finding in late 2003, the Premier commissioned a report by the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales to review the methodology used by the Commission to date in considering standing contract prices.

The report of the Independent Pricing and Regulatory Tribunal largely endorsed the methodology adopted by the Commission but recommended a number of minor improvements to further enhance the current process. One of the report's key recommendations was to improve the clarity and transparency for determining justifiable standing contract prices.

In response to the report's recommendations and consistent with this Government's continuing commitment to ensuring a robust and transparent process for setting standing contract prices, this Government has reviewed its current regulatory regime. It has recently appointed three part-time Commissioners to provide the Commission with additional resources and has drafted the *Statutes Amendment (Electricity and Gas) Act 2004* I present to you today. This Bill enhances the current price setting regime by:

- Requiring the retailer to submit a proposed price path for the upcoming three year period together with a justification for those prices;
- Compelling the Commission to undertake an inquiry into those prices; and
- Mandating the inquiry process extend to at least six months thereby providing adequate opportunity for stakeholder input.

I am confident these amendments will further strengthen the existing process whilst providing small customers of AGL and competing retailers with greater price certainty over the medium term. This in turn will assist small customers in comparing their electricity costs, under the standing contract regime, with the available market contracts.

Further, in preparation for the introduction of full retail competition in the gas industry and this Government's commitment to a whole of energy approach to regulation, an equally robust price setting regime will be established for small customers and customers of a prescribed class in gas.

As all honourable members would agree, the energy industry is a dynamic and ever-changing environment. For this reason, this Government is always seeking ways to improve it for the benefit of South Australian energy customers. These amendments will ensure small customers of electricity and gas will continue to be protected should they elect to remain on the standing contracts whilst at the

same time, providing them with the pricing information they need to facilitate their venture into the competitive retail market, should they wish.

I commend the Bill to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Electricity Act 1996*

4—Amendment of section 23—Licences authorising operation of transmission or distribution network

Section 23 lists various conditions that the Essential Services Commission must impose on a distribution network operator's licence. One such condition is the retailer of last resort requirement. Section 23(3) currently limits the operation of such a requirement to the period until 1 January 2005. This clause amends section 23(3) so that the retailer of last resort requirement will continue until 30 June 2010.

5—Amendment of section 24—Licences authorising retailing

This clause adds to the mandatory conditions for a retailer's licence a condition requiring the licensee to provide services specified by the Commission, on a costs recovery basis approved by the Commission, to an electricity entity that becomes bound to sell and supply electricity under a retailer of last resort requirement.

6—Amendment of section 36AA—Provision for standing contract with small customers

This clause is intended to change the standing contract price provisions in various ways:

- future standing contract price determinations of the Commission will be required to expire after a minimum period of 3 years
- it is made clear that a determination may fix a series of prices that vary over time according to a formula
- unless the Commission determines that special circumstances exist—
- a determination may not be made to take effect before the expiry date of the last preceding determination
- a determination may only be made if the electricity entity has made a submission to the Commission stating the entity's proposed standing contract price, and the entity's justification for the price, not less than 6 months and not more than 9 months before the making of the determination
- the Commission must conduct an inquiry into the appropriate standing contract price during that period
- if a standing contract price is not fixed in accordance with the above, the price will be the price fixed by the electricity pricing order under section 35B as at 31 December 2002 for the sale of electricity to non-contestable customers.

Part 3—Amendment of *Gas Act 1997*

7—Amendment of section 33A—Recovery of prices for services provided in accordance with retail market rules

This clause corrects a wrong cross-reference.

8—Amendment of section 34A—Standing contracts

The changes proposed by this clause are to new section 34A which was enacted by the *Statutes Amendment (Gas and Electricity) Act 2003* but has not yet been commenced by proclamation. New section 34A corresponds to the standing contract provisions for electricity. The changes proposed by this clause also correspond to those proposed by clause 6 to the standing contract provisions for electricity with the exception that until 1 July 2005, the standing contract price for gas will be the price last fixed by the Minister under the temporary price-fixing powers contained in Schedule 2 of the *Gas Act 1997*.

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

EMERGENCY MANAGEMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this bill be now read a second time.

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

Leave granted.

The terrorist attacks in New York on September 11, the devastating attacks in Bali, the bombings in Jakarta and on the transport system in Madrid and the murder of one of our most senior public officials, have highlighted the fact that these types of events have no geographic or state loyalty, and do not recognise state or international boundaries. In addition, major floods and bushfires interstate have also demonstrated the significant human and financial costs of such events.

This Government is committed to ensuring that South Australia has in place the best possible emergency management and protective security measures to prevent, respond and recover to a full range of potential emergencies, from natural events to human initiated or terrorist activities and to ensure the safety of our community and the infrastructure.

At the present time the principal statute for managing emergencies, including disasters, in South Australia is the State Disaster Act. Whilst this Act has served the State well since its inception in 1980, the Government realised that, planning must be more sophisticated and required a shift in focus from 'disaster management' towards an 'all hazards' framework that encompasses prevention, preparedness, response and recovery.

As the Parliament was advised on 16 October 2002, the Government commissioned a review of every aspect of our State's disaster legislation and associated disaster management arrangements to look at issues including:

- the role of government agencies in all aspects of emergency management and protective security;
- the governance arrangements for emergency management;
- recommendations to ensure South Australia is best positioned to manage a full range of potential emergencies.

The review identified a number of inadequacies in the existing arrangements including:

- insufficient clarity of governance arrangements between the Emergency Management Council, the Emergency Management Council Standing Committee and the State Disaster Committee;
- a lack of focus towards issues surrounding terrorism and protective security;
- a need to increase the involvement by local government and the owners and operators of key infrastructure services such as electricity, gas and oil;
- a lack of accountability on government chief executives for emergency management and protective security planning.

As a result of the Review, the Government has introduced an Emergency Management Bill to replace the State Disaster Act.

The Emergency Management Bill will facilitate the required shift in culture from "disaster management" towards an "all hazards" framework and ensure appropriate strategies and systems are in place to enable a seamless emergency management transition from minor emergencies through to a disaster.

The Emergency Management Bill includes an additional level of emergency to be known as an "Identified Major Incident". This level will provide a new transitional step between a day to day emergency and a declared Major Emergency. It may be used for emergencies where, because of the complexity of co-ordination or the magnitude of the event, a higher degree of management and co-ordination is appropriate.

Whilst this Bill will be the peak legislation for any emergency that is declared as an Identified Major Incident, Major Emergency or Disaster, it will complement the Fire and Emergency Services Bill, also currently before the Parliament. The Bill will in no way curtail the specific roles and responsibilities of control authorities that are identified in current legislation.

To improve the governance arrangements for emergency management and protective security, the Government will replace the Emergency Management Council Standing Committee and the State Disaster Committee with a State Emergency Management Committee which will report directly to the Emergency Management Council.

Because of the importance this Government places on the role of the State Emergency Management Committee, it will be chaired by the Chief Executive of the Department of the Premier and Cabinet and include membership at Chief Executive level from other Government Departments. Also included will be Senior Executives from the Police, Ambulance and other Emergency Service agencies and a senior representative from the Local Government Association.

The State Emergency Management Committee will be accountable for the development and continual improvement of the State Emergency Management Plan. This Plan will incorporate the South Australian State Counter-Terrorism Plan and the South Australian Government Protective Security Manual.

In addition, the Committee will provide strategic policy advice and leadership across the whole of government in relation to emergency management, protective security and counter-terrorism issues.

To assist the State Emergency Management Committee, a series of "Hazard Leaders" will be identified to develop State level hazard plans in areas that pose risks to the community of South Australia and may have a major impact on the emergency management needs of the State. Specific hazards include such issues as bushfires, flood, failure of an essential service, animal or plant disease, transportation and storage of hazardous or dangerous goods, human disease including pandemic or epidemic, transport infrastructure failure, information technology failure or natural disasters such as earthquake.

To further enhance the Government's commitment to emergency management and protective security, Emergency Management Zones will be established across the State, including the metropolitan area. The Zone Emergency Management Committees will, through their membership, enhance the close working relationship that already exists between the Local Government, Police and Emergency Services and the community.

The Commissioner of Police will continue to be the State Co-ordinator and have the ability to exercise a wide range of powers once an emergency is declared at Identified Major Incident or greater.

It is essential to the future well-being of South Australia to ensure that there is a robust capability to recover from emergency incidents, not only in terms of personal issues, but also economically and environmentally.

The Emergency Management Bill emphasises this capability and fixes accountability to the State Emergency Management Committee and Zone Emergency Management Committees to ensure that all plans include recovery strategies.

This Government is committed to ensuring that South Australia is best positioned and has the best possible plans in place to manage a full range of potential emergencies that may confront our State in the 21st century.

The Emergency Management Bill will provide the basis from which the State's emergency management and protective security strategies and plans can be developed. In addition, it will provide an improved holistic framework to enable the State to mitigate against, plan for, respond to and recover from any emergency, whether minor in nature or catastrophic.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines certain terms used in the measure. In particular, ***emergency*** is defined broadly as an event that causes, or threatens to cause—

- the death of, or injury or other damage to the health of, any person; or
- the destruction of, or damage to, any property; or
- a disruption to essential services or to services usually enjoyed by the community; or
- harm to the environment, or to flora or fauna.

It should be noted that this is not limited to naturally occurring events (such as earthquakes, floods or storms) but would, for example, include things like epidemics, hi-jacks, sieges and acts of terrorism. A note to this effect is included in the measure. The measure provides a framework for emergency planning and management in the State, so the breadth of this definition would allow those planning and management functions to be exercised in relation to a broad range of incidents or types of hazards. The measure then provides for more serious emergencies (described in the measure as ***identified major incidents***, ***major emergencies***, and ***disasters***) to be declared under the measure and for special powers to be exercisable in relation to such declared events.

4—Application of Act

This clause ensures that the Act would not apply to industrial disputes or the control of civil disorder.

5—Interaction with other Acts

The measure does not derogate from other Acts but would prevail in the event of inconsistency with another Act.

Part 2—State Emergency Management Committee

6—Establishment of State Emergency Management Committee

This clause establishes the State Emergency Management Committee (***SEMC***) and outlines its membership.

7—Terms and conditions of membership

This clause provides the terms and conditions of membership of SEMC.

8—Vacancies or defects in appointment of members

This clause provides for vacancies to be filled and ensures that an act or proceeding is not invalid by reason only of a vacancy or a defect in appointment.

9—Functions and powers of SEMC

Under this clause, the main functions of SEMC are—

- providing leadership and maintaining the oversight of emergency management planning in the State;
- preparation of the State Emergency Management Plan;
- providing advice to the Minister relating to the management of emergencies in the State;
- undertaking risk assessments relating to emergencies or potential emergencies;
- liaising with those agencies who are given functions under the State Emergency Management Plan;
- co-ordinating the development and implementation of strategies and policies relating to emergency management (including strategies and policies developed at a national level and agreed to by the State);
- monitoring and evaluating the implementation of the State Emergency Management Plan during any identified major incident, major emergency or disaster and the response and recovery operations taken during or following the emergency.

For the purposes of preparing and implementing the State Emergency Management Plan, SEMC can create offices and appoint persons to those offices and can assign functions to the State Co-ordinator (appointed under Part 3 of the measure) or, with the approval of the State Co-ordinator, to any Assistant State Co-ordinator.

10—Proceedings of SEMC

This clause includes various provisions relating to the manner in which the proceedings of SEMC are to be conducted (eg. in relation to who is to preside at meetings, the quorum, manner of making a decision, telephone conferences etc.)

11—Establishment of advisory groups by SEMC

Under this clause SEMC can establish advisory groups, and is compelled to establish an advisory group in relation to recovery operations.

12—Delegation

This clause provides for delegations by SEMC.

13—Annual report by SEMC

This clause provides for an annual report by SEMC.

Part 3—The State Co-ordinator

14—Appointment of State Co-ordinator

This clause provides that the Commissioner of Police is to be the State Co-ordinator. Note that the *Police Act 1998* provides that when the Commissioner is absent from duty, or during a vacancy in the position of the Commissioner, the Deputy Commissioner may exercise and perform all the powers, authorities, duties, and functions conferred or imposed on the Commissioner by or under that Act or another Act or any law.

15—Functions and powers of State Co-ordinator

The functions of the State Co-ordinator are—

- to manage and co-ordinate response and recovery operations;
- to ensure SEMC is, in the case of a declared emergency, provided with adequate information in order to fulfill its monitoring functions under the measure;

· to carry out other functions assigned to the State Co-ordinator.

16—Assistant State Co-ordinators

The State Co-ordinator may appoint Assistant State Co-ordinators at any time and must, as soon as practicable after the declaration of an emergency under the measure, appoint an Assistant State Co-ordinator to deal with issues relating to recovery operations for that emergency.

17—Authorised officers

Police officers are (by virtue of the definition in section 3 of the measure) authorised officer for the purposes of the measure and the State Co-ordinator may appoint other authorised officers under this clause. The clause also provides a requirement for identity cards to be issued to, and produced by, such authorised officers.

18—Delegation

This clause provides a power of delegation for the State Co-ordinator.

Part 4—The management of emergencies

Division 1—Co-ordinating agency

19—Co-ordinating agency

The co-ordinating agency in an emergency is responsible for—

· consulting with the relevant control agency and taking action to facilitate the exercise by the control agency of its functions or powers in relation to the emergency;

· determining whether other agencies should be notified of the emergency or called to the scene of the emergency or otherwise asked to take action in relation to the emergency;

· advising the State Co-ordinator in relation to the emergency;

· exercising any other functions assigned to the co-ordinating agency under the measure or the State Emergency Management Plan.

This clause identifies South Australia Police as the co-ordinating agency for all emergencies (not just those declared under Division 3) unless the State Emergency Management Plan designates a different body as the co-ordinating agency in relation to a particular kind of emergency.

Division 2—Control agency

20—Control agency

The control agency, in relation to an emergency, is the agency given that function in relation to such an emergency under an Act or law or under the State Emergency Management Plan (or, where no agency is given that function or multiple agencies are given that function or where it is unclear who is given that function, it will be the agency determined by the co-ordinating agency). This general position is, however, subject to an exception in the case of emergencies where terrorism is suspected, in which case, South Australia Police will be the control agency.

Division 3—Declaration of emergencies

21—Publication of guidelines

This clause allows the publication (by SEMC) of guidelines in relation to when it will be appropriate for an emergency to be declared as an identified major incident, a major emergency or a disaster under the measure.

22—Identified major incidents

This clause allows for the declaration by the State Co-ordinator of identified major incidents. Such a declaration remains in force for a maximum period of 12 hours and cannot be renewed.

23—Major emergencies

This clause allows for the declaration of major emergencies by the State Co-ordinator. Such a declaration remains in force for a maximum period of 48 hours and can be renewed or extended with the approval of the Governor.

24—Disasters

This clause allows for the declaration of disasters by the Governor. Such a declaration remains in force for a maximum period of 96 hours and can be renewed or extended only with the approval of Parliament.

Division 4—Powers that may be exercised in relation to declared emergencies

25—Powers of State Co-ordinator and authorised officers

This clause sets out the powers that can be exercised by authorised officers during a declared identified major incident, major emergency or disaster. These include various powers to enter land, use property and issue directions. Only in the case of a major emergency or disaster is there a power to issue directions to a control agency.

26—Disconnection of gas or electricity

This clause requires a person or company supplying gas or electricity to a place to send a competent person to shut of the supply of gas or electricity when directed to do so under the Division.

Division 5—Recovery operations

27—Recovery operations

This clause deals with recovery operations (which must be carried out in accordance with the State Emergency Management Plan. Operations can only be carried out on private land with the consent of the owner of the land or if the State Co-ordinator is satisfied that it is not practicable to seek the consent of the owner (because the owner cannot be located or for some other reason) or that the consent of the owner is being unreasonably withheld.

The provision would also allow recovery of costs where work is carried out and some other person has a duty to carry out the work (eg. a body that has a statutory or contractual obligation to provide an essential service) or has a legal liability in respect of the work (eg. an insurance company).

Part 5—Offences

28—Failure to comply with directions

Under Part 4 there are various powers to issue directions in the course of response and recovery operations following a declared emergency. This clause makes it an offence to fail to comply with a direction, punishable by a fine of $20 000 for a natural person or $75 000 for a body corporate.

29—Obstruction

This clause makes it an offence to hinder or obstruct operations carried out in accordance with the measure. The penalty is a fine of $10 000.

30—Impersonating an authorised officer etc

This clause makes it an offence to impersonate an authorised officer. The penalty is a fine of $10 000.

31—Disclosure of information

This clause allows an authorised officer to require a person to state the person's name and address, and to produce evidence of identity where the authorised officer reasonably suspects the person has committed, is committing or is about to commit and offence against the measure. Failure to comply with such a direction is punishable by a fine of $5 000.

Part 6—Miscellaneous

32—Protection from liability

This clause provides protection from liability for the State Co-ordinator and other persons exercising powers and functions under the measure.

33—Employment

This clause provides employment protection for persons exercising official duties under the measure.

34—Evidentiary

This clause provides various evidentiary presumptions to aid proof of certain matters under the measure.

35—Offences by bodies corporate

This clause provides for criminal liability for directors and managers where an offence is committed by a body corporate (unless it is established that the director or manager could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence by the body corporate).

36—Insurance policies to cover damage

This provision mirrors a provision in the Fire and Emergency Services Bill 2004 and ensures that insurance policies covering the damage caused by an emergency would also cover any damage caused by the exercise of powers under the measure in dealing with the emergency.

37—State Emergency Relief Fund

This clause continues the current State Disaster Relief Fund as the State Emergency Relief Fund and is otherwise in the same terms as the existing fund provision in the *State Disaster Act 1980*.

38—Regulations

This clause is a regulation making power which, apart from the usual power to make regulations contemplated by or necessary or expedient for the purposes of the measure, also includes power to make regulations necessary in consequence of conditions directly or indirectly caused by a declared

emergency. This is the same as the current regulation making power under the *State Disaster Act 1980*.

Schedule 1—Related amendments, repeal and transitional provisions

The Schedule makes some minor consequential amendments to other legislation (to change references to the *State Disaster Act 1980* to references to the Emergency Management Act 2004, repeals the *State Disaster Act 1980* and includes a transitional provision allowing the State Disaster Plan to continue as the State Emergency Management Plan until such time as it is replaced in accordance with the measure.

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

CHILDREN IN DETENTION

The Hon. KATE REYNOLDS: I move:

That this council condemns the federal government for failing to ensure that Australia's detention laws comply with obligations under the Convention on the Rights of the Child, and specifically that the federal government failed to ensure that—

1. Detention of children is a measure of last resort, for the shortest appropriate period of time and subject to effective, independent review;
2. The best interests of the child are a primary consideration in all actions concerning children;
3. Children are treated with humanity and respect for their inherent dignity;
4. Children seeking asylum receive appropriate assistance to enjoy, to the maximum extent possible, their right to development and their right to live in an environment which fosters the health, self-respect and dignity of children, in order to ensure recovery from past torture and trauma;

and that this council calls on the federal government to immediately implement the recommendations of the Human Rights and Equal Opportunity Commission's report, 'A Last Resort'.

As I rise to speak to this motion today, there are still more than 150 children being held in prison-like detention centres in Australia, Nauru and on Christmas Island. This is despite calls by medical practitioners, welfare groups, child protection experts and politicians in every sphere of government for children to be released from detention centres immediately so as to spare them from further trauma and harm. The seriousness of the situation and, indeed, some would say the callousness of the federal government was highlighted when on 10 June the Prime Minister ignored a deadline set by the Human Rights and Equal Opportunities Commission to release all children within detention, a call which was prompted by the commission's newly released national inquiry report.

This is why I believe that this council should join the chorus of voices condemning the federal government for failing to ensure that Australia's detention laws comply with obligations under the Convention on the Rights of the Child. It is unacceptable that the federal government has failed to ensure that the detention of children is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review. Children in detention centres have not been treated with humanity and respect for their inherent dignity, because the government has taken away—some would say stolen—their ability to enjoy 'to the maximum extent possible' their right to development and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma.

I would like to take members back 2½ years to November 2001, when the Human Rights Commissioner announced the Human Rights and Equal Opportunity Commission's National Inquiry into Children in Immigration Detention. This inquiry was established to consider whether Australia's immigration detention laws and Australia's treatment of children in immigration detention complied with the United Nations Convention on the Rights of the Child. The inquiry was conducted throughout 2002 and received over 340 submissions and visited all immigration detention centres in Australia. The inquiry received substantial evidence about the treatment of children in immigration detention centres between 1999 and 2002. Public hearings were conducted in Victoria, Western Australia, South Australia, New South Wales and Queensland. Amongst others, experts with experience in dealing with children in detention gave oral testimony. In addition, the inquiry conducted confidential focus groups with former detainee children and young people in Melbourne, Perth, Adelaide, Sydney and Brisbane.

The inquiry found that children in Australian immigration detention centres have suffered numerous and repeated breaches of their human rights. The committee's report entitled 'National Inquiry into Children in Immigration Detention Report-A Last Resort?' was tabled in the federal parliament on 13 May this year. This report chronicles the experiences of children in detention in exhaustive and disturbing detail. The Department of Immigration, Multicultural and Indigenous Affairs has not disputed the evidence of the devastating impact that indefinite detention has on the mental health of children and their families. Some children have been diagnosed with clinical depression, post-traumatic stress disorder and developmental delays. Many children have shown symptoms such as nightmares, bedwetting, muteness, loss of appetite and suicidal ideation. The report documents, beyond any doubt, that the longer children are in detention the more likely it is that they will develop serious mental health problems. Of course, those serious mental health problems will continue as those children grow into adults, regardless of where they spend the rest of their lives.

The report finds that Australia's immigration detention policy failed to protect the mental health of children, failed to provide adequate health care and education, and failed to protect unaccompanied children and those with disabilities. The inquiry recommended that children be released from detention centres and from the so-called residential housing projects within four weeks of the inquiry's report being tabled (which meant that children should have been released by 10 June). It also recommended that Australia's immigration laws be amended, as a matter of urgency, to comply with the Convention on the Rights of the Child and called for an independent guardian to be appointed for unaccompanied children. The inquiry recommended that there should be a review of the impact of the legislation in relation to children, that is, legislation that creates 'excised offshore places', and the Pacific Solution, and also stated that minimum standards of treatment of children in detention should be codified in legislation.

According to the HREOC web site, a 14-year-old boy is still in detention in the Port Augusta residential housing project. Between April 2002 and July 2002, the boy (who was then being detained at Woomera) attempted to hang himself four times, he climbed into the razor wire four times, he slashed his arms twice, and he went on hunger strike twice. The boy's mother was hospitalised due to her own mental illness during this whole period. A 13-year-old child has been seriously mentally ill since May 2002. This boy has regularly self-harmed. Mental health professionals have made more than 20 recommendations that this child be released from

detention with his family, but he has not been and he is still locked up.

Children remain in detention, suffering long-lasting and, in many cases, irreversible psychological damage, despite the fact that nine out of 10 asylum-seeker children end up calling Australia home because they are eventually recognised as genuine refugees: that is, people in genuine need of protection. That is, more than 92 per cent of all children arriving by boat since 1999 have been recognised by Australian authorities to be refugees. In the case of Iraqi children the figures are as high as 98 per cent. But, instead of welcoming these children and insuring their protection, we have taken them to isolated, harsh and fortified facilities and detained them there while they await the outcome of their visa applications.

According to the Human Rights Commissioner, children regularly wait for months or years in detention—and I have met a number of children who have spent years and years in detention. In fact, as at the end of 2003, the majority of children in detention had been held for more than two years. This policy is a complete departure from the principle of detention as a measure of last resort. According to the Commissioner, the irony is that the long-term impact of Australia's immigration detention system on these children will, in the main, be borne by Australian society, because almost all children in detention eventually become members of the Australian community. They will carry the scars of their detention experience throughout their lives.

The report details that the inquiry heard numerous examples where state mental health and child protection agencies, as well as independent experts, repeatedly recommended that children be removed from detention to protect their mental health. By April 2002 most unaccompanied children were removed from detention centres following these recommendations, but the recommendations were not implemented for children in detention with their parents. Mental health experts, many of whom had treated these children, told the inquiry that child detainees had experienced, amongst other things, clinical depression, post-traumatic stress disorder and various anxiety disorders. The report also finds that children detained for lengthy periods have experienced significant mental health problems. The 2003 Steel report, a study by mental health professionals of 20 children from a remote detention centre who had been detained for an average of 28 months, found that:

> All but one child received a diagnosis of major depressive disorder and half were diagnosed with Post-traumatic Stress Disorder (PTSD). The symptoms [of PTSD] experienced by the children were almost exclusively related to experience of trauma in detention.

The report goes on, in April 2002, to say that the South Australian child welfare authority—that is, our Department of Family and Youth Services—made the following report on a 13-year old boy who, at that stage, had been detained for 455 days. It said:

> [He] is very withdrawn and lethargic. Since entering Woomera he has been suicidal and very sad. He reports nightmares nightly, seeing himself dead, or unable to move with people carrying his body. He reports waking screaming and finds trouble falling to sleep. He reports a diminished appetite. He has little memory of past events and no hope for the future. He refuses to make new friends because he believes they will be released but not him. He engages in constructive daytime activities but spends hours sitting staring vacantly.

Children in detention also self-harmed. They have sewn their lips together, attempted to hang themselves, swallowed shampoo and detergents and have cut themselves—and I have seen the scars, Mr President. Between April and July 2002, one child detained at Woomera made four attempts to hang himself. As I said earlier, he climbed onto the razor wire and went on hunger strike. Records from April 2002 report this boy as saying:

> If I go back to camp I have every intention of killing myself. I'll do it again and again. . . we came for support and it seems we are being tortured. It doesn't matter where you keep me—I am going to hang myself.

Of course, these sentiments are not confined to children in detention. Recent media reports have highlighted the fact that young people who are only just over the age of 18, young men who have spent their latter teenage years and early adulthood in detention, are also repeatedly taking the same desperate measures.

The inquiry finds that the commonwealth failed to take all appropriate measures to protect and promote the mental health and development of children in detention over the period of the inquiry and, therefore, breached the Convention on the Rights of the Child. With respect to some children, the department failed to implement the clear and, in some cases, repeated recommendations of state agencies and mental health experts that they be urgently transferred out of detention with their parents. This amounted to cruel, inhumane, degrading, and—many would say—unforgivable and certainly inexplicable treatment. The inquiry also finds that, despite the efforts of individual staff members, the commonwealth failed to take all appropriate measures to ensure that children in detention could enjoy the highest attainable standard of health, especially in remote detention centres—particularly, of course, Woomera, but many of these findings would also apply to Baxter and, to some degree, to the Port Augusta residential housing project. This, of course, is a breach of the Convention on the Rights of the Child.

Another of the findings was that the commonwealth failed to take appropriate measures to provide children with an adequate education, resulting in a breach of the Convention on the Rights of Child. The inquiry found that the commonwealth breached the convention by failing to ensure a full and decent life for children with disabilities in detention and by failing to ensure that they received the special care and assistance that they required. The inquiry has found that Australian laws that require mandatory immigration detention of children, and the way that these laws are administered by the commonwealth, have resulted in numerous and repeated breaches of the Convention on the Rights of the Child. Specifically, it made factual findings in relation to: the monitoring of conditions in detention centres; Australia's detention laws and policy; our refugee status determination system as it applies to children; safety and security; mental health; physical health; children with disabilities; education; recreation and play; unaccompanied children; religion, culture and language; and temporary protection visas. These findings, based on evidence received during the inquiry, were assessed against Australia's human rights obligations under the Convention on the Rights of the Child.

The Democrats have been at the forefront of the campaign to have children released from detention, and as recently as 10 June my federal colleague, Senator Andrew Bartlett, again condemned the federal government's policy of locking up innocent children. As he said, the prolonged detention of children equates to 'government child abuse'. I think the record will show that I have made that comment on numerous occasions, too. Reports and studies over the years prove that child detainees are being harmed by detention itself as well

as being exposed to violence, riots and self-mutilation in the centres.

The HREOC report's major findings include that children in immigration detention for long periods of time are at high risk of serious mental harm and that the detention regime is fundamentally inconsistent with the Convention of the Rights of the Child. My colleague has stated:

> The government justifies its abuse of children by saying it deters people smugglers. I do not believe this is true but, in any case, no policy that causes massive damage and suffering to innocent children is justifiable.

Senator Bartlett, who has visited every detention centre in Australia as well as Nauru, has repeatedly challenged the Minister for Immigration to meet with these children, hear their questions and their cries and then attempt to defend the government's policy. He states:

> The distress and trauma of the children and mothers, even in residential housing detention, is plain to see. Government claims that residential detention means women and children live 'largely within the community' are simply not true. Women and children are separated from their husband, and older children are not free to come and go from their houses and are allowed out only on limited occasions with continual supervision.

I add that the supervision is frequently very unfriendly. There are more than 150 children in detention centres, including some who are unaccompanied minors. Australia is the only country that places children in long-term detention where they can remain for years if their parents are assessed as not being refugees or if they are still 'in-process'.

Senator Bartlett points to the example of a family examined at length in this inquiry whose story highlights the failings of the current policy. In November 2002, Woomera management informed the Department of Immigration that the family were at risk and could no longer be cared for within the centre. A senior DIMIA official stated:

> The department has been actively managing this case and considering what options might be available to the family.

Eighteen months later, this family is still in detention. I have met a number of families in Baxter who have been in detention for many years, and there have been numerous reports and recommendations calling for their release into some form of proper community detention. Those recommendations from expert professionals continue to fall on deaf ears.

The Democrats welcome the release of the HREOC report, and we believe that this report must lead to major policy change by both of the two major political parties. Unfortunately, the report was released at a time when all eyes were on the federal budget amid early speculation of an early election. The system of detaining asylum seeker children is systematic and institutionalised child abuse and, as we have seen here in South Australia in recent months, there is (and should never be) any excuse for physical, emotional or sexual abuse or neglect of any child regardless of how that child came to this country.

One submission to the inquiry stated that the federal government's policy of keeping children in detention 'also offends traditional and long-established Australian standards of humanity, compassion and morality.' Meanwhile, to our great shame, Australia is now the only Western nation that places all asylum seekers in mandatory detention for unlimited periods of time, showing to the world that the Howard government's refugee policy is more twisted than the barbed wire around the detention centres. In fact, rather than providing the extra care and support that children and young people need and deserve after experiences such as fleeing from life in a war zone, this government is causing more harm to these vulnerable and already traumatised children. In one submission to the HREOC inquiry, a national child welfare organisation stated:

> The detention environment by its very nature retraumatises already extremely vulnerable children and young people.

FAYS staff in this state know this from their own visits, as I do, from the visits that I have made to both Baxter Immigration Centre and the so-called Port Augusta Residential Housing Project, known by many people as mini-Baxter.I have repeatedly called on the Rann government to take action to remove children and their parents from detention in South Australia under the jurisdiction of the state's Child Protection Act.

The Democrats remain committed to lobbying for families to be housed in the community with proper access to the necessary health and education services and language services for parents, as is done in Europe and Canada where compassion inspires, rather than enrages, political leaders. Many alternatives to the mandatory detention of unauthorised arrivals have been put forward by non-government organisations. The Australian Democrats have developed a policy that would provide security and the ability to detain and deport visa overstayers, while ensuring that Australia complies with international conventions.

We believe that Villawood and Maribyrnong facilities should be maintained for visa overstayers and criminal deportees. Instead of the existing prison-like detention centres, asylum seekers could be accommodated in an appropriate facility for a four to eight week health security screening, after which they would be released into the community unless there is a strong reason on health or security grounds for them to be kept in some other form of detention. Any attempt to use these grounds to detain people further must be open to appeal.

We believe that asylum-seeking families could be immediately housed in separate facilities run by non-government organisations and that, after release, they should be granted financial and case work assistance. We believe that all asylum seekers who enter Australian waters should be processed on-shore instead of being sent to the processing facilities created as part of the Pacific Solution. If this policy were implemented, it would enable the scrapping of the Baxter, Port Hedland, Darwin, Christmas Island, Manus Island and Nauru facilities. The proposed new facilities at Christmas Island and Brisbane could also be scrapped, which would not only save hundreds of millions of dollars but would probably save further claims of abuse in the future.

I return to South Australia, where we know that the Rann government is only too well aware of the damage being done to children inside detention centres. The report by Robyn Layton QC showed that the United Nations High Commission for Refugees had already determined that, due to the hardship involved with detention, it should normally be avoided. The United Nation's High Commission for Refugees and the Convention on the Rights of the Child indicate that children should be detained only as a measure of last resort, and for the shortest possible time. Again, Robyn Layton's report states:

> The inherent character of their detention in a centre for an indeterminate period of time places children at significant risk of abuse or neglect.

Some of you might remember from my speeches last year that she states:

> The effect of detention. . . is so devastating to the well-being and development of children, and will have such lasting consequences during their lifetimes which may, in fact, be spent in Australia; the state government has a responsibility to take a strong position on this issue.

Despite the fact that very little has occurred here in South Australia to address any of the Layton report recommendations in relation to children in immigration detention, I sincerely hope that members on the government side will take this opportunity to join the Australian Democrats in condemning the federal government for its actions and its inactions.

On October 22 last year I moved that the South Australian parliament condemn mandatory detention and the Pacific Solution as crimes against humanity. I was not successful in having that motion passed. In fact, when we came to the division, the Democrats were a pretty lonely little group. But we remain committed to addressing this issue, and we remain determined to highlight the cruelty shown to families in detention. Therefore, I urge all honourable members to make their personal views on this issue known. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

COMMISSION OF INQUIRY INTO CHILD SEXUAL ABUSE BILL

The Hon. R.D. LAWSON obtained leave and introduced a bill for an act to establish a commission of inquiry into child sexual abuse. Read a first time.

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

> That this bill be now read a second time.

I introduce this bill with a degree of reluctance, because it should not have been necessary for a bill of this kind to be introduced into this parliament. More than a year ago the government should have answered the calls of a number of people in the community, the Leader of the Opposition the Hon. Rob Kerin and others for the establishment of an inquiry of this kind. When I gave notice of motion and stated my intention to introduce this bill, government ministers continued to say there was no need for an inquiry of this kind; that the opposition was playing a political game; that it was a waste of money for such an inquiry to be conducted; and that there was no need for an inquiry. Yet, today, before I rose to introduce this bill, the government announced that tomorrow it proposes to introduce legislation in another place to establish an inquiry. We have yet to see the government's bill, but it is important that this matter not be further delayed. If giving notice of my intention to introduce this bill was the lever necessary for the government to finally call an inquiry, I am glad of that fact.

It is worth looking back over the history of this matter, because the seeds for the need for this particular inquiry were sown many years ago in a number of institutions across this state. This government has loudly proclaimed the need for other organisations and churches to conduct inquiries. For example, in relation to the St Anne's School abuse matter, the Catholic Church appointed Brian Hayes QC to conduct an inquiry at the expense of the church. When issues arose in relation to the Anglican Church, the church, at its own expense, established an inquiry to investigate the matter. But, when it came to the question of children who were in the care or custody of the minister—wards of state and other children in similar situations—and the way in which their allegations of abuse were conducted, this government resisted any form of inquiry.

Eventually, when it looked as if some form of inquiry would be established as a result of community pressure, ministers started to talk about looking at some sort of inquiry but saying that we cannot justify the expense of an inquiry. They did not say to the Catholic Church 'You don't have to have an inquiry because it is going to cost a lot of money.' They did not say to the Anglicans 'Well, you shouldn't have an inquiry because it is going to cost a lot of money.' They demanded that those organisations have an inquiry. Of course, when the Anglican inquiry came out with its results, the Premier and the Deputy Premier were at the forefront of calling for action from Archbishop Ian George and calling for his resignation. They demanded that he resign because of what happened in the organisation well before the time he was head of the Anglican Church. But they were not prepared to submit themselves and the government of South Australia to similar strictures.

The Hon. A.J. Redford: They didn't lead by example.

The Hon. R.D. LAWSON: As my colleague the Hon. Angus Redford said, the government certainly did not lead by example. It did not lead at all. It has been dragged kicking and screaming to the position announced in the ministerial statement that was tabled here today.

There is a number of historical matters that I should mention. The Speaker and member for Hammond (Hon. Peter Lewis), I must acknowledge, has been campaigning for quite some time on this issue. In July 2002, which was within a very few months of the Hon. Peter Lewis agreeing to support the Labor government, he wrote to the Premier in the following terms:

> . . . I am very disturbed and have been personally distressed by my discovery of the widespread malaise in the administrative culture and lack of professionalism in our justice and legal system and associated activities. More than ever, I strongly believe that a royal commission, (and nothing less) is necessary to rectify the problems.

I think it is fair to say that the Speaker was not explicit in precisely what matters were of concern to him, but he had indicated enough to suggest that an inquiry was warranted. My party—the Liberal Party—supported that call for a royal commission on the basis of the preliminary information that Mr Lewis had. Subsequently, as a result of other information that came forward from various sources, the Leader of the Opposition (Hon. Rob Kerin) called for a royal commission.

It is worth placing on the record the names of a number of individuals and organisations who were strongly supportive of the need for a commission of inquiry. For example, the Advocates for Survivors of Child Abuse, of which Mrs Pamela Ayling is the state coordinator, has been assiduous in advocating for an inquiry into child sexual abuse and, in particular, child sexual abuse of wards of the state in past years. In February 2003, it wrote to members calling for such a commission. Wendy Utting, the deputy coordinator, has been prominent in the campaign, as have a number of victims, many of whom are nameless but who in recent times have come forward.

I also pay tribute to Graham Archer and the *Today Tonight* program, which have given voice to calls for a commission and have given widespread publicity to the existence of the shameless abuse which occurred over many years in our institutions. The government has been very keen to dismiss Mr Archer as some sort of rogue reporter. It has been keen to kill the messenger on this one. A number of other journal-

ists in this town also have been dismissive of the efforts of the *Today Tonight* program—in particular, Mr Archer—in pursuing this and other matters. His program (which I think was the highest rating program at that time in South Australia) reaches over 200 000 viewers on a nightly basis and, notwithstanding the stories that he has uncovered and the allegations that he has shown, this government has steadfastly dismissed the need for any inquiry.

On 12 February last year, when the Leader of the Opposition called for a royal commission into child abuse, he said:

> Very serious allegations of abuse of children in government care have recently been made. The allegations centre around children, mainly boys, being taken away at night from government hostels by paedophiles and complaints from these children being ignored by officials. Until recently, these victims have been too afraid to speak on the matter fearing their own personal safety and the threat of legal action against them.

The leader said:

> A royal commission would give these victims full protection from any legal moves aimed at preventing the truth coming out.

Mr Kerin said:

> For too long now South Australia has been riddled by rumours of a high powered paedophile ring known as The Family. We need to get to the bottom of this and clear the air.

On the same day, the Minister for Police was quick to reject that call, describing it in a media release as 'knee-jerk nonsense'. It was knee-jerk nonsense then, but today the government said that it will introduce legislation to establish an inquiry. The Hon. Patrick Conlon described the Leader of the Opposition's move as a 'knee-jerk reaction, a media stunt and a fair indication of the Liberal Party going on a frolic with a serious issue'. The minister claimed that his government was taking the issue of child protection very seriously. He said, 'Mr Kerin in the meantime is playing politics with one of the gravest concerns for any decent human being.' The minister, speaking on behalf of the government, rejected the call in a most dismissive fashion and concluded his media release with, 'Mr Kerin has made a terrible blunder.' Some blunder—because, as the weight of evidence has piled up and more and more people have come forward, the inevitability and desirability of a wide-ranging inquiry has become manifest.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. R.D. LAWSON: Before the adjournment I was indicating that the Leader of the Opposition had in February 2003 called for the establishment of a royal commission into child abuse, and the response of the government, delivered by the then Minister for Police, (Hon. Patrick Conlon) was highly dismissive. He said that the call was nonsense, etc. The Leader of the Opposition was not put off by those dismissive tactics of the government and continued his campaign. In an article published in the *Advertiser* of Saturday 24 May 2003, the Leader of the Opposition cogently set out reasons why there ought to be an inquiry. He said, and I quote in part:

> As the profile of child sexual abuse has risen over the past six months, I have become increasingly concerned. I have heard stories which convince me that as a society and as individuals we have failed miserably in protecting our most vulnerable from shocking predatory abuse. Worse still is that much of this abuse has occurred when children have been in the care of the state, the churches and other institutions. Think of the many victims, deeply aggrieved, innocence and dignity destroyed, coupled with feeling guilty. Many victims have sought refuge in drugs, alcohol and even suicide. We have failed these people and we must make sure that we destroy any chance of it happening again.
>
> Too expensive and a waste of time: is that a valid, let alone an impassioned, answer to the calls for justice? In the past six months, many victims of child abuse have come forward with horrific stories on how the government system has let them down. Many of these victims of abuse were in government care as children. Earlier this year I called for a royal commission into this abuse of children in government care. The latest revelations give cause to expand this to all organisations that have been entrusted with the task of caring for children. It concerns me that there has been a high level of neglect in South Australia when it comes to dealing with child abuse.
>
> Very serious allegations of abuse have recently been made and strengthen the need for a royal commission. On calling for a royal commission, the state Labor government quickly dismissed it as a waste of money. Nothing could be further from the truth. The initial allegations which prompted my call for a royal commission centred on children, mainly boys, being taken away at night from government hostels by paedophiles, and complaints from these children being ignored by officials. Until recently, many victims have been too afraid to speak out, fearing their own personal safety and the threat of legal action against them.

And the leader continued in that vein, saying that a royal commission would be in the best interests of the victims and all South Australians who care for the wellbeing of our children. These were entirely appropriate sentiments, and the claims made by the leader were verified by a number of people who have come forward, although not all by any means. I have already mentioned the work of the Advocates for Survivors of Child Abuse in this state, by Pamela Ayling and Wendy Utting of that organisation. A number of people have provided information to the opposition, and I imagine that some of them have also provided information to other members of parliament. They speak of sexual abuse over very many years when many of them were under the care of the state and, also, some other institutions. I mention one typical message received in February last year, which states:

> My husband and I were outraged and horrified by the revelations and accusations by a recipient of child sexual abuse while in the custody of government welfare officials many years ago. These poor children who suffered in this way have been done a grave injustice and probably their lives ruined in many cases. We ask that you, as representatives of the people of South Australia, do everything in your power to see that an inquiry into this matter is held quickly and that laws are put into effect to bring the perpetrators to justice. We need to see this inquiry to expose the truth concerning paedophilia in our state in the past amongst government officials, senior judiciary and the media.

I was delighted to see the Hon. Kate Reynolds in May 2003 issue a statement to the media, acknowledging the problem and supporting a child abuse inquiry. The honourable member was referring at that stage to the federal Senate inquiry promoted by the Democrat member, Senator Andrew Murray. In referring to the Layton report, the Hon. Kate Reynolds said:

> We note that the report makes no recommendations about longstanding allegations of abuse of children in care. Victims of child abuse and neglect are vulnerable to many problems, including drug and alcohol abuse, relationship breakdown and mental health problems. This new inquiry will provide an opportunity for people not covered by the two earlier reports to make submissions protected by parliamentary privilege.

I mention the Hon. Kate Reynolds—obviously, she will be able to speak for herself on this bill—because it should not be suggested that the Liberal opposition alone has been calling for an appropriate inquiry. The government has sought to scuttle the idea of a royal commission by suggesting that such a commission would be too expensive and too protracted. We in the opposition do not seek to have a protracted inquiry, nor do we seek to provide an opportunity for people to make false allegations, as has been suggested by the

government. What we seek is an inquiry which is well resourced and which will get to the facts; one which will encourage people to come forward to provide information, not one which will sweep allegations under the carpet.

We are deeply concerned that today, when the government was aware that a bill for an act to establish an inquiry was to be introduced into this place, as had been previously flagged, the government itself announced that tomorrow it proposes to introduce a bill in another place which will establish some other form of inquiry. It is important to note from the ministerial statement delivered today in another place, and in the supporting media release, that it appears that what the government has in mind is a narrower inquiry than is needed. The fourth paragraph of the ministerial statement made today on this subject states:

> The inquiry's terms of reference will centre around whether there were any cover-ups or mishandling of allegations or reports of sex abuse involving children under the guardianship of the state.

I repeat: 'whether there were any cover-ups or mishandling of allegations or reports of sex abuse'. This government is seeking to confine the report merely to process issues. How were complaints handled? It is not: what was the substance of the complaint; or what is the justice of the issue? Rather, it is whether or not there is some failure on the part of some official in relation to the handling of the allegation and whether or not there was a cover-up. This government is seeking to confine its proposed inquiry to how certain public servants or police handled particular allegations—if allegations were made—but we know, from all the facts that have been presented, that in many cases people did not come forward to make complaints, whether through fear or shame or feelings of guilt or for whatever reason.

The facts are plain. Many of the people who are now saying that they were abused while in government care never made a complaint at the time. This government in its foreshadowed inquiry is seeking to focus not on the substance of the allegations that were made but, rather, on the issue of the process that was adopted. It is clear that the government has in sight a few social workers and other workers in government departments, no doubt well down the line, who as a result of this inquiry (if they are still around) can be chastised, blamed and made scapegoats for systemic failure. This government is proposing to have an inquiry that will simply not establish the truth of these allegations.

My suspicion about this is confirmed by the very next paragraph, where the minister somewhat unctuously begins:

> As children under the care of the state we have an ongoing duty to ensure that if they were sexually abused that their complaints were handled adequately and appropriately by the government.

This paragraph points to the question of whether their complaints were handled adequately and appropriately by the government. It does not seek to look at the protection that was offered to them or the circumstances in which they were abused or whether or not it was systemic or otherwise, but it seeks to examine the question of whether their complaints were adequately and appropriately dealt with by government officials. That is a very narrow inquiry indeed. It is simply leading, inevitably—hopefully, no doubt, by the government—to a whitewash for the government. The issue to be examined is not whether they were abused, what were the circumstances of the abuse and who was responsible for it but whether they complained. If they did not complain, you cannot say that the government is in any way responsible, because they did not complain.

No doubt, the government will try to say that, when one looks at the private inquiry that was established by the Anglican Church, it had terms of reference which, in some respects, dealt only with what the terms of reference of the Anglican Church inquiry referred to as 'process failure'. What this government is seeking to do is to look at process failure, not the substance of the allegations, and that is deplorable. Of course, there is still time. The government still has to introduce its bill, so we still have not seen the terms of reference. No doubt, the government is working hard with its lawyers to confine the terms of reference as much as possible. The pious hope is expressed in today's ministerial statement, as follows:

> If the inquiry can bring justice or consolation to victims of sexual abuse while in state care, it will have achieved a positive outcome for them.

How patronising! It will not achieve a positive outcome for many of those who did not make complaints and who are not going to come forward now to this very limited inquiry with these Mickey Mouse terms of reference. Victims of sexual abuse while in state care will take little comfort from the foreshadowed terms of reference of the government inquiry.

I turn now to the substance of the bill I have introduced. The bill proposes that a commission of inquiry be set up, to be known as the 'Commission of Inquiry into Child Sexual Abuse in South Australia', comprising two commissioners appointed by the Governor on the recommendation of a parliamentary selection committee. We believe that it is appropriate that the commissioners be appointed not simply by the government to investigate government instrumentalities but through a mechanism which includes the parliament. We propose that there be a parliamentary selection committee, comprising three members, namely, the Premier, the Leader of the Opposition and the Speaker of the House of Assembly.

Mr President, the reason why we are suggesting the Speaker of the House of Assembly for this task and not you is the fact that the Speaker has been a prominent champion of this issue and, of course, no disrespect at all is intended to you, Mr President. It is solely the fact that the Speaker in another place has been calling for the establishment of such an inquiry and has taken a leading part in the campaign for it. By that mechanism, the commissioners appointed will not be seen to be under the control of the government.

The commission we propose will have the powers of a royal commission, and this is entirely appropriate. The Ombudsman has the powers of a royal commission when he conducts an inquiry. They are well understood, and I will spell them out shortly. It is unnecessary to reinvent the wheel for every inquiry we have, and it is entirely appropriate that those powers be vested in this commission of inquiry. We propose that there be two members of the inquiry, one of whom will be a judge or a former judge of a court in a state other than South Australia. Once again, no disrespect at all is intended to the judges or former judges within this state. However, we believe that the allegations of sexual abuse that have been made go deep into institutions within this state, and it is entirely appropriate that we should have someone entirely divorced by association with people who are likely to have been involved. We also believe that the second member of the commission—and in this respect we believe the model adopted by the Anglican Church is appropriate—should be a person with experience or expertise in the field of child protection.

Our bill proposes that the parliamentary selection committee must make a recommendation to the Governor for the appointment of the commissioners within one month of the commencement of the act. The commission of inquiry itself will be required to report no later than 31 January 2005 and, therefore, we propose that the commission take about six months after it is established to deliver a report. The commission will report to the parliamentary appointing committee and the report will be tabled in both houses of parliament within four sitting days of its receipt.

The commission will inquire into allegations of sexual abuse of persons, as children, who at the time the alleged sexual abuse occurred were in the custody or care and control of a minister or an agency or instrumentality of the Crown. The commission will also inquire into the adequacy of existing measures to provide assistance and support to victims of child sexual abuse. It will be required to make recommendations concerning the measures that ought to be implemented to provide assistance and support to victims of child sexual abuse and the processes that ought to be followed in the investigation of complaints of child sexual abuse. The commission will have the power to make interim inquiries.

It is also important that this commission does have support, and the proposed bill provides that the Commissioner of Police:

> . . . must, at the request of the Commission, provide a reasonable degree of support or assistance in obtaining information or gathering or assessing evidentiary material for the purposes of the Inquiry.

And that:

> The Crown Solicitor must, at the request of the Commission, provide a reasonable degree of legal support or assistance in connection with the Inquiry.

It is important that the inquiry be well resourced and have the capacity to undertake investigations, and for that reason the support of the police and also crown law is necessary. It has been pointed out that in the Anglican inquiry, for example, the commissioners had to do all their own work (limited as their inquiry was), and that meant that they were unable to embark upon any sort of fact-finding exercise. That was an inquiry, admittedly, which was narrowly focused merely upon issues of process.

The royal commission powers, as I say, are commonly exercised by the Ombudsman, by the Auditor-General, and by inquiries established from time to time. Rather than—as the ministerial statement suggested the government will do—cherry-pick a few powers here and there, we believe that all the powers ought be given to this commission. Those powers include the power to take evidence in public or in private, and there has been some suggestion from the Attorney-General and others that the proposed government inquiry will be a private inquiry. It is well established elsewhere in inquiries of this kind that, when evidence is published, people very often do come forward and, with their consent, tell their story in public so that others who have been similarly affected but who, in the past, have not had the courage to come forward are thus fortified to come forward to tell their stories and expose the truth. That is not only victims but also some of those who might have been working for the state or the instrumentalities of the state at the time and have information which is appropriate to be brought forward. I heard the Attorney-General on radio this evening suggesting that the government does not want to have an inquiry in which a lot of people can come along and tell a lot of lies about other people—

The Hon. R.I. Lucas: Who said they are all lies?

The Hon. R.D. LAWSON: Certainly, there is the inference that many of these people are not telling the truth. That is the inference: that they just want to come along to cause mischief and besmirch the good reputations of people. Frankly, if you want to close down tribunals that have people coming along telling lies, there are a lot of courts of law where you might ask what the point is of having a libel action, or what the point is of having a workers compensation tribunal if people are going to come along and exaggerate their symptoms and besmirch their employers. What a lot of nonsense, Mr President. People ought to be able to come along and provide their evidence, and the commissioners will decide whether it is appropriate for the evidence to be given in public or in private. If the commissioners form the view that the evidence is unreliable, that it is damaging and does not have sufficient probative value, no doubt people of this experience and integrity will ensure that the reputations of others are maintained.

How would one have gone with the Painters and Dockers Royal Commission in Victoria if one had said that we did not want to have anyone coming along and besmirching the reputation of good members of the union? How would one expect the building industry inquiries to have been conducted if you are saying, 'Well, we are not going to provide a forum for people to come along and make allegations about others'? How would the Wood Royal Commission into Police Corruption in New South Wales have gone if the government had said that the royal commission was not to hear evidence in public and was not to provide an opportunity for people to come along and make allegations? How would the WA Inc. inquiry have gone if the terms of reference had been such that everything was conducted behind closed doors and there was some sifting mechanism or some presupposition that people were coming along to tell lies?

The Royal Commissions Act provides that the commission is not bound by the rules of evidence or procedure, and that it conducts itself not necessarily as a court of law but in a more liberal fashion. The commission has powers to sit at any time in any place. It cannot be interfered with by writs being taken by the court and challenged by subsidiary legal action—injunctions, prohibition and the like. The commission has the power under the Royal Commissions Act to enter land and buildings, to inspect goods and things, and to require answers or returns to inquiries. It may require the production of books, papers and documents. It may inspect books, papers, documents and records. It may retain or copy them and make appropriate use of them. It may examine witnesses on oath, affirmation or declaration, and there are powers to compel the attendance of witnesses and summon the attendance of witnesses who might be required to give evidence. There is an obligation on witnesses to attend.

There is a right given by the Royal Commissions Act for a person who is summoned to appear before the commission to appear by counsel. Some people might say that is inappropriate, but it is entirely appropriate that, if allegations serious criminal conduct are to be made, for example, against people who are responsible for the care of others, they should have the opportunity to be represented by counsel, if they deem that to be appropriate. The Royal Commissions Act gives the commission the power to order that evidence be not published in order to prevent undue prejudice or hardship to any other person.

The point being made now in some media that the government is suggesting that the commission of inquiry might in some way prejudice ongoing criminal proceedings

can easily be handled by orders of that kind. Obviously, we propose that an experienced judge or former judge have the oversight of the commission of inquiry so that one can be satisfied that the chair of the commission would have the good sense to ensure that the trial of people is not prejudiced. This government's record in relation to this matter is pretty poor. This Premier and this Attorney-General have the gall to say to the public, 'We, this government, introduced legislation to remove the bar on criminal proceedings—the period of limitations.' This government, time and time again, has said that. When the Hon. Andrew Evans introduced the bill into this council, did those opposite say, 'We support it'? They said, 'No; we do not support it. We want it to go off to a committee.' Subsequently, they joined with all other members and agreed to support the Hon. Andrew Evans.

The Hon. Carmel Zollo: Better to have government legislation than private members.

The Hon. R.D. LAWSON: The Hon. Carmel Zollo says that it is better to have government legislation than private members' legislation. There was absolutely nothing wrong with the Hon. Andrew Evans' legislation that he introduced, and he is entitled solely to the credit. It was not actually a government measure. The Premier claimed credit for that. We see, foreshadowed today—

The Hon. Carmel Zollo interjecting:

The Hon. R.D. LAWSON: Well, that is very interesting. The Hon. Carmel Zollo is now suggesting that the government gave the Hon. Andrew Evans the bill to introduce to remove the time limit on prosecutions. When the Hon. Andrew Evans introduced the bill, the government suggested—

The Hon. P. Holloway: What did you do in eight years?

The Hon. R.D. LAWSON: What you did for 20 years after the Hon. John Cornwall introduced a bill which had the effect of creating the anomaly.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: The minister says, 'We set up the Layton inquiry.' True, it is. The Layton inquiry was established, which produced a very big report—a comprehensive report. It took the government some time to respond, but it has responded. However, that report did not examine the truth of the allegations that are now being raised, much to the distress of the people who went to that inquiry thinking that their issues would be addressed. I am not critical of Robyn Layton QC for that fact—she produced a very comprehensive report. However, it did not cover the matters that the Catholic Church was required to examine or the matters that the Anglican Church, and any other organisation, were subsequently required to undertake, and did undertake. Yet, it is this government that has been refusing until now to have any inquiry and, when forced into the corner of having an inquiry, it foreshadows one which is apparently very narrow in its terms. We look forward to examining the government's legislation tomorrow but, in the meantime, I seek support for the inquiry that is proposed in this bill.

The Hon. R.K. SNEATH secured the adjournment of the debate.

STATUTORY AUTHORITIES REVIEW COMMITTEE: HOMESTART FINANCE

The Hon. R.K. SNEATH: I move:

That the Report of the Statutory Authorities Review Committee, on the Inquiry into HomeStart Finance, be noted.

On 8 August 2002 the committee opened its inquiry by inviting the Chief Executive Officer and representatives of HomeStart to give evidence. Subsequently the committee advertised its adopted terms of reference, seeking submissions from the public. Despite the fact that these were extensively advertised, the committee received no further submissions. In the absence of further submissions the committee recalled the Chief Executive Officer of HomeStart to discuss the changes which have occurred in the housing market during the intervening period. In light of these discussions, the committee decided that a full-scale investigation of HomeStart was not warranted. The committee resolved to formulate a brief report to convey some of the issues arising from the discussions, but did not undertake further investigations into all issues surrounding the subjects covered. This report therefore does not purport to be a detailed assessment of HomeStart Finance and its operations. Rather, it is an open discussion of some of the issues arising as a result of the recent buoyancy in the housing sector and the implications of this particularly for low income earners.

HomeStart is an organisation which has provided mortgage finance for low income households since 1989. It has done this economically and at a profit. In the process, it has provided the opportunity of home ownership for thousands of South Australians who otherwise may not have realised their dream. This can be demonstrated by the fact that around 50 per cent of HomeStart's current book of lending is to people in receipt of CentreLink benefits. Recent price increases in the housing market have meant that fewer people on low incomes can afford housing, even with HomeStart's support. The decline in affordability of housing is a mounting problem for HomeStart. While HomeStart will no doubt be part of a broader solution, the problem is one which is obviously too great for it to tackle alone.

The coordinated approach across the three levels of government and industry will be required to find solutions to decreasing affordability of housing. The committee's report and its recommendations are qualified as they did not undertake a broad inquiry, speaking only to HomeStart Finance. It did ascertain that, while a range of options will be required to assist first home buyers in home ownership, HomeStart should be given every opportunity to assist as many low income home buyers as possible. Since the recent rise in housing prices in the past five or six years in particular, low income earners have found it very difficult to access a HomeStart loan. HomeStart loans were set at 2.8 times a person's income. If a person had an income of $20 000, HomeStart would lend them 2.8 times that amount—which is close to $60 000. In the past seven or eight years it was pretty hard to buy a house. For $60 000, you need a large deposit, somewhere in the vicinity of another $60 000. It is an impossibility for low income earners to raise that deposit.

Later on, HomeStart started lending up to three times the income. Lately, of course, that amount is still difficult for people to borrow, whereas, some of the banks and Bernie Lewis, for example, are lending something like five and a half times gross income. A $20 000 household has the potential to borrow $120 000 plus, which makes it a lot easier, so a lot

of those people have been required to go elsewhere. After receiving evidence from HomeStart, two recommendations which the committee made included that HomeStart Finance be permitted to offer a broader mortgage finance loan such as line of credit mortgages, which the banks and most credit unions now offer. It is an account which all wages go into, I understand, and that goes towards the house, and you draw on the wages or the credit that you have in your home loan. That offer is not available with HomeStart at the moment; therefore, it finds it hard to compete with the banks and credit unions in that regard.

Another recommendation was that consideration be given to increase the maximum loan book that HomeStart operates. It might be necessary to look at increasing the amount that they can borrow, perhaps up to four times their income, to help low income earners realise their dream. HomeStart now tends to attract people on higher income rather than low income earners, who seem to be going elsewhere. They are the two important recommendations that came out of this. HomeStart is financially travelling well; its debt is well under control; and it is self-insured against the debt, because it cannot get mortgage insurance. Overall, it has been a wonderful thing for low income earners, but there have to be some changes to see that it continues to service those whom it was set up to service. I take the opportunity to thank the Secretary of the committee, Gareth Hickery, the Research Officer, Tim Ryan and committee members.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

SELECT COMMITTEE ON PITJANTJATJARA LAND RIGHTS

Adjourned debate on motion of Hon. T.G. Roberts:

That the report of the committee be noted.

(Continued from 2 June. Page 1740.)

The Hon. SANDRA KANCK: On this occasion, when I am making an important speech about indigenous people's issues in this state, I want to begin by acknowledging that we are on Kaurna land. Although the motion to establish this committee was passed on 29 August 2002, the committee has taken just short of two years to produce this report for the parliament. At the outset, I personally apologise to the Anangu for the terribly long time that the committee took to reach the point of producing a final report and recommendations. I say to the Anangu 'munta'.

I cannot explain why these delays occurred, but I place on the record that our committee secretary regularly contacted us with lists of dates that were offered to us by the chair of the committee, the Aboriginal affairs minister (Hon. Terry Roberts). The minister clearly gave the committee priority because, like me, I know he believed that it presented an opportunity for intervention and an opportunity to bring about some positive changes on the lands. Each time a list of dates was provided to me, I wrote all the alternative dates into my dairy. I gave this committee priority over all other parliamentary responsibilities. Again and again the dates fell through. I do not know why.

It was 16 months between the last hearing of evidence, in January 2003, to the point of tabling this report. As a member of this parliament and a member of this committee, I am embarrassed and ashamed by this. In the meantime—I suspect, at least in part, because of our committee's inactivity—this parliament moved to form the Aboriginal Lands Parliamentary Standing Committee. Then earlier this year events took their own course with the intervention of the Treasurer following the death of four young Anangu and the attempted suicide of eight others, all in the space of two weeks. I wonder whether history would have been different if our committee had been more responsible and prompt in its responses. It concerns me greatly that our committee's inaction may have inadvertently contributed to those incidents and those deaths.

The issues of petrol sniffing, alcohol addiction and family violence in the Pitjantjatjara community, the consequences of which are the highest levels of disability in the state, have been well publicised in the past two years, and particularly in the past few months. Less well known than those behaviours is the stand-off between the Pitjantjatjara Land Council and the Anangu Pitjantjatjara Executive, with the subsequent breakdown in delivery of services to that community. The demarcation dispute was creating great division amongst the Anangu to the point where it could have been life threatening. What the committee was presented with was dysfunctionality at the individual, family, community and organisational levels.

At the time the committee was formed, the situation of individual misery was overlain by that stand-off between the PLC and the AP Executive, and further complicated by the fact that the Pitjantjatjara Land Rights Act can necessarily deal with land only inside South Australia's borders, but the Anangu's lands extend into Western Australia and the Northern Territory. The lines on our maps can sometimes become ineffective and even counterproductive.

This committee, which promised much, was seen by the Anangu as a circuit-breaker. The two sides in this dispute communicated with the committee on many occasions, and our presence on the lands when we visited in 2002 was welcomed over and over again. It was clear that the Anangu were at their wit's end with the problems and were placing great faith in the committee to provide some solutions.

Shortly before the committee was formed, the State Coroner released a damning report into the deaths of three young indigenous people from petrol sniffing. He drew attention to the fact that, in a community of between 2 000 and 2 500 people, 35 people have died as a result of petrol sniffing in the past 20 years. My back of envelope calculations suggest that this would be the equivalent to 750 Adelaide residents dying each year for 20 years from one cause alone, and a preventable one at that. We would not tolerate it. We would call it an epidemic. We would be demanding a solution, and we would be demanding a royal commission.

The Hon. Nick Xenophon: Five times the road toll.

The Hon. SANDRA KANCK: Exactly—five times the road toll. To remind members just how awful those figures are, of course, they reveal only the ones who die. They do not take into account the brain and lung damage of those who survive the petrol sniffing, the violence they perpetrate and the physical injuries and damage that result to others.

Most South Australians had no real knowledge of this, but our health, police and legal bureaucracies and the governments that funded them must have known about it and tolerated it. The 2002 coronial inquest investigated those three deaths and found that each of the three had been sniffing petrol for over 10 years and that their lives had been 'characterised by illness, hopelessness, violence and alienation from their families and community'. The Coroner

observed that the consequence has been 'serious disability, crime, cultural breakdown and general grief and misery', and 'that such conditions should exist among a group of people defined by race in the twenty-first century in a developed nation like Australia is a disgrace and should shame us all'. The Coroner observed that the Anangu look to the broader community to help them deal with a problem that has no precedent in traditional culture, and that was clearly the way in which the community responded to us when we visited. But, sadly, this committee let them down.

While the problems have been escalating over years, and even decades, for reasons of political ineptitude, political antipathy or political paralysis, not least of which has been the fear of appearing to be paternalistic, those who had the power to intervene have been unwilling to do so. The radio shock jocks and the right wing newspaper columnists might talk of an Aboriginal industry, but they clearly have no comprehension of the experience of people living in this situation. As a committee, we undertook a whirlwind three-day tour of the Pitjantjatjara lands, visiting Pipalyatjara, Amata, Fregon, Umawa, Ernabella, Mimili and Indulkana, to talk with some of the local indigenous people. I was shocked and appalled so many times by what I saw. Not just the petrol sniffing, a little of which we saw at a distance in Ernabella, but the filth, the disease-carrying dogs, the poverty and the disempowerment. The cost of living is a shock in itself. I had a quick look inside one of the community stores and was shocked to find that a packet of biscuits that I can buy for $1.80 in Adelaide was selling to those people at $3.30. Petrol at the time was retailing in the metropolitan area for 90 cents a litre, but on the lands it was $1.60.

When 85 per cent of the community are sustained by CDEP grants and other social security benefits, the money does not stretch far. A transportable cabin-style home that we could buy for about $100 000 when purchased in Adelaide costs a quarter of a million dollars by the time it has been built on the lands and the water and electricity connected. Often, the successful tenderer is the only one, so price is not negotiable. There is almost no such thing as paid employment for the Anangu. There are no tradespeople on the lands. TAFE shut down its services five or six years ago, so how can anyone learn a trade? When the houses are constructed, the contractors bring in tradespeople from outside the lands, which of course adds to the cost of constructing the houses.

Something is terribly wrong with our educational services there. In the 21 years since the lands were returned to the people, only one person has completed secondary education. But why would you bother when there are no jobs at the end of it? By condoning this situation, successive governments have effectively said to the Anangu that they have no right to participate in our first world society and economy. While it is important for the Anangu to maintain their culture, they should surely have the freedom to move themselves out of poverty. While the detractors talk about an Aboriginal industry, you do not hear them talk about the white exploiters of indigenous people. We heard evidence that, even though it is illegal to bring alcohol onto the lands, enterprising white people are selling it to the Pitjantjatjara people at a cost of up to $100 for a slab of beer.

Those white low-lifes sell them alcohol, they sell them petrol to sniff, and now they are beginning to sell them hard drugs. They sell them second-hand cars without a second-hand dealers licence. Cars that would sell in the metropolitan area for $500 are sold to young men on unemployment benefits for $2 000. And then these young men, now with cars that do not run—often they do not even get back to their settlements—are in hock to these low-lifes. This is not to excuse those Anangu who are not above trafficking in these commodities, but it is an indictment of these white people who have the knowledge and the understanding of the damage this is causing to the APY that they would seek to profit out of such misery.

The committee looked at so many issues, and I can only touch on them, such as deficiencies in the original act. It is an act like no other act. Is it a bird? Is it a plane? No, it is the Pitjantjatjara Land Rights Act. The Anangu Pitjantjatjara is a body corporate, but it is not a statutory authority, nor is it a service delivery body, nor is it local government. We were told that administrative law would not apply in the same way as it does to a body such as SA Water, but some principles of company law would apply to it. We have made recommendations to the government about the need for amendments to the act, and I would strongly urge the government to include recognition of the Ngaanyatjarra and Yankunytjatjara people in the title of the act.

There are issues about mining exploration on the lands, and I note that this was very much a cornerstone of the dispute that erupted between the Pitjantjatjara Council and the Anangu Pitjantjatjara executive. There are divisions in the community over the acceptability of mining as a source of revenue and a way forward for the Anangu. The community at Indulkana, for instance, was very negative about the continued existence of the Mintabie precious stones field. They talked of Mintabie and the white miners there as being sources of alcohol, drugs and pornography, and they wanted to 'close that place down.' The division in the community about whether or not mining is going to be the solution to providing wealth to the people of the lands or whether it will cause more misery is one that I think is tightly balanced and could easily erupt if it is not handled carefully in the future.

The committee heard how those working on the lands faced the interminable problem of answering to an endless number of bureaucracies and funding agencies, spending time writing reports justifying their existence so that they could continue to receive funding, rather than being able to get out there and do the job of assisting and empowering the Anangu. Ms Maggie Kavanagh from the NPY Women's Council observed that her organisation has to acquit 59 separate grants covering 16 different program areas from nine separate funding sources. That is just one group. Most of their funding is annual and they do not know how much they will get until it arrives. And that situation is replicated across the lands.

Our recommendation to government about the need for triennial or block funding I hope might provide a bit of continuity and stability in the delivery of programs. As I mentioned, we had a whirlwind three-day trip across the lands, and the last community we visited was Indulkana. We met, by contrast to some of the other communities, a very clean place. The public hearing began with one of the religious leaders of that community saying a prayer, which was very different from the other communities. It was very clear that we had what appeared to me to be a fundamentalist Christian takeover in that community. I want to quote a little from some evidence that was given to the committee, not actually in the public hearing, but when we moved inside to hear evidence from those who were delivering the programs at Indulkana. It states:

> We have made that change here by having a strong administration with a very strong council that drives it with a bit of Christian drive added. You might ask what the Christian drive does. It adds a

bit of shame. A lot of people who are senior people follow the Christian faith. They go home and impart their Christian beliefs to the family who feel ashamed about their drinking habits or whatever and they either give up or move away.

I must say that I was appalled. The Aboriginal people in this state have got enough on their plate without Christian communities trying to add shame to it. I was really quite disturbed by that. We were also told that the cleanliness of the place was partly engineered in response to our going there. What they had done—and this was not said on the record, of course—was stop the people from going to the community store for 24 hours so that there would not be the food wrappers, drink bottles, cartons, and so on, lying around when we arrived. It was very much engineered.

As I say, I cannot possibly deal with all the issues in one speech in this place tonight, so I am going to concentrate my contribution on what I believe to be the core of the problems on the lands, that is, violence. We refer to it in our report as 'family violence', but that term glosses over what is happening. What is happening is not just family violence: it is societal violence. It is domestic violence; it is child abuse; it is male to male violence (particularly under the influence of alcohol); and it is endemic. When we visited the lands, at each settlement people came forward to give evidence, but the huge majority of the witnesses were men. While they spoke about the petrol sniffing, the alcohol, the emergence of illicit drug use and the selling of substandard over-priced cars to young male Anangu, to their shame all but one failed to even acknowledge the issue of domestic violence.

One of the written submissions to the committee included a paper, 'Minyma Rapa: courageous women', which had previously been presented by Jane Lloyd, Coordinator of the Domestic Violence Service of the NPY Women's Council, to the Expanding Our Horizons conference in Sydney in February 2002. That paper gave an example of a Pitjantjatjara woman, Daisy, living with a man of Torres Strait Island origin who, therefore, required a permit to be on the lands. Over a period of three years, his violence resulted in Daisy's jaw being broken twice and her leg also being broken. Her female relatives approached the mostly male AP executive and asked for his permit to be revoked, but the request was refused.

When the men in the community collude with violence in this way it makes it very difficult to stop this abhorrent practice. Women working for the Domestic Violence Service have found themselves intimidated by men from both the AP Executive and the Pitjantjatjara Council. One of the staff has twice had to have a police escort to leave the lands. The permits of these non-Anangu staff can be revoked at a moment's notice. The suggestion was made to the committee that a ministerial permit should be given to allow them to stay on the lands to assist domestic violence victims. The committee's recommendations did not take that up, but I do remind the minister of that suggestion.

I return to Daisy's story. The perpetrator attempted to intimidate his victim (his partner) to drop the charges—he had always succeeded before in intimidating her—on this occasion, even outside the Magistrates Court hearing on the AP lands. In this case she did not give in, but, to make matters worse to her, while the prosecutor sought a custodial sentence, the defence lawyer asked for a suspended sentence—which is what the magistrate gave him. There would have been an outcry if this had happened in an Adelaide-based court. I observe that some education and cooperation of judges and magistrates in regard to understanding the impact of domestic violence would not go astray if there is to be any containment of this sort of behaviour on the lands.

Ms Lloyd suggests the need for intense and ongoing lobbying of the judicial system to ensure that the safety of the victim is paramount. It seems so blatantly obvious that one wonders in the 21st century why women still should be asking for judges to have sensitivity to the needs of women. Ms Lloyd quotes some interesting statistics in that paper as follows:

> Between January 1980 and May 1989, the reporting period of the Royal Commission into Aboriginal Deaths in Custody, there were nine Aboriginal deaths in custody in the Northern Territory. During the same period the NT police crime reports recorded 39 homicides of indigenous women.

These are extraordinary statistics and, although that paper deals with the Northern Territory, I have no doubt that if these statistics were available for the APY lands we would find similarities. It is my view that the government should start bringing such figures together so that we can understand the extent of this problem. Ms Lloyd also states:

> [Domestic violence] occurs in an environment where physical aggression and posturing is the norm. . . where young men, in particular, believe it is not only their right but it is also acceptable to assault their young girlfriends and wives. . . where family of the victims are fearful of the offenders and cultural and social relationship with the offender's family are prioritised over the safety of their daughters and other female kin. Women are socially isolated. They are locked in rooms away from the sights of other family, they are prevented from socialising with their family and from attending much prized and valued jobs; their lean earnings and/or social security payments are beaten off them to purchase alcohol and marijuana that leads to further acts of violence. Women are prevented from leaving because husbands and their families have possession of the children. . .

We must address the problem of domestic violence on the lands. The committee heard evidence that one in four Anangu women between the ages of 15 and 44 has been or is a client of the NPY Women's Council's domestic violence program, and these are only the women who have reported the violence. We were assured that this is a conservative figure. What about the children who are the victims of violence? Comments were made in passing about increasing rates of sexual abuse of children, although there was no data given to us. Ms Lloyd reported that demand for the domestic violence services is increasing. That is both disturbing and encouraging: it is disturbing to hear that violence is on the increase; encouraging because the women on the lands are starting to get up the courage to begin to take action. It is tentative, and it needs all the encouragement we can give it.

There are certain practices and behaviour which require our intervention and which are beyond any cultural mores. Parliament, for instance, has passed legislation to prevent female genital mutilation. We said, 'We don't care if this is a tradition in other countries; it is a crime.' We were prepared to face accusations of paternalism in passing that legislation. Of even more significance for this issue is that 10 years ago in South Australia we passed the Domestic Violence Act. Parliament said that domestic violence is so repugnant that it requires its own separate recognition as a crime. We said then that domestic violence is unacceptable. We did not say, 'Domestic violence is unacceptable except on the Pitjantjatjara lands.' We did not say, 'Domestic violence is unacceptable except if it's an Aboriginal man attacking an Aboriginal woman.' No; we said, 'Domestic violence is unacceptable.' There were no caveats, no exemptions and no exceptions. So, how is it that such violence has been tolerated, not even spoken about, and ignored on the AP lands? It is little wonder

that petrol sniffing is rife. So many young people must be looking for a better life and, if that is not possible, then escaping through oblivion might feel better for some.

When children see their mothers being bashed and treated as third class citizens, when the children themselves are abused, when that primary relationship between a parent and child becomes dysfunctional due to violence, the seed is germinated for self-destructive behaviours. In medical literature in the first world, it is known that one of the indicators for eating disorders is to see that violence acted out, not even to be on the receiving end of the violence. How much worse will the outcomes be within a marginalised culture where self-esteem is already low? The committee has recommended significant increases in funding levels for domestic violence services; it is the very least we should expect. If we allow this violence to continue, we are giving assent to the destruction of the culture of the Anangu. All the stores policies, all the housing and road construction, all the police to come in after the event will be for nothing. It is as simple as that.

I have tried to apply my mind to solutions to break the cycle of hopelessness and despair. As a former primary school teacher, I became aware that children arrive at school on their first day fully formed, with most of their attitudes to life in place. The chances are that these young Anangu, when they report to school on day one, will already have been abused physically, emotionally and sexually, or they will have seen their mothers and aunties beaten up. They will already have been traumatised; they will already have internalised the pain; and they will already have found ways to shutting down their emotions.

We did not receive any evidence to this effect, and it is only my view but, if I were the minister, I would be bending over backwards to have preschools set up in every community on the lands, making them available, if not compulsory, to every child once they reach the age of 2 years. In this way, these children could grow with an understanding that the world is not completely mad and that there is, in fact, some predicability and order to be found. Education might then, at the very least, be experienced as respite from despair, and it might even become a place of relevance to young Anangu, thus allowing them to have some sense of control of their lives. It just might be the circuit breaker which is needed and which could provide some hope for the future.

In many ways this committee has been overtaken by its tardiness, and that is a matter of regret. However, despite that, this is an excellent report, with 15 very substantial recommendations. I encourage members of this place, members of this parliament and members of the public to read it. I am hopeful that the actions we have suggested to government will be quickly implemented and that the recommendations to the Aboriginal Lands Standing Committee will also be given utmost priority. There is no doubt that there have been years of neglect. It is my fervent hope that the government and the people of South Australia will not turn away from taking action to prevent brain damage, bloodshed and death. For too long these problems have been 'up there', out of sight and out of mind. The Coroner's words about petrol sniffing say it all for all the problems that beset these people. He said:

> There is no need for further information gathering. . . .What is missing is prompt, forthright, properly planned, properly funded action.

Please, let's do it.

The Hon. R.D. LAWSON: I rise to speak in support of the motion that the report of the Select Committee on Pitjantjatjara Land Rights be noted. I was a member of this committee from its inception. Notwithstanding the reservations expressed by the Hon. Sandra Kanck, I believe that the committee worked diligently to produce a good report. It is a pity that the Hon. Nick Xenophon, who was appointed to the committee, was ill at the time of his appointment and was unable to take part in any of the deliberations of the committee. It is also a pity that the council—not, of course, at that stage realising the duration of the Hon. Nick Xenophon's illness—did not replace the honourable member with another member of the council.

I know, for example, that the Hon. Andrew Evans would have been interested in serving, and I believe that the parliament would have been well served had another member been appointed, because there is no doubt that, unless one undertakes the relatively detailed study required when one is on a select committee of this kind, and unless one experiences a visit to the lands and converses with people on the lands, one simply does not have any real comprehension of the nature of the problems faced not only by the people on the lands but also by ministers, governments and officials who are working towards improving the lot of people on the lands. However, I think that the biggest danger of being on a committee of this kind is to think—after one has heard some evidence, read a good deal of material and heard various views—that one has a solution to the problems that beset the lands. And problems there are in abundance.

It is a matter of regret to me that the recommendations of the Coroner handed down in September 2002, following his so-called petrol sniffing inquest, were not embraced or adopted in a timely fashion. The Coroner undertook a very comprehensive and detailed look, and he took evidence over quite a protracted period of time. It was concentrated and well-prepared evidence from service providers as well as people on the lands. He came up with what I believe is a comprehensive blueprint to address some of the issues concerning petrol sniffing, in particular, but I prefer to call it substance abuse in general. Regrettably, those recommendations were not adopted in as timely a fashion as they should have been.

In my experience, one of the frustrations of people on the lands is that parliamentary committees come and go; members of parliament come and go; committees of bureaucrats attend on the lands, hear evidence, promise that needs will be met, then they disappear over the horizon; and people on the lands see very little for all of the inquiries, investigations, working parties, committees, working groups, subcommittees, etc.

Inquiries have beset the lands for many years. For example, Neville Bonner, a former member of the Australian Senate, chaired an examination of services on the lands in the 1980s. He produced a very comprehensive report called, 'Always Anangu'. I was not aware of that report when this committee embarked upon its investigations, and it was only during the course of those investigations that I became aware of the Bonner report 'Always Anangu'. The truly depressing feature of that report is the fact that the situation described by Bonner in the 1980s was precisely the same situation as our committee saw in 2003. Indeed, one would have to say that, objectively, the situation had not improved and that it was probably worse in 2004 than it was at the time Bonner prepared his report. All aspects of the health status of people, of employment opportunities, of economic opportunities, of

education, of the provision of services and support generally had slipped back over the years—and they had slipped back notwithstanding the best efforts of many dedicated people, both indigenous and non-indigenous.

I think the real danger of any committee of this kind is thinking that you have found a solution. I do not believe that the committee fell into that trap. The recommendations made were all sensible, and one might term them relatively modest recommendations. The dissenting statement which was appended to the report by my colleague the Hon. Caroline Schaefer and I points out that we support the recommendations of the report but we also point out those recent unhappy events on the lands which commenced in March of this year. The Hon. Sandra Kanck has referred to them, we refer to them in our dissenting statement, and I do not think it is necessary to dilate upon those matters.

This committee did receive what I believe is good-quality evidence from a range of people, and the schedule of witnesses which appears on page 96 of the report illustrates the breadth of experience that was brought to bear. Many of the witnesses were non-indigenous people, but many were also indigenous people, and they also represented people from the lands as well as off the lands.

The Hon. Sandra Kanck mentioned the visit of the committee to the lands, which was a great eye-opener for those of us who had not previously visited the lands. To visit the Anangu Pitjantjatjara lands of South Australia for the first time is a life changing experience for anybody with any sensitivity to human needs. Anyone who undertakes that task conscientiously is assuredly changed in their views and outlook, and to some extent their understanding. Notwithstanding that, one visit, two visits or many visits does not provide one with an insight into a so-called solution.

The committee had the very great benefit of being accompanied on our visit to the lands by Bill Edwards, who provided interpreting services for the committee. Bill Edwards was the superintendent of the Presbyterian mission at Ernabella for a number of years. It was interesting and delightful to see many of the older people on the lands approach Bill Edwards with great affection. Reverend Edwards is a man who has a deep understanding and experience of Anangu. He has thought about issues on the lands; he has written about them and studied them; yet, it is interesting to note that Mr Edwards never purports to offer a simple explanation for the situation on the lands. In fact, I think it is fair to say, and whilst I do not want to put words in his mouth, that he, like so many others, is perplexed about what has gone wrong and what we can do in this part of the world to improve the life of people on the lands.

The recommendations are sensible and pragmatic. They do not purport to provide a simple solution, or any solution. What is needed, of course, is leadership: leadership on the lands, leadership at a bureaucratic level, and leadership also at a political level. I commend the Hon. Terry Roberts as minister, who was chair of the committee throughout, for his good humour and unfailing patience. I think it is fair to say that there are not many ministers of this government (or any other government) who would make available the time that this minister has to the workings not only of the select committee but also of the Aboriginal Lands Parliamentary Standing Committee.

This report will be taken up by the Aboriginal Lands Parliamentary Standing Committee and I think that, as a member of that committee, I am deeply indebted to the report. I think that those members who are new to the parliamentary standing committee will also benefit greatly from this report. I commend Jonathan Nicholls, who was the research officer for the select committee. He has been assiduous in the collection and presentation of evidence and in organising the committee. I am delighted that he has been appointed as the secretary of the Aboriginal Lands Parliamentary Standing Committee where he is already using to good effect the good experience that he gained from the select committee, as well as his own experience with indigenous matters. I commend the report.

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

SOUTH AUSTRALIAN COUNTRY WOMEN'S ASSOCIATION

Adjourned debate on motion of Hon. Carmel Zollo:

That this council notes and congratulates the South Australian Country Women's Association on its 75 years of service to our community.

(Continued from 2 June. Page from 1750.)

The Hon. R.D. LAWSON: I rise to support the motion that this council notes and congratulates the South Australian Country Women's Association on its 75 years of service to our community. The Country Women's Association has achieved a significant milestone in its 75th birthday. It has been 75 great years of service to South Australia, not only to country South Australia but also to metropolitan South Australia in understanding the needs of people in the country. I rise because my mother was a member of the CWA when we lived at Tanunda. I think that she was the secretary of the local branch of the CWA for quite some time. Of course, Tanunda is hardly a remote part of South Australia. Some people say that it is hardly any country at all. I remember, as a child, my mother being a most enthusiastic member of the CWA. The president of the local branch of the CWA, for many years, was Laurel Hoffman, the wife of Erwin Hoffman, who was the proprietor of Hoffman's wines and a great character in the Barossa and, in particular, in Tanunda.

I remember that the happy band of members of the Country Women's Association in Tanunda organised many great events, had wonderful trading tables, raised funds and supported the community. I believe that organisations like the Country Women's Association, which still has about 3.000 members, is at the heart of what the state of South Australia is all about. The CWA epitomises the spirit of South Australia, of 'volunteerism', of community service, of getting in and helping your friends and neighbours and of supporting your local community.

Obviously, in recent years the number of members in the Country Women's Association has declined somewhat, although it is still significant. That is very much a sign of the times. It really is a matter of regret that some of the great organisations that have provided the mortar that has held together the fabric of our community are not as strong in numbers as they once were, but the spirit is still strong. I wish the association the very best for its 75th anniversary, and I look forward to supporting the Centenary in 25 years.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support my colleague the Hon. Mr Lawson, and I note that he is obviously intent on staying in the Legislative

Council for another 25 years to acknowledge the impending 100th anniversary of the CWA in South Australia. Certainly, we look forward to that, and we welcome that public acknowledgment from my colleague, the Hon. Mr Lawson. I join other members on both sides of the chamber who, over the past few weeks, have supported the tremendous work of the CWA as an organisation, and the individual members referred to in the CWA.

I must admit that, as I listened to the debate when last we met, I could think of no immediate connection to the CWA, certainly, not on my side of the family. Whilst I come from Mount Gambier, to my knowledge neither my mother nor my two sisters have had any engagement in the CWA. I should have thought of this myself, but I was recently reminded by my wife that my mother-in-law, Una McNamara, who is now in her late eighties, retired and living in Adelaide, during her many years in Mintaro in the mid North was a very active participant in—I presume it was called—the Mintaro branch of the CWA, together with a number of other friends who, over the years, I have met through my wife.

As other members have acknowledged, the active work of school fetes, craft shows and a variety of other fundraising functions were supported by my mother-in-law and other women from the Mintaro region. They raised considerable funds for the local Mintaro school. Though it is not of significant size in terms of the number of students, my wife reminds me that the quality made up for that—at least she indicated so. They also raised significant funds for community facilities in the Mintaro region. Of course, in the latter years Mintaro has become much more of a tourist based location.

Years ago when my wife was living in Mintaro it did not have quite the prominence as a tourist based location. Nevertheless, the CWA was one of those organisations that continued to raise funds for community-based facilities for the locals and the small number of tourists who, at that stage, visited the region. With that, I will not repeat all the words of my colleague the Hon. Mr Lawson and others who have spoken before me tonight. I join in congratulating the CWA as an association, and its present leadership. I congratulate it for the work that it has undertaken during the past 75 years and, certainly, with other members wish it very well for the future.

The Hon. J.S.L. DAWKINS: I rise to support this motion. I have not had a great deal to do with the CWA, although, throughout my life I have been well aware of the good work that it does. Unlike the Hon. Mr Lucas, I cannot come up with a relative or an in-law who is involved in the CWA, although, my mother was heavily involved in a similar organisation, but it was not the CWA. In recent years the Gawler branch of the CWA has indicated its strong willingness to participate alongside the town's service clubs in joint community projects and activities.

A good example is the manner in which the branch has strongly supported the establishment of the Gawler chapter of the Operation Flinders Foundation over the past 12 months. This support resulted from the attendance of Gawler CWA members at the combined service clubs dinner, which was addressed by the Operation Flinders Executive Director, John Shepherd. The branch was subsequently represented on the committee which organised the fundraising dinner, raising around $20 000.

In addition to that work, CWA members from Gawler also supported the forum for service clubs and the public on communities and leadership, which formed part of the Rotary District 9500AA conference held in Gawler earlier this year. CWA members showed particular interest in the young leadership development aspect of this forum, as well as the segment on building communities. This participation is in addition to all the other good work done by the Gawler branch and the large network of branches across South Australia including, I should add, those which are established in the metropolitan area. I thank the Hon. Carmel Zollo for putting forward this motion, which notes and congratulates the CWA for its service to the South Australian community over three-quarters of a century.

The Hon. CARMEL ZOLLO: I thank all members for their contributions and support of my motion. In particular, I thank the Hon. Caroline Schaefer for her considered contribution. It is gratifying to see so many members on both sides of the chamber make a contribution, and I guess it is not surprising to see that the South Australian Country Women's Association has touched the lives of so many people on a personal level. The contribution of the South Australian Country Women's association is important to our state at both the social and economic level and deserves acknowledgment. Again, I thank all members for their contributions and expressions of support in congratulating the South Australian Country Women's association for its 75 years of service and volunteerism to our community.

Motion carried.

INDUSTRIAL AND EMPLOYEE RELATIONS (PROHIBITION AGAINST BARGAINING SERVICES FEE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 September. Page 198.)

The Hon. J. GAZZOLA: This is not a new debate, as Graham Orr from the School of Law at Griffith University has argued in a discussion paper in *The Australian Journal of Labour Studies*. The use of agency shops or fair share fee arrangements in the US (the land of freedom of association) and Canada has been the vogue for quite some time. The conclusions that he came to are interesting and can be summed up as follows: it is fair, it would be workable and justifiable under the Australian enterprise bargaining system, and its enactment can sit within the freedom of association principle. The overseas solutions, he notes as a caution, are no cure-all, and its acceptance here by non-union members and unions alike would be a complex and lengthy legal process.

The arguments in the federal and state spheres have to date been general and, following this, a look at the Liberal Party's Declaration and the Spirit of Liberalism is of interest. The declaration states both its belief in the right to freedom of association and its belief in the rights for all of equal opportunity and social justice. Given the need for unifying, practical qualifications as required in the real world, the argument between a bargaining fee and non-compulsion for a service to all employees under the same enterprise agreement should raise important questions about what constitutes social justice and access to social justice for the competing parties.

In regard to equality before the law, the Liberal Future Action Plan of the Workplace Services Policy states that a Liberal government will 'ensure that unions and union

officials are not given special privileges, protections or immunities from prosecution or civil action in relation to enforcement of industrial rights or responsibilities'. If we rephrase this and say that non-union employees, as a de facto association of individuals, are granted industrial protection equal and equivalent to union employees under the same agreement, as we know the situation to be, then the special privilege of not having to make a material contribution through a bargaining fee in the pursuit of equal industrial outcomes should raise important moral questions about what responsibilities non-union employees owe to unions and their members.

The Hon. Angus Redford, in his introduction to the bill in the council, argued two points against the charging of a bargaining fee for non-union members who benefit from successful union action in industrial arbitration. His argument about fairness centred on pragmatic and moral considerations. The former, which is a distraction from the central moral point, concerns a particular fee negotiated by the PSA. It is not central to argue from this figure as to the merits of the argument, although the figure mentioned will be accepted as a reasonable guide. His initial argument was that actual costs of services under a fee for service for non-unionists would be much less than, and disproportionate to, the bargaining fee, the amount in lieu of the annual union dues. He claimed that it 'bears no relationship to what the union might purport to provide'. He further offered a conditional argument to support his claim of unions profiting from members and non-members for the cost of each unit service offered. This final figure would be significantly less (the Hon. Angus Redford's words) than the union membership fee. This is an interesting approach. Can a bargaining service fee, as a matter of argument, be accurately disaggregated in a way that is helpful or realistic? Does the answer reflect the real cost of industrial practice and, if not, why not? I do not know whether I am splitting hairs or chasing hairs or both.

My initial answer to this, however, since industrial bargaining does not follow this particular accounting path, is that it is a false hypothesis and, as a point of comparison, irrelevant. The interesting part, though, is the assumption that the cost of a fee per unit service of the type we are discussing—a bargain fee—can be founded on a simple identification of input and output like an ideal production line. Obviously, a fee can be decided upon, but what does it tell us and is it accurate? It would be interesting, for example, to know the rationale as to how a lawyer justifies a cost for a legal service. Is it, say, in regard for a successful criminal defence, the level of responsibility and knowledge required to conduct the case or the class nature of the professional salary hierarchy? In this roundabout way it seems erroneous and misleading, and certainly impractical, to assume that unit fee value can be arrived at by some simple reduction or disaggregation or that there is a simple formula that offers easy and accurate relative comparisons between services.

This is not to say that there are cannot be ways to measure fee justice or fairness, but I am truly interested in how a lawyer, for example, as one part of this process, justifies the ground for legal fees beyond quoting from a schedule. Besides this, it is a truism that some union members will never require additional services, but there will be members who will require further services where the total cost exceeds their membership fee. It is their insurance policy, if you like. There are the accumulated costs of expertise and knowledge which determine all specialist services and which form the corpus of knowledge for an enlightened membership. It is this informed representation and authority acquired over a period of time that is also appropriated by non-union members in agreements hammered out by the union for its members that a bargaining fee recognises.

In principle, it seems fair and correct that non-members should contribute in some way to their betterment. According to information provided by the PSA, non-union members stand to gain a minimum of $5 000 over a two-year period for an all-up bargaining fee of $750. It should also be pointed out that union members on an equivalent sliding scale will pay around $1 000 for union dues over the two years of the agreement. The honourable member, however, does not refer to the economic gain to be made by non-union members in his reference to the PSA claim as 'outrageous.' The Hon. Angus Redford, however, has raised an interesting hypothetical situation. A comparison between the suggested PSA fee and what a non-union member would have to pay if a solicitor were employed to represent an individual at a single bargaining centre is illuminating.

I point out that this is not an unlikely probability, given the complexity of industrial law even to an expert. I refer here to the schedule of fees as set out by the Supreme Court of remuneration. One law firm I spoke to that specialises in industrial cases, a firm which, I might point out, charges less than it could, suggests that its minimum cost of representing someone at an individual bargaining centre would be around $700 to $800. Another cheaper alternative perhaps would be for an individual to hire a registered agent, but issues of whether the agent is bound by a code of conduct, what redress the client has in regard to insurance and the level of competence and knowledge an agent brings to the industrial bargaining table are of concern. The possible passing of this amendment bill for some is like awaiting an invitation to a greedy lawyers' neverending feast.

There is also the possibility of non-union members forming a de facto union, seeking representation through one or two non-union members only for similar or at least equal conditions to union members; like an industrial enterprise class action. Employers may find this initially attractive, to set one employee group against the other but, as in the case mentioned by the former federal minister for employment and workplace relations, Tony Abbott, such an approach had the potential to become unworkable for the parties involved. As a minority group under a collective agreement, however, it would collapse, so it is also an unrealistic venture. There are other more powerful moral arguments against this approach in regard to non-union members' 'free riding' on the intellectual capital and efforts of the union, given that it has been unions that have established industrial benchmarks and whether de facto unionism contradicts what they claim is their right to the freedom of association principles.

The former federal minister seized upon the shibboleth of freedom of association as 'the cornerstone of the government's vision for a more productive and more prosperous workplace,' which he used in the fashion of a club rather than an argument. He assumes that freedom of association necessarily guarantees greater prosperity; that a possibly free market approach would achieve this. Scarcity of labour in an ideal marketplace might achieve this, but I fail to see how a free competitive market, where there is an excess of labour, would result in a more productive result for workers. Also, lower wages for workers, If this is what he is getting at, is not necessarily in the public interest, let alone the interest of unjustified inequality.

If, however, as is the reality, the union undertakes negotiations for an award that by its efforts will also reward the employee as the non-member, and that negotiations come from the collective intellectual capital and effort of the union, then there seems to exist a prima facie case for a bargaining fee. Those to the contrary argue that we need to protect people's right to choose, their right to association, but I wonder what sort of right it is that allows people—in this case non-union members—who enjoy the fruits of others' labour, to benefit. In some ideal industrial world, where the individual or parties have equal bargaining powers, with no hidden cards or agenda, then the issue of free association would not be such a problem. There seems to be an interesting assumption, a tactic, I suspect, in the freedom of association argument, that its mere utterance establishes its truth; that it floats out like a universal truth in some pure ideologically free air.

Even much worse, according to its pundits, is its contradiction as coercion, something akin to heresy, if we believe the arguments for. This reality reflects in part an assumption held by some that union action is inherently unlawful. This is grounded in the fact that common law has leant on the side of protecting property and that judicial policy has always generally favoured the prevailing interests of the employer. The implementation of statute law by the federal government through sections of the Trade Practices Act and the Workplace Relations Act have been used, according to the studies by some critics, to impose further restraints on union action in addition to any restraints imposed by common law. The consequences of the legal attacks on the rights of workers reinforces the prevailing ideological view that employers' resistance to union agitation is a social good, while union action is seen as intimidation.

Contemporary ideology has little sympathy for workers' rights, as aptly reflected in the federal government's current industrial practice. For example, there is the impediment in the way the federal government is seeking to use freedom of association restraints by legislative action as seen in the amendment to the Higher Education Support Act, otherwise known as the student union fee. Under this proposed amendment banning compulsory fees, students will not automatically be allowed membership to a union that provides a range of services as well as the organisation, support and guidance that have been a traditional part of university life and culture. This particular bill will further the prevailing ethos of individualism and disconnection that is so important to both disempowering people of legitimate and productive association and furthering the government's erosion of union rights.

This federal government wants to use whatever device it can. This will be counterproductive, many university services will be lost and university culture will be further damaged, beyond the vandalism it has already suffered at the hands of the Howard government. Clearly, the federal government through its draconian industrial program is seeking to exploit the naivety and ignorance of students in the current ideological climate. The gloss of freedom of association as an industrial tool assumes a self-evident appeal, superficial though it really is. The importance of freedom of association, however, as a real and successful industrial weapon to weaken unions, has been noted in a study of the waterfront dispute. This wand needs to be seen as an unfair industrial device, a philosophical fiction which ignores a moral issue that conservatives often trot out to diminish union representation; and this, I suspect, is the opposition's true intention.

If the federal government and the opposition are really serious about protecting all workers' rights, including the rights of union members, it will be interesting to see what standard of fairness they are prepared to offer outside what has been debated so far. The whips of fear for business interests were energetically raised in the other place—the member for Waite waxing enthusiastically over the great economic achievements of the state and federal Liberal governments in regard to enterprise bargaining and micro-economic reforms. The leap of the economy into hyperdrive, he called it; a leap that is mortally threatened by the introduction of a bargaining fee. Has anyone ever wondered about the cost in time and money to all parties of enterprise bargaining—one jewel, he claims, in the crown of Liberal industrial reform? Has he considered the cost to workers, to the every increasing numbers of casual employees, of Liberal industrial and economic reform? Does the member for Waite seriously believe that the stability of hyperdrive balances precariously on the knife edge of a bargaining fee provision?

The Hon. A.J. Redford interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The honourable member ought to stick to his text.

The Hon. J. GAZZOLA: Thank you, Mr Acting President. So much for the strength of the hyperdrive. This is slapdash stuff, and his plea about the ordinary mums and dads, the non-union members, being ripped off is lamentable. We need only to look to the federal government to see who is being ripped off. After rattling his light sabre, we are then treated to the Darth Vader of all arguments—the inexorable conspiratorial hand of the Labor Party/unions nexus to fatten union coffers over the bodies of ordinary mum and dad storm troopers. If he was consistent about workers' rights he would apply similar odium to the juggernaut of capitalism or big business support of the Liberal Party. Is his argument really serious? According to him, there is no moral issue—

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. J. GAZZOLA: —just union opportunism and conspiracy. His argument has the lot: a lot of superficial analysis and a lot of humbug. The opposition's professed concerns for ordinary mums and dads just do not wash. The member for Waite's contribution gets to another point, though. He wants to maintain that this bill is about championing the cause of industrial deregulation; of avoiding a return to the pre Howard-Reith market reforms of supposed reduced productivity and higher business costs. Is this correct, though? Professor Junankar, Professor of Economics in the Faculty of Business at the University of Western Sydney, in the abstract to his paper on the comparison of the Keating and Howard years, in regard to labour market reforms, economic health and employment, states—

The Hon. A.J. Redford interjecting:

The Hon. J. GAZZOLA: Well, just wait for it. His paper states:

> The labour market reforms of the coalition government in the second half of the 1990s are compared with those of the former Labor government in the first half. Though economic growth was the same for both governments, the improvement in aggregate . . . unemployment appears significantly better under the former Labor government.

Though the emphasis here is on unemployment, a return to the industrial scenario of 1993, as suggested by the member for Waite, will not—even if we could—on a simple reading of this abstract see economic growth thwarted and, by extension, productivity reduced or costs increased. What the

opposition really wants through these strawman arguments is to continue the scare campaign in order to again raise the spectre, the myth, of rampant arrogant unionism.

The Hon. A.J. Redford interjecting:

The Hon. J. GAZZOLA: Yes, you will continue with your scare tactics. You will keep on with your scare tactics. The reality of the relationship between business, employers and unions in the complex contemporary industrial scene also does not flatter any notions about improved productivity under the current push for further industrial deregulation. According to a study by Professor Lansbury, Professor of Work and Organisational Studies at the University of Sydney, there is great concern and evidence that the current trends in the industrial arena are socially destructive and economically counterproductive. I recommend his paper, 'Work place change and employment relations reform in Australia: prospects for a new social partnership'. His findings are interesting in the way in which they throw light on current federal industrial initiatives. He points to the danger of non-standard employment, which is the move away from full-time waged work. This equates to 45 per cent of all employees, which comprises 25 per cent casual workers—one of the highest in the OECD. In relation to the problem this trend generates, he states:

> . . . some employees are becoming concerned about some of the disadvantages of casual employment, including an absence of enterprise level skill, lack of commitment to the enterprise, and the extra administrative burdens associated with casualisation of the work force.

A 1997 report by *The Economist's* intelligence unit entitled, 'Make or break', commissioned by Australia's largest employer's association in the manufacturing industry criticised the government's failure to create full-time jobs and a loss of skills, research and development that had led to a poorly balanced economy. A modern industrial atmosphere, he concludes—which I will paraphrase—is one that will be more efficient and productive, more concerned with equity, will resist the adversarial for the cooperative between government, employers and unions in the interests of all parties.

The Hon. A.J. Redford interjecting:

The Hon. J. GAZZOLA: You keep listening, Angus. The point of all this is that the reality of current industrial relations for employers and employees in general, and as reflected in academic opinion, together with the changing face of industrial relations, does not herald a return to the so-called perils of the early 1990s. Furthermore, there is not a demonstrated connection between this bill and the possibility of detriment to business, nor the reality of an inflexible attitude to the rights of non-members who are asked to pay a bargaining fee, as the US and Canadian examples demonstrate. Although the practicalities will provide a challenge, the issue is essentially a moral one.

In closing, I must say that I am a little perplexed by the motives of the mover of this motion and what he has said about the plight of exploited young workers. On 15 April, or thereabouts, the Hon. Angus Redford spoke on radio about young overseas students who were being constantly exploited in the restaurant industry and how one particular union had done nothing to assist these people. Although there was some disagreement about what was actually discussed between the honourable member and the union secretary, the fact is that the union's policing powers to examine this sort of exploitation was removed by the honourable member's government in 1994 when it was in power. To condemn the unions for something for which they are not responsible and to further blunt union capacity to redress this in this motion is morally inconsistent.

I am also concerned about the sincerity of the opposition's claims to be supporting the rights of workers, and here I refer mainly to non-unionised workers. In the first instance, I refer to the Legislative Council committee debate on the Industrial Relations and Employees Bill in May 1994—

The Hon. A.J. Redford interjecting:

The Hon. J. GAZZOLA: Yes, we have to go back—where issues were raised over the role and independence of the Employee Ombudsman—

The Hon. A.J. Redford interjecting:

The ACTING PRESIDENT: Order! The Hon. Angus Redford will get the opportunity to summarise the debate.

The Hon. J. GAZZOLA: And we are looking forward to that, Mr Acting President—which, through amendments to the then government's bill, guaranteed the Ombudsman's independence under the act. The then government unsuccessfully sought to bring the Employee Ombudsman under the control and direction of the minister. I would have thought that a sincere interest in the rights of all employees would be best guaranteed by a truly independent ombudsman. Their intention to remove independent third-party scrutiny at that time flew in the face of their promises, as argued by the Hon. Ron Roberts and their party policy, as the Hon Elliott argued. Given their party policy on workplace flexibility and what they see as in-principle fair play, existent then and now, the attempts by the then government to restrict the independence of the Ombudsman would have denied non-union members genuine choice, which amounts to both an abuse of industrial rights and a contradiction of their own policy.

What of the present? We have only to look at the review of awards amendment in the Shop Trading Hours Amendment Bill and the manner in which the opposition hid behind the motion moved by the Hon Nick Xenophon. The consequences for the independence of the Industrial Relations Commission and retail workers were quickly seen and the opposition's intention unmasked. In conclusion, the opposition says one thing and does another. At the end of the day, when we unravel its intentions and patter, it is not really interested in the plight of the ordinary worker. I do not support the bill.

The Hon. R.K. SNEATH: I oppose the bill. The Liberal Party is always talking about user pays and mutual obligations, but, of course, we know that the opposition is not serious about that. The opposition applies that argument only when it suits it. The proof of this is in a contribution made by the Hon. Angus Redford on 4 May in relation to the Authorised Betting Operations Betting Review Amendment Bill, when he said:

> Further, I congratulate the minister on this occasion for the work he is doing in relation to stopping those bludgers—

I note that the honourable member had a go at me for calling people free loaders, but he calls them bludgers—

> in the Northern Territory and the ACTU bludging off the racing industry in South Australia and other states in not paying proper taxes or fees for the provision of their services. I urge the minister to continue doing what he does at national ministerial racing meetings to ensure that the bludgers in the Northern Territory and the ACT pay their fair share towards the racing industry for the provision of those services.

The honourable member does not want non-unionists to pay for the provision of services, of course, because it does not suit him.

What we are talking about here is enterprise bargaining, under legislation introduced by the former Liberal government: its own legislation. We are talking about the proper process, where everyone has the right to their say. It is a democratic process supervised by the Industrial Relations Commission; in other words, supervised by the umpire. I encourage honourable members in this chamber to read the umpire's transcript when it handed down its recent decision. I hope that the members who will have an input into this debate will read the transcript before doing so. Under the existing legislation, not only must the employer approve of an enterprise agreement but also, through one process or another, a majority of employees must approve the agreement. That is the democratic process.

The Industrial and Employee Relations Act currently provides:

> Except as otherwise provided, the commission must approve an enterprise agreement if, and must not approve an enterprise agreement unless, it is satisfied that—
>
> (b) the agreement has been negotiated without coercion and a majority of the employees covered by the agreement have genuinely agreed to be bound by it; and
>
> (c) if the agreement is entered into by an association as representative of the group of employees bound by the agreement . . . an appropriate officer of the association has lodged a statutory declaration with the commission verifying that a majority of the employees currently constituting the group have authorised the association to act on their behalf and, if the commission requires further evidence of the authorisation, the further evidence is to be provided;

Throughout our society, we have examples where there is an appropriate process where everyone can participate, and then there is an outcome. As Australians we accept the outcome of a fair process. This situation is no different.

The full bench of the South Australian Industrial Relations Commission recently considered this issue and made a decision, but it certainly did not close the book on bargaining agent fees. The commission made a number of points in paragraph 18 of its decision, and in the final paragraph it said that it wanted to emphasise those remarks. The commission said that each case must be considered individually. Fair enough. That means that the union has to take the case for each shop, or workshop, to the commission. Their enterprise agreement might have a clause in it talking about bargaining fees. The commission said that this decision was not to be taken as a rigid template and that 'Other cases will present an entirely different set of circumstances'. That might be the case. They went on:

> Different and additional considerations might apply where employees have actually been represented in the negotiation stages by other (minority) representatives. Future considerations of any [Bargaining Agents Fee]. . . proposals within an Enterprise Agreement will be given therefore on a case by case approach.

If you read that transcript you will notice that in this case the employer agreed with the union. It is also relevant that the commission has asked the parties to do some further work and come before it again.

We have here a situation where the commission has indicated that, subject to its further consideration of the work it has asked the parties to do, it is likely to approve a bargaining agent's fee in an example where all the employees are union members. Where is the injustice in that? This bill is unnecessary and should be rejected. The commission is appropriately going about its work, making decisions that are tailored to the circumstances that are put before it. This attack on normal industrial processes and the unions who support working people should be rejected.

The Hon. J.M.A. Lensink: It's not normal.

The Hon. R.K. SNEATH: The Hon. Ms Lensink interjects, but I do not know whether she knows much about the Industrial Relations Commission. In this case it was not one commissioner who heard the case: it was five commissioners, and—at a guess—I would say that at least four of those five commissioners would have been appointed by a Liberal government. They made this decision—not me, not you—they did. Five of them.

As they said, this bill is unnecessary and should be rejected. We are talking about the ability of employers who agree with the majority of employees covered by an enterprise bargaining agreement to insert a provision that they think is appropriate. The explanation of clauses concerning clause 5 states:

> Section 79 contains provisions relating to the approval of enterprise agreements by the Industrial Relations Commission. This clause inserts a new subsection that prevents the Commission from approving an enterprise agreement if the agreement requires payment of a bargaining services fee.

That is unbelievable. The Liberal Party put together enterprise agreements for employers and employees to go out and work out an agreement, register that down at the commission, and everyone is happy. They have done that under legislation, and now they want to interfere with it further. They want to say, 'You can put an agreement together as long as it has not got any clauses in it that upset us. The commission cannot register an agreement that has a clause in it concerning bargaining service fees.'

If you are successful at this, I would say that your next trick would be that the commission cannot register an agreement that has overtime penalty rates in it. And, if you are successful at that, you will say that you cannot register an agreement that gives workers a pay rise. In the first instance you say, 'Okay, we are introducing enterprise bargaining between the employer and the employee. Go away, sit down, do it at the workshop, involve the union if there is one there, involve lawyers if you need a lawyer, involve the Chamber of Commerce and employer groups. Then go off and register it.' And if all parties go in there and agree, that is fine. But now you are saying, 'Oh no; all parties are agreeing to this and we do not like it. From now on the commission cannot register an agreement that has something in it that we don't like.' If this gets up, you do not like workers getting pay increases, so they will be next; you do not like workers getting overtime rates, so that will be next; and you want workers working seven days a week, so that will be next.

The ACTING PRESIDENT: Order! The honourable member ought to address his remarks through the chair. You are accusing the chair of doing lots of things that I do think the chair has done.

The Hon. R.K. SNEATH: I am sorry, Mr Acting President. I thought I was looking at you, but I do not find it hard to look at you so I will continue to do so. The opposition is saying that they cannot now rely on employers and employees, and the majority of employees, to come to an agreement. They have to come to an agreement—

The Hon. A.J. Redford: You're missing the point.

The ACTING PRESIDENT: Order!

The Hon. R.K. SNEATH: I am trying to address my remarks through the Acting President, but I am having great difficulty because of the interjections from the other side,

Mr Acting President, that you might want to check on. In terms of the issues raised by the proponents of this bill about the quantity of any particular bargaining agent fees—

The Hon. T.G. Cameron interjecting:

The ACTING PRESIDENT: Order!

The Hon. R.K. SNEATH: That is, of course, a matter that was considered by the full commission in this decision. In that case the position was that over 80 per cent of the total time required to attend industrial issues at that workplace related to the enterprise agreement, and as such the fee proposed was 80 per cent of the union membership fee, or about $232, compared to a membership fee of about $291. If it is a two-year agreement, I imagine that $232 would be over the term of the agreement, so that would work out to perhaps $116 or $117 per year compared to $291 a year.

Clearly, if the commission was not satisfied, it would be a long way off what the Hon. Angus Redford would have us believe, and a lot cheaper than the lawyers would charge, as the Hon. John Gazzola pointed out. Clearly, if the commission was not satisfied with what was put before it, it could have taken further steps to satisfy itself about what was appropriate. The commission has taken the approach of seeing what is appropriate in any given set of circumstances. Of course, circumstances can vary and it is taking account of irrelevant information and making a decision to suit that situation.

If necessary, it does seem most unlikely that the claim made with the PSA would stand up to that sort of scrutiny, which only emphasises the need to take a case by case approach. In enterprise bargaining, when there is a majority agreement, things like penalty rates, loadings, allowances, and other conditions can be removed, even if a minority of employees do not want that to occur. We do not see the opposition railing against that situation when employees lose their entitlements to valuable conditions, potentially having to reduce income against their will—what hypocrisy!

The fact is that enterprise bargaining, which is regulated by the legislation of the former Liberal government, provides for the views of the majority of employees when they agree with the employer to prevail. The bill simply demonstrates the opposition's hypocrisy when the sanctioned minority groups of employees are overruled when it suits the opposition's agenda to attack working families, but not in other cases. It seems that the opposition's position in bringing this bill forward flies in the face of the Liberal Party's talk about mutual obligation. The fact is that the commission's decision does not say that a bargaining agent's fee should be paid in all circumstances. It recognises that, where people participate and pull their weight in the bargaining process, it may not be appropriate to pay a bargaining agent.

The commission's decision says that the authorisation for a bargaining agent's fee to be paid has to be able to be withdrawn by the worker if the staged complement in the provisions has been reached. I advise the council that the commission is referring to negotiations for an agreement on a variation and representation in the commission. The worker wished to exercise his or her statutory right to representation other than that by the bargaining agent. So, the rationale seems to be this: if you do not play a role in the bargaining process, whether through the Employee Ombudsman, a registered agent or some other appropriate means, if you just sit back and accept the benefits, whilst having played no role in obtaining them, a fee is payable to the bargaining agent who has done the hard work and delivered improved wages and conditions.

I do not see the opposition railing against situations where strata title holders have a vote that means they each have to expend funds even though the minority objects. There is a number of ex-trade union workers in this council, and I am sure that they could describe their disappointment when they have negotiated for hours and travelled miles to negotiate enterprise agreements on behalf of union members, only to see three or four non-union members rubbing their hands together and taking the pay rise that has been negotiated after a lot of hard work. Did we give people the choice to pay the—

The Hon. A.J. Redford interjecting:

The Hon. R.K. SNEATH: I am making this speech, not you. Did we give the people a choice about the emergency services levy when that was introduced? Did the Liberals say, 'Those who want the service, put your hands up; those who do not, do not have to pay'? No; they did not do that. Did the South-East farmers get a choice about the dingo fence? No; they pay their fees. They do not want to, but they pay their fees. Do I get a fee at Clare to pay the council rates? I do not have a footpath going past the place. I do not have a bitumen road. I do not get rubbish collection, but I pay it.

The Hon. T.G. Cameron: You are talking nonsense.

The Hon. R.K. SNEATH: You know nothing about the trade union movement, so sit there and listen; you will learn something.

The Hon. T.G. Cameron: I know more about it than you.

The Hon. R.K. SNEATH: The trade union movement forgot you years ago.

The ACTING PRESIDENT: Order! The Hon. Mr Sneath will ignore interjections.

The Hon. R.K. SNEATH: I am sorry, but I like debating with the Hon. Mr Cameron because I have not lost one yet, or an election. Do members think that the Chamber of Commerce, the employer groups and the lawyers will work for nothing? Not on your life! To go back to the council rates, they do provide a service, but we do not all get the same service. We pay the dues to help those who gain the benefits supplied by local government and the local council in the town, whether or not we are from the country. We pay the dues so that they can use them, and these people are taking what is won by union officials and members without paying a cent, and it is wrong. They are freeloaders, in my opinion. I ask the council to reject this bill, which has been introduced in this council by people determined to crush unions because they do not like unions. They have never liked unions. They have never liked what unions represent. These people, who bring bills such as this to the council, do not like workers, either.

The Hon. NICK XENOPHON: I indicate that I will be supporting the second reading of this bill but, before honourable members get too excited, I think my approach will be similar to that of the Dignity in Dying Bill on voluntary euthanasia introduced by the Hon. Sandra Kanck.

I think it is an important issue, and it should be further debated in the committee stage. In terms of the provisions in this bill, I do not think I would see myself supporting it at the third reading stage, but I do think that it is an important issue, and I acknowledge that the Hon. Mr Redford feels passionately about it. It is an issue that, I believe, ought to be subject to further scrutiny and debate in the committee stage. I note that the Hon. Mr Gazzola made reference to the amendment that I moved to the shop trading hours amendment bill. I want to make clear that the amendment was not seeking to direct the

commission to deal with the shop trading hours in a particular way. It was simply setting out a framework for matters relating to the award to be dealt with expeditiously. Given that there was a sea change in trading hours, I thought it was a sensible amendment, and I am grateful for the opposition's support in this chamber and in the other place. I did not see it in any way as fettering the independence of the commission.

I have had an opportunity to read the judgment of the full bench of the Industrial Relations Commission on the matter of Ian Gregory Morrison Pty Ltd SA and the SA patrol and security officers enterprise agreement. It was a decision delivered on 14 April 2004. I note that several months earlier there was an argument before the commission on jurisdictional issues with respect to the whole issue of enterprise agreements. I think the Hon. Mr Sneath made reference to that particular decision on a number of aspects, but I want to reflect on these parts of the decision in the context of the bill introduced by the Hon. Mr Redford. I believe that this decision is a most considered one that cautiously and carefully looks through the provisions of the legislation of the Industrial and Employees Relations Act. I note that it draws heavily on subsection 68(3) of that act. My understanding—and I will stand corrected on this—is that, whilst subsection 68(3) in its present form forms part of amendments moved by the former Liberal government, that particular provision in a different part of the act was introduced in the 1972 act. Notwithstanding that, it was obviously a provision that was considered by a former Labor government in the 1970s and, indeed, by the former Liberal government when the Hon. Mr Ingerson was minister. That provision has been there for a generation, and it was considered by the full bench of the industrial commission.

I urge all honourable members interested in this bill to read it, because it goes through, in a very systematic way, the way the legislation works in respect to enterprise bargaining agreements and the whole issue of whether a fee can be charged for that bargain. I acknowledge what the Hon. Mr Sneath said in relation to part 18 of the judgment where the commission has stated the following:

> We reiterate that each case must be considered individually. This decision is not to be taken as a rigid template. The circumstances presented to us here are to some extent peculiar in that all employees are members of the one union. We have not had contrary submissions put to us and no specific alternative interests was presented in this matter. Further, although able to do so, neither the Minister nor the Employee Ombudsman made any submissions to this Full Commission. Other cases will present an entirely different set of circumstances.

In considering this legislation I was particularly comforted by the decision of the commission not to interpret it broadly as I saw it but looked at the particular circumstances of each case.

The Hon. Mr Redford made reference to the PSA. The particular case which I referred to and which was a subject of the decision of the full commission is related to a different union—the LHMU. I will have more to say about the PSA's submission when, as I hope, we get to the committee stage, because I see that as a different set of circumstances. My understanding is that it is still before the commission, and still awaiting a judgment with respect to the PSA. I await with interest to see what the commission does with the PSA's submissions which, as I understand it, are quite different to the circumstances upon which the full bench decided the patrol and security officers enterprise agreement matter. I propose to refer to the decision in terms of the provisions and the construction of the statute if this matter gets to the committee stage. To date, I think that our system has worked and that this is a considered position.

I note that the Hon. Mr Redford introduced this bill a number of months before the decision was handed down. I look forward to the Hon. Mr Redford giving his views if he considers it appropriate with respect to this particular decision and the way the commission, I believe, carefully considered it. In terms of general principles, I do not support the concept of compulsory unionism, but my dilemma is that, if you can show there is a clear link—a causal relationship—between the work that has been done by a particular employee association with respect to the terms and conditions and the rates of pay for a particular group of workers, and if there is a clear link showing cause and effect in the context of the enterprise agreement, what is the obligation on those workers in a work force who are not members of the association or the union to at least pay a contribution for the administrative costs of dealing with it? I think that is the dilemma and, obviously, that is at the nub of this debate.

In relation to the LHMU matter with respect to the decision of the full bench that was handed down in April of this year, reference was made to an affidavit by Mr Mark Butler, representing the union, with respect to his saying that 80 per cent of its costs were associated with this enterprise agreement. Before this matter is brought on again, and assuming it proceeds to the committee stage (and, as I have said previously, I hope it does), I would like to have an opportunity to look at Mr Butler's affidavit, because I think it would be useful for it to be looked at and considered in the context of the debate as to how these provisions work regarding the current framework under the legislation. I look forward to the committee stage of this bill but I am not convinced, particularly given the decision of the full bench, that it is warranted. However, I do respect the right of the Hon. Mr Redford to ventilate his concerns and for this to be subject to further debate.

The Hon. IAN GILFILLAN: I indicate Democrat opposition to this bill. I also indicate that we will vote against the second reading. I am not attracted by the prescriptive nature of the legislation. It seems to me to be a negative reaction to a situation on an ideological ground and, from that point of view, I do not find the legislation attractive. Historically, I think it is important to put on the record that my former leader, Lance Milne, in the mid 1980s expressed Democrat support for the principle that the benefiter should pay. That principle has certainly been accepted by me—and I have never been a member of a union and I am not likely to be. I am not a particularly strong advocate of unions per se; that is not my role. However, I recall, in the days of employing shearers, how they would quite often during smoko ridicule the Australian Workers Union, but they never ridiculed the rise in the rate per hundred, and they also took the free meals and so on that were in fact bonuses over the requirements of the award. It sat uneasily with me that those who were quite happily avoiding paying any contribution to the union could then, with a very clear conscience and without demurring at all, accept the benefits that had been achieved by the energies of the union in that case.

The fact is that we are strongly opposed to compulsory unionism. We do not see this in any way translating into compulsory unionism, but we believe that the principle is a fair one. We also have some confidence and trust in the Industrial Commission with respect to the proposal for what

is a fair contribution to a self-interest representation—there is no other reason to argue that there is justification for contributing to a bargaining on behalf of the employee who benefits. The commission has been entrusted by legislation, by the appointees of various governments, to do its job, and this place very rarely criticises those results in detail or in principle. I understand it to be (and I do not need to use the rhetoric of the Hon. John Gazzola or the Hon. Bob Sneath) an ideological, knee-jerk reaction, because it appears to those who oppose it ideologically that this is a leg-up for the union movement. If the opposition wants to propose this legislation as a criticism of the Industrial Commission, so be it; let that be the interpretation of it. On the other hand, if it is an ideological objection to any form of funds going to the union per se, I regard that as being unacceptable.

I do not believe that the bill justifies committee stage discussion. Certainly, I have been entertained by the debate; I think it has been robust. Quite clearly, the lines are drawn—except with the Hon. Nick Xenophon who, in traditional form, is riding very comfortably on the top of the fence, at this stage at least. I think it is inappropriate for us to go into the committee stage. I repeat that the Democrats believe it is unacceptable legislation and we intend to vote against the second reading.

The Hon. J.M.A. LENSINK: It was not my intention to speak on this bill, but some of the comments that I have heard, particularly from members opposite, have driven me to speak.

Members interjecting:

The Hon. J.M.A. LENSINK: I must confess that I was once a member of the Shop Distributive and Allied Employees' Association; at the tender age of 15 I was recruited by compulsion. The $3.50 from my $35 a week did me absolutely no good at all. The $3.50 a week fee that I paid out of my $35 for working on Thursday nights and Saturday mornings at the Bridgewater Coles gave me a regular newsletter inviting me to submit to an essay competition.

I was quite thrilled by all this, of course—not—and failed to see the value of it. Similarly, my mother, who was an enrolled nurse before she retired, was a member of the Australian Nursing Federation for the same reason. She rejoined after compulsory unionism was abolished, and sought assistance at some stage because she was being bullied by a couple of registered nurses. She was told by central office to speak to her local representative. Her local representative told her to speak to central office. My father's experience, when he was a member of whichever union represents weather observers working for the Bureau of Meteorology, was that he was forced as a member of a union, under a compulsory regime, to go on strike when he had no wish to do so. So, we have had an unhappy relationship with unions in our family.

But the reason why I support this bill as a member of the opposition is that I believe in freedom of association. We have heard a lot about mutual obligation from members opposite, and I note that their federal party has reluctantly had to accept the concept of mutual obligation, so it is quite ironic to hear them using it to advance their cause in this debate. In my view, bargaining agents' fees are in fact compulsory unionism by stealth, so while I accept that the Hon. Ian Gilfillan might say that this is an ideological debate, then indeed it is. If the Democrats do not believe in compulsory unionism, then they should be supporting this bill. I would have to say that the Labor Party itself is obviously ideological. It is fundamentally based on the union movement and cannot bear any system of industrial relations that might possibly exclude the unions from being involved, which is the same reason why they are so fundamentally opposed to Australian workplace agreements, in spite of the fact that they can provide a varied number of benefits for the mutual benefit of employees and employers.

There is also the issue of funds for the Labor Party. If the regime of bargaining agents' fees gets through, then we will see large sums of money flowing into the Labor Party's coffers courtesy of workers who have no wish to be represented by unions. I just see this as a very cynical exercise. I think I have seen some figures where the Public Service Association's proposal of $750 a year plus GST would actually erode the benefit to the average worker, so that they might actually get a benefit in their pocket of $300. I would think that they would be able to negotiate something better themselves without the benefit of the union movement, thank you very much.

The government's opposition to this is a case of hanging on for dear life. It is 'old Labor', and it just shows why they do not understand why membership of unions has fallen, in that people are sick of the militaristic behaviour and the lack of effective representation in times of genuine need. I would urge the unions to try to take care of the really disadvantaged people, such as the people that the Hon. Angus Redford referred to in a previous speech: non-Australian citizens who are being ripped off, and some of our new arrivals whose lack of language skills means that they are being abused by outworkers. I commend this bill to the house.

The Hon. T.G. CAMERON: I did not intend to speak on this bill tonight, but I will make a very brief contribution and perhaps contribute during the committee stage if the bill passes the second reading. First, I think that the Hon. Angus Redford ought to be congratulated for introducing this bill, if only for the reason that it has prompted the Hon. Bob Sneath and the Hon. John Gazzola to their feet in this chamber. Whilst I understood one speech—a touch ideological—I got lost with the other. I will leave members to work out themselves who I am talking about. One of the speakers for the opposition just about had me convinced to oppose this bill. What was a little bit disappointing at times was the ideological way both the opposition and the government approached this bill.

But I should thank the Hon. John Gazzola: listening to the honourable member was a little bit like a walk down memory lane. It reminded me of standing at the back door on a Saturday morning listening to my late father having his political conversations with Peter Simon. Peter Simon, of course, was the local Communist Party representative who used to deliver *The Tribune* to our house. I could not wait to get hold of *The Tribune* and, as soon as my father had finished it, I would read it from cover to cover. Mind you, I was only nine or 10 in those days: I have since matured a little. But I must congratulate the Hon. John Gazzola for bringing that memory back to me.

I am not sure I was as persuaded by the Hon. Ms Lensink's anecdotes about her family's history with trade unions. I will be supporting the second reading. That should come as no surprise: I support all second readings. At this stage I am unlikely to support this bill, but you never know. If the Hon. Bob Sneath keeps arguing, he might just convince me to change my mind.

The Hon. A.J. REDFORD: Not a day goes by in this place where I am not reminded that the ALP preselection process for the Legislative Council is in bad need of reform. First, I thank the Hons John Gazzola, Bob Sneath, Terry Cameron, Nick Xenophon, Ian Gilfillan and Michelle Lensink for the time and trouble they took to prepare their contributions; or, indeed, any staff that got involved in preparing their contributions. I will give some advice to the Hon. Bob Sneath: do not send it out to the delegates because I do not think it will help.

I have been accused of being ideological in relation to this bill. I am not exactly sure to what members are trying to allude, but what I would say is that I have attempted to be principled in relation to this bill. We on this side of politics do not like unions, or in fact anyone else, walking around with their hands in other people's pockets stealing money—and that is what this is all about. Mr President, you only need to see what the PSA has in mind. I know the Hon. Terry Cameron has not made up his mind about this. Is it not ridiculous that in some cases the bargaining fee exceeds the union fee? When they send out the bill—

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: That is the case. The PSA wants $825, but the union fee is not $825. When the bill goes out, they will join the union because it is cheaper. If that is not compulsory unionism through the back door, I will go he for chasey. As I said when I introduced the bill—and I will be interested to see what the Hon. Ian Gilfillan says about this later in the debate—is it fair when one is negotiating what generally speaking is a flow-on wage rise, because of something that has happened in a federal arena, the PSA would pick up something between $11 million and $12 million? They are the sorts of figures we are talking about.

The Hon. Ian Gilfillan interjecting:

The Hon. A.J. REDFORD: They are setting fees of that order. That is what is happening. Members can say that this is fair and reasonable, but I have to say that, from where I sit, because someone negotiates a flow-on pay rise because of something that has happened federally and that organisation picks up $10 million, $11 million or $12 million, it is a scandal, whichever way you look at it—and it should not be permitted. That is what this bill seeks to redress.

I think we all get a pay rise next month. I got a little note with my pay slip this week, and I think we get a $4 000 pay rise; I am surprised I did not read about it in the paper. Will the Hon. John Gazzola or the Hon. Bob Sneath send a cheque to the ASU in Canberra because it negotiated the pay rise for the public servant to whom our salaries are attached? Will he do it?

The Hon. J. Gazzola interjecting:

The Hon. A.J. REDFORD: In the case of the Hon. John Gazzola he may not have to, but I suspect the Hon. Bob Sneath will not be sending anything—nor will the Hon. Ian Gilfillan.

An honourable member interjecting:

The Hon. A.J. REDFORD: No, I am not going to; I do not believe in it. I will use the analogy of a court case. Often we see court cases occur where two private litigants have a stoush. Out comes the court case and out comes the judgment, and that becomes the common law of the land. No-one turns around—and no-one would be expected to turn around—and say to every individual who might potentially benefit from the result of that court case, 'Look, you will have to pay a fee and kick in a share of the lawyer's fee.' The world simply does not operate that way. If the Australian Conservation Foundation achieves a benefit for the environment, we do not see it running around compulsorily nicking money from my kids and my pockets for some benefit that it might have achieved that has a flow-on effect to the broader community. That is what this bill is designed to address.

I was disappointed with the attack on my good friend and mate the member for Waite by the Hon. John Gazzola. I do not know what he did to deserve that level of attention, but I assure the Hon. John Gazzola that I doubt whether he will lose any sleep over the attack, because it was not all that vicious. I loved it.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: The Hon. Terry Cameron said that it was a visit down memory lane. He talked about the good old days of 1993. I remember the good old days of 1993 when Paul Keating was running the economy, when interest rates got up to nearly 22 per cent and unemployment was rollicking around, aided and abetted by the current Premier—

The Hon. J.F. Stefani interjecting:

The Hon. A.J. REDFORD: Around 11 per cent. We had a building site at the Myer-Remm Centre that finished up costing the taxpayers more than $1 billion. I love it when the Hon. John Gazzola stands up to remind me about the good old days in 1993. What a nerve! And he wants to go back to those employment levels! I know the honourable member has led a very protected life. I know that for most of his working life he has been cocooned from some of the vagaries out there in the hard, cold wind of the South Australian economy, particularly the one run by the last Labor government. I cannot see how that has any relevance, but I remind the honourable member that we now have a government that is likely to be re-elected, much to his disappointment.

We now have a government in Australia that has managed to ride out an Asian economic crisis and managed to ride out rescessionary pressures in both Europe and the United States; and it has had the longest, continued, sustained growth in an economy in my lifetime. Even the Hon. Bob Sneath is not old enough to say in his lifetime, 'the longest, continued, sustained period of economic growth'. What underpinned that were the principles adopted by Peter Reith, the former minister. If the Hon. Mr Gazzola is going to talk about economic issues, he ought to get real and say, 'Hang on; that happens out there outside my public service office, my parliamentary office, out there in the real world, where business people actually have to make a living and make a profit.' I am disappointed that the Hon. John Gazzola—and I am sure that he did not write it—would present a speech of that nature.

I now turn to the Hon. Bob Sneath, who talked about authorised betting. When he mentioned that, I thought, 'Now, this is the ALP and its preselection process. They are in serious strife if they come up with that sort of drivel.' Let me try to explain so that the Hon. Bob Sneath understands: what I was referring to there in relation to my contribution about authorised betting was a picture of horse racing that gets beamed out to the world. I am sure there is a WEA course, or something like that, out there that would be able explain it to him. It is a property right, and that is different from what we are talking about here, which is labour and services. I do not expect the Hon. Bob Sneath to grasp this concept very quickly, but I suggest that he goes and talks with some of his more learned colleagues—I know there is probably a queue to visit them, because there are not many of them—to get

some explanation as to why that is fundamentally a different concept and a different principle.

He said that I and people on my side oppose workers' pay rises. Let us look at the facts of the matter. Under the accord, and I remember that I used to vomit every time I heard it, we had Paul Keating and Bob Hawke wandering around in the 1980s, having delivered 19 to 24 per cent interest rates, with unemployment levels hovering around 12 per cent and getting absolutely excited if it dropped to something like 11 per cent—

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: Did the honourable member run a business then? The honourable member has never run a business in his life, so he would not know.

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: That was in deep, dire strife.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: Exactly; that is what Howard has delivered. I am glad the minister acknowledges that. We used to have these two gentlemen wandering around saying, 'We have this accord, and it is wonderful, and the workers have done very well.' But they went silent when the figures started to come through over the past decade under the Howard-Costello government. In the absence of an accord, workers have received double the pay rises and double the income compared with what the accord delivered. That has been delivered because—

Members interjecting:

The Hon. A.J. REDFORD: Well, they have always been too much, and that is the problem.

An honourable member interjecting:

The Hon. A.J. REDFORD: Again, that is consistent with his speech, and it is completely inaccurate. If the honourable member wants to look back, I think we supported the last one. So, I can deal with the Hon. Bob Sneath's issue in relation to authorised betting. The next point he made was that there is an agreement. Again, I know that this might be a bit complex for the Hon. Bob Sneath because there is a legal principle involved, but an agreement involves two people consenting or agreeing to a particular course of action. That is not what is happening here. These people are going to have the union's hand put in their pocket without their consent, and that is not an agreement.

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: I might well have. If the Industrial Commission is predicating the principle behind an agreement, the Industrial Commission has got it wrong. However, it does not do that. So, that is another complex legal principle that the Hon. Bob Sneath has not quite got his mind around. It is not an agreement: it is theft. He then talked about the issue of when does the union get involved in this contract on behalf of these people. These people never engaged the union to do anything. I know I am throwing a lot at the Hon. Bob Sneath in one speech, but in our legal system we have a concept called the privity of contract. That means that third parties are not affected by contracts between two consenting business people or two consenting adults.

I will take the Hon. Bob Sneath back through a couple of these principles: first, authorised betting is a property issue and has nothing to do with wages and salaries; secondly, it is an agreement between two people, and we are talking here about people who are not part of that agreement; and, thirdly, this could almost be equated to a tax. Parliament does not give anyone the right to tax; we do not even give the government the right to tax. Parliament has always retained the right in relation to taxation. I know the Hon. Bob Sneath wants to compare the payment of a bargaining fee with the payment of taxation. He gave the example of the emergency services levy. There is a difference: one was imposed by parliament, having gone through the two houses—

An honourable member interjecting:

The Hon. A.J. REDFORD: Duly elected—and this has not happened here. There is a bit of a difference. Again, I owe it the Hon. Bob Sneath to pick up that concept very quickly. I can assure the honourable member that there is a difference in terms of principle. The Hon. Bob Sneath will be pleased to hear that I am finished with his contribution.

The Hon. Nick Xenophon indicated that I have more work to do, and I am happy to speak with him and work with him. I know that he does have an ability to come up with a compromise, and I am heartened by the fact that he agrees with the principle of freedom of association. But I ask him to take into account how he would justify the PSA picking up $10 million or $11 million for having negotiated a flow-on increase in salary. You simply cannot do that.

The Hon. Ian Gilfillan said that he was opposed to the bill because it was not attractive. I apologise to the Hon. Ian Gilfillan, but I did not intend it to be attractive. I suppose I could have used another colour paper, but the fact is that, in our view, it is theft. Indeed, if the Hon. Ian Gilfillan's position is consistent, I am sure that he will wander over to the Hon. John Gazzola and give him a cheque for a couple of hundred dollars to cover this $4 000 pay rise that we are getting from next month. He complained that it is ideological: I would dispute that. I would say that it is principled, because people should not be taking money out of the pockets of other people. The unions have plenty of opportunities to encourage people to join their ranks, if they are indeed relevant.

I thank the Hon. Terry Cameron for his contribution, and we will certainly take what he has said on board. The Hon. Paul Holloway did not make a contribution—although he interjected once—and I can now understand why, because it would not have been wise. He said, by way of interjection, that it is a bit like directors fees. There is a fundamental difference with directors fees in that, if you do not like the fees that a company is paying, you ring your sharebroker and tell him to sell the shares. However, that does not work in an employment relationship, particularly when third parties are involved. So, there is a fundamental difference, if I can point that out to the Leader of the Government.

I close by thanking members for their interest and for their contributions. I think we have all learnt a bit out of this. I must say the biggest thing I have learnt is that the ALP preselection process is badly in need of reform, having regard to the contributions that have been made.

Bill read a second time.

MOTOR VEHICLES (EMERGENCY CONTACT DETAILS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 June. Page 1751.)

The Hon. R.K. SNEATH: I rise today to present the government's position in respect of the bill introduced by the Hon. Michelle Lensink for an act to amend the Motor Vehicles Act 1959. The bill seeks to provide for the inclusion of a person's emergency contact details on a drivers' licence or learners' permit. The proposal, if introduced, provides the opportunity for information to be accessed either directly

from the licence or from the licence register in the event that the licence holder is involved in an accident or an emergency.

While the government is sympathetic to the circumstances that give rise to the bill, it does not provide a workable or practical solution. The bill is therefore opposed. It is considered that the practical implications of this scheme have not been fully thought through. The bill proposes that a replacement drivers' licence or learners' permit be issued at no cost to the licence or permit holder when the information is first recorded. I would like to point out that there are currently over one million licence holders in South Australia—should only 10 per cent of the current licence holders choose to have this information displayed on their licence, the cost to Transport SA for the processing and manufacture of the licences may be in the region of $1 million (100 000 drivers' licences at a cost of roughly $10 each). The cost could be reduced if the new details were incorporated at the time of renewal, but it may then take up to 10 years to replace all licences.

The honourable member also indicated that there is sufficient space and capacity for this information to be displayed on the back of a drivers' licence or learners' permit, but that is not always the case. There is currently a requirement to record certain conditions on the reverse side of the licence. In some instances there may be insufficient space remaining for the recording of emergency contact details. Furthermore, if the contact details change during the currency of the licence—which is a likely event in the case of a 10 year licence—the details will then need to be amended on the register of drivers' licences and on the licence itself.

It is proposed that a sticker be placed on the back of the licence or permit to record the amended contact details, as is currently the case where a licence holder notifies a change of address during the currency of a licence or permit. This procedure was introduced as an alternative to the licence holder obtaining a replacement licence at their own cost each time he or she changed their address. However, there is limited space available on the back of a licence—if a change of address sticker was already attached to the licence or permit to display an amended address, there would be insufficient remaining space for a second sticker to display the amended emergency contact details without encroaching on or obscuring any conditions printed on the licence or permit.

In the case of a learners' permit and provisional drivers' licences, the date of birth of the provisional licence or permit holder is also superimposed in large print on the reverse side. This initiative was introduced to make tampering with the date of birth on the permit or provisional licence more difficult, and to assist licensed premises in the detection of underage drinkers. The presence of the date of birth in large print and also accommodating the emergency contact details will present difficulties.

While the bill proposes that replacement licences be issued free, considerable costs will be incurred by Transport SA. These costs include changes to computer systems and administrative processes to initially establish the facilities and to publicise the facility, the redesigning of existing forms and applications, and the training of staff. Ongoing administrative costs would also be associated with maintaining and recording the additional up-to-date information on the register. As this is essentially a social issue, it is not considered appropriate that this cost should be funded by the Highways Fund. As the honourable member may be aware, there is also evidence of young people fraudulently obtaining a copy of another person's driver's licence for the purpose of accessing licensed premises when underage.

Changes are in hand to reduce the risk by retaining the photographic image and signature of the original applicant. The wider community's use of the driver's licence for identification purposes may also be an issue if additional information is shown on the licence. Licence holders may be rightly concerned if their licence is lost or stolen or if their personal contact details fall into the wrong hands. There are also concerns with this proposal in relation to the confidentiality and privacy of the information recorded.

On the privacy issue, there is concern that the nominated contact person or next of kin may not have been consulted to approve the inclusion of their name and contact details on the licence. It is the expectation that the registrar would be required to obtain consent from the nominated contact person and incur the additional costs involved. A simple alternative to the inclusion of information on the driver's licence would be to have the details of the contact person recorded on the registration and licensing database of drivers, and to make the information available to SAPOL and emergency services in the event of an emergency, but without printing it onto the driver's licence. In conclusion, for the reasons previously outlined, the government does not support the bill as proposed by the honourable member.

The Hon. NICK XENOPHON: I support the second reading of the bill. I believe that it has a lot of merit. I know that the government opposes the bill and has set out a number of reasons why it should not be supported; but, rather than opposing the bill, I would have thought that a way should be sought by all members of this chamber to pass the bill for what I believe are very good public policy reasons. I look forward to the committee stage. I hope that it has support. I believe it is a sensible bill insofar as the government has raised legitimate concerns about its implementation, and they should be ventilated in the committee stage.

The Hon. J.M.A. LENSINK: I am quite astonished at the government's position, on the quote of $1 million to change the systems, and the long list of reasons why this is all too hard. I think it might be a case of Sir Humphrey having got hold of this and saying, 'Why on earth should the opposition be allowed to get this bill through?' Really, we are talking about putting the name and telephone number of a family member (or other selected person) on the back of one's licence. I have not looked at my driver's licence in the past five seconds, but I would be very surprised if there were no room on it. The blood type, for instance, is a matter of one capital letter and a plus or minus sign. I am indebted to my colleagues the Hon. Terry Stephens and the Hon. David Ridgway for showing me their licences, so I have now had an opportunity to look at a driver's licence in the past five seconds, and I confirm that there is ample room on which to include these details.

In response to a couple of the matters that were raised by the Hon. Bob Sneath from the government's position, I refer to the training of staff. I would have thought that there would be a couple of administrative or systems changes that would be necessary; a matter of rejigging the format slightly to add a couple of extra fields—not any more difficult than changing the parameters of a mail merge. As to the 'sensitive social issue which should not be funded by the transport department', I am at a loss to understand what that means.

The honourable member then referred to changes that the government intends to make to stop underage people from being admitted to hotels when they should not be and that there would be an additional photo or signature. If those things can be done, why cannot a name, telephone number and blood type also be recorded? Another issue that was raised was the confidentiality of personal contact details, that an individual who had been nominated might not have been consulted. In response to that I would say two things: it is a voluntary issue and, quite clearly, if you do not want your Aunt Edna who is demented to be contacted in the event of an accident, you do not name your demented Aunt Edna as the contact person.

Most of us have passports and diaries and so forth, in which we nominate a next of kin or somebody else in case of an emergency. If a family member or a spouse is so incensed that they are contacted in the event of somebody having a major motor vehicle accident, I am at a loss to understand what is happening in this society. I will just have to say that the government's position in response to this is quite astonishing and I would urge honourable members to support the bill.

Bill read a second time.

In committee.

Clause 1 passed.

Clause 2.

The Hon. P. HOLLOWAY: I would like to ask the Hon. Ms Lensink a question. Given that clause 2 of the bill provides that the act will come into operation on 1 July 2004, or on an earlier date fixed by proclamation, and given that it is quite impossible to have this bill passed by 1 July 2004, does the honourable member intend this to be retrospective and, if so, what impact does she believe that will have?

The Hon. J.M.A. LENSINK: I am happy to amend that date. I move:

To alter the date in clause 2 from 1 July 2004 to 31 December 2004.

Amendment carried; clause as amended passed.

Clause 3 passed.

Clause 4.

The Hon. NICK XENOPHON: Can the Hon. Ms Lensink respond to the concerns raised by the Hon. Mr Sneath? I have indicated that I am very supportive of this bill and commend it. Does the bill purport to be retrospective in the sense that it applies to existing licences, or is it simply for those licences that are to be renewed? I think that was one of the government's principal concerns in relation to that. My understanding is that it applies only on issue of renewal. My reading of that is that it is prospective in that sense, but the government—if I did not misunderstand the Hon. Mr Sneath—believes it would be an administrative nightmare. I am trying to sort out what is happening there. Could you explain how you see it working in an administrative sense?

The Hon. J.M.A. LENSINK: I think the wording is quite clear when it states: 'for the issue or renewal of a licence or permit'. So, it would be at the time when it comes up for either a 10 year renewal or for however many years it takes for a licence to be renewed. It is not going to be for everybody immediately.

The Hon. R.K. SNEATH: Are you saying that it applies even on request that such information be included on the licence at the time of renewal? Is that what you mean, or can anybody with an existing licence take it in and request that information is put on the back of it? Are you saying that they can take the whole of an existing licence in, or just at renewal?

The Hon. J.M.A. LENSINK: If I could just draw the honourable member's attention to subclause 4(3) which provides for 'the issue or renewal'; it is not everybody immediately. On 31 December this will apply to everybody. It is at the point of issue or renewal.

The Hon. T.G. CAMERON: Is the honourable member indicating that this will come up only on the renewal of your licence?

The Hon. J.M.A. LENSINK: Yes.

The Hon. T.G. CAMERON: Are you aware that some people may not get a new licence for another 10 years?

Clause passed.

Clause 5 passed.

Title.

An honourable member interjecting:

The Hon. J.M.A. LENSINK: 'The registrar must amend' refers to the fact that you have changed it from its previous situation. Hypothetically, if somebody has a licence that they then renew, if you add details, that is an amendment.

The Hon. T.G. Cameron interjecting:

The CHAIRMAN: I understand the Hon. Mr Cameron's confusion, but we have actually confirmed clauses 4 and 5. The only way we can do it is if we resubmit the clauses.

Title passed.

Bill reported with an amendment; committee's report adopted.

The Hon. J.M.A. LENSINK: I move:

That this bill be now read a third time.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): Clause 4(2), which amends section 77A, provides 'after subsection (2) insert'. Clause 4(4) provides:

If the holder of a licence that does not include the information referred to in subsection (3) requests that such information be included on the licence, the Registrar must amend the licence in accordance with the request without payment of a fee.

I would have thought that that pretty clearly contradicts the advice that was given during the committee stage. It means that any person who wishes can ask, without the payment of a fee, to have that information inserted. That may or may not be a good thing, but the point is that it costs a significant amount of money. I think that is why, on that ground alone, the government could not support it.

The Hon. R.K. SNEATH: I asked that question—

An honourable member interjecting:

The Hon. R.K. SNEATH: —yes—with respect to clause 4, which provides that if the holder of a licence that does not include the information referred to—

The PRESIDENT: The Hon. Mr Sneath, I understand what you are saying, but we really cannot go back and debate the clause again. Debate has taken place during the committee stage of the bill and we are now at the third reading stage. If you want to speak against the third reading of the bill on the basis that it does not do what you think it has to do, that is your prerogative. However, we cannot go back into the committee stage with respect to something that has already passed in the council.

Bill read a third time and passed.

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) (OVERSEAS TRAVEL) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. CARMEL ZOLLO: As the honourable member opposite would know, I have responded on behalf of the government on two occasions because he reinstated the legislation. The main reason why we were not able to support it, amongst others, was that a joint committee was set up on 7 July last year to consider a code of conduct of members and, indeed, I think it is probably about to report. I think it is worthwhile noting those terms of reference, and I would like to ask the author of this legislation why he believes this code of conduct would not cover his concerns. Under those terms of reference we are looking at (a)(iii) disclosure of interest; (iv) conflict of interest; (v) independence of action (including bribery, gifts and personal benefits, sponsor, travel/accommodation, paid advocacy); (vi) use of entitlements and public resources; and (vii) honesty to parliament and the public. Why does the honourable member believe that this joint committee would not be the best way in which to deal with his concerns?

The Hon. A.J. REDFORD: I have not seen the code of conduct. I do not know whether there will be a code of conduct. That is out there in the ether. This is an issue that we on this side of parliament believe needs to be attended to relatively quickly. The second point, and I think that the honourable member misses the point, is that a code of conduct is just that: a code of conduct. This parliament, when it passed the Members of Parliament (Register of Interests) Act back in 1983, decided that the register of interests of members of parliament would not be done by standing orders or by any other basis than through a statutory instrument. If you want to amend the statutory instrument, then you bring in a bill to parliament. You do not amend a statutory instrument by entering into a code of conduct. That would be entirely inappropriate and certainly not something I have ever seen done before.

What I am seeking to do here is amend an act of parliament, because it is the act of parliament that sets out our responsibilities and our duties when it comes to filling in our register of interests. It is not a code of conduct. My understanding is that the code of conduct will be adopted as part of our standing orders. They are two entirely different instruments.

The Hon. P. HOLLOWAY: The reason why the Members of Parliament (Register of Interests) Act was introduced 21 years ago was to guard against a member of parliament acting in some way that might be considered corrupt. They might have a conflict of interest because they had some shareholding, they had received some benefit, and therefore that shareholding benefit or whatever should be made public, so that there would be available to the public a means of knowing whether members of parliament were acting free from conflict of interest. I really do not see why the need to include travel provided by the state contributes to that in any way whatsoever. It is one thing to be receiving benefits from a private individual or from a company, or even from another government, because that may well influence the way the person votes, but I do not see how it is relevant to include travel provided by the state. That is obviously why it was, quite rightly in my view, omitted from the original bill back in 1983. We are talking of particulars of all overseas travel undertaken by a member or a member of the member's family that is or is to be funded in whole or in part by the state.

Does that include travel under the parliamentary travel scheme and, if so, why do we have the double counting here, given that already there is accountability in, I would have thought, a much more correct way, where every year that travel information is made available? Indeed, members' travel reports from overseas are required to be put on the internet, so why do we need this double counting?

The Hon. A.J. REDFORD: It is certainly not my intention in promulgating this bill to have double disclosure. Members of parliament's travel that is paid for as part of our travel entitlement is already well disclosed. It is tabled in parliament normally around November, and it is certainly not intended to catch that. What I will do, and I will give the honourable member an undertaking on this, is raise the issue with parliamentary counsel, because my drafting instructions were quite specific in that respect. If parliamentary counsel gives me an explanation that is inconsistent with my instructions, then I will undertake to file an amendment when it reaches the House of Assembly.

The Hon. CARMEL ZOLLO: The bill really only relates to travel overseas. Will the honourable member explain why he believes that people may only be corrupted by overseas travel? One can spend a lot of money travelling round Australia.

The Hon. A.J. REDFORD: I suppose the honourable member is right. Some people's corruption levels are higher or lower than others. If the honourable member thinks it can be improved by an amendment, then I will consider it. Can I say that the government is opposed to this: it can wriggle and squirm all it likes, but it is on the record as being opposed to this. All its rhetoric about openness and accountability we are now seeing in its starkness.

The Hon. CARMEL ZOLLO: I did raise this in my second reading contribution, but the bill does not require the details or terms of the grant of funding to be disclosed, but merely the particulars of all overseas travel, and such generality could undermine the intention of the bill, which is to prevent abuse of publicly funded travel.

The Hon. A.J. REDFORD: I do not mind taking these questions. This is entirely consistent with the provision that requires us to disclose a travel trip that might be donated by a private party or by a third party. For example, if a private company pays for me to go to Las Vegas to look at poker machines, all I have to do is disclose the fact that that is what occurred. It is consistent with that provision.

The Hon. P. HOLLOWAY: It is not quite the same, because there is a threshold that applies, as I understand it, in relation to the bill.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is $750. The honourable member should remember that he is talking here in whole or in part, so it may well be a part contribution. But it is certainly not consistent. Whether the rest of the act should be amended is another question. Nonetheless it is inconsistent.

The Hon. CARMEL ZOLLO: I did ask this question during my second reading contribution. We believe that the existing exemption from disclosure for contributions towards travel that come from the state or from any public statutory corporation constituted under the law of the state in section 42C is not removed by this bill. Perhaps the honourable member can explain.

The Hon. A.J. REDFORD: Something is not removed by clause 4(2)?

The Hon. P. HOLLOWAY: I was going to raise the same question. Under the current act, there is specific exemption under paragraph (c) for travel provided by the state. I would have thought that, if the honourable member is bringing it in, he would have to remove that, otherwise we will have two paragraphs, the old paragraph (c) and the new paragraph (ca), which appear to be internally inconsistent. On the one hand, paragraph (c) will exempt state travel, and new paragraph (ca) will include it. I presume parliamentary counsel must have taken it into consideration and, therefore, for some reason it must negate the effect of paragraph (c). I cannot understand it, but I am not a lawyer.

The Hon. CARMEL ZOLLO: In the Members of Parliament (Register of Interests) Act 1983, the honourable member will see that is the case.

The Hon. P. HOLLOWAY: I assume parliamentary counsel knew what they were doing.

The Hon. A.J. REDFORD: With respect to the leader, I think that is entirely consistent. Section 4(2) provides:

> For the purposes of this act, an ordinary return shall be in the prescribed form and shall contain the following information: . . .
>
> (c) the source of any contribution made in cash or in kind of or above the amount or value of $750 (other than any contribution by the state or any public statutory corporation constituted under the law of the state, by an employer or by a person related by blood or marriage) for or towards the cost of any travel beyond the limits of South Australia undertaken by the member or a member of his family during a return period, and for the purposes of this paragraph 'cost of travel' includes accommodation costs and other costs and expenses associated with the travel.

Section 4(2)(c) provides that a member must disclose the source of any contribution made in cash or in kind above an amount of $750, except a contribution by the state or any public statutory corporation constituted under the law of the state, by employer, and so on. What we are seeking to do here is require members to disclose all travel, whether above or below $750. It is entirely consistent. I can understand why parliamentary counsel drafted the clause in that fashion. Again, I am happy to raise the issue with parliamentary counsel and, if they think that I am wrong, we can see what we can do when we get it into the House of Assembly.

The Hon. CARMEL ZOLLO: In relation to paragraph (ca), where it provides 'whole or in part by the state', could that be interpreted as parliamentary travel as well?

The Hon. A.J. REDFORD: I can only reiterate what I said earlier to the Hon. Paul Holloway. It is not my intention, and when I gave instructions it was not ever my intention, that we had to disclose for the purposes of this act our travel paid for under our parliamentary scheme. The reason is that it is already disclosed. It would be absurd to have a requirement for us to disclose it pursuant to standing orders or travel rules and at the same time do it under this act. However, as I said earlier, I will speak to parliamentary counsel about that. If it does have that effect, then we will seek to move an amendment in the other place to ensure that we do not have to disclose twice.

Clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1889.)

The Hon. R.I. LUCAS (Leader of the Opposition): I spoke briefly prior to the dinner break and indicated my concerns with the process that the Minister for Energy had utilised in bringing this bill before the Legislative Council. As I said, the original message was (the bill having arrived in this place at 5 o'clock) that they wanted the bill passed tonight. I indicated my concern at that, even the notion of having to have this bill passed within 24 hours, which is by tomorrow, is extremely unusual. It generally only occurs when matters of urgency arise and, as I indicated at the outset, it is very hard to mount a case that this is a matter of urgency. This issue has been known for almost 12 months. The start-up date of 1 July has been known for almost that length of time as well.

Whilst I am certainly the first to acknowledge that trying to get agreement between states is a difficult task, the notion of introducing a bill into the House of Assembly one day, passing it that day and then requiring its passage in the Legislative Council the next day is something which, if it is to occur at all, should not be occurring in relation to something as significant as what this minister is describing as trail-blazing legislation which will set on its ear the national electricity market and bring a bold new world in relation to electricity regulation.

The Hon. Sandra Kanck: Your Prime Minister said it would be passed by today in his energy statement.

The Hon. R.I. LUCAS: That may well have been his wish. The Prime Minister may well have indicated that would be his wish, but I am sure the Prime Minister—

The Hon. Sandra Kanck: He didn't consult you, did he?

The Hon. R.I. LUCAS: No—in indicating that would not have been aware that the South Australian minister would have been so tardy as to introduce a bill as important as this in the House of Assembly on one day and then require its passage through both houses of parliament within 24 hours. I am sure the Prime Minister would not have been aware of that level of detail. The other issue in relation to whether or not this is an urgent matter is what is the practical effect of the passage of this legislation. The first point is that this is a most unusual bill in that, in essence, we are being asked to sign up to a package of bills; that is, once we take this step, it is inevitable what the next steps will be, but we do not know what the next steps will be and we do not know the shape and the nature of the powers of this particular body and the Australian energy regulator. We do not know the shape and nature of the changes the minister has agreed.

As I said prior to the dinner break—and I am disappointed that almost six hours or so later there has been no response from the government—this council needs to see a copy of the intergovernmental agreement prior to passage of the legislation. I know that the government has a copy of the intergovernmental agreement. One of my questions is: has the intergovernmental agreement been signed by all the parties as we debate the bill today?

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The minister can respond at the end of the second reading. As I said, even if the Prime Minister or, indeed, one of the premiers has not yet signed that agreement, my understanding is that it is not because

there is any ongoing debate in relation to the provisions in the intergovernmental agreement: it is a question of just getting the signatures on the dotted line. Therefore, there is no reason why this government should not provide to all members of this chamber a copy of the intergovernmental agreement.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Why does it have to be signed? The Leader of this Government wants this legislation through—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: My advice, admittedly via officers within the federal minister's office, is that they have no objection to a copy of the agreement being provided. It was an issue for the Premier and the Minister for Energy in South Australia as to whether or not we would be provided with a copy.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: This chamber deserves the courtesy of being provided with a copy of the intergovernmental agreement. We have a shell of a bill, and the only indication of what might be in that shell and the other regulatory changes is potentially what is in this intergovernmental agreement. As I said before the dinner break, I would certainly not be sending the Minister for Energy off to negotiate a deal for the state of South Australia, and I think what we are seeing at the moment is proof of that. However, whatever this minister is negotiating on our behalf—and we are about to be forced to vote on it over the next 24 hours—is potentially outlined in this intergovernmental agreement.

It would be a disgrace if the South Australian government continued to refuse to provide a copy of the intergovernmental agreement. We have been chasing a copy for much of the day, although I concede that we were seeking it through ministerial web sites and other publicly available information sources in the first instance. It was not until this afternoon that we sought to get a copy through the minister's office. We have then been chasing it down with the federal minister's office, although I again concede that we have not spoken to the federal minister but only to an officer within the federal minister's department, and that was the advice provided to one of my staff around the dinner break late this afternoon.

Tonight, to the extent I can without having seen the intergovernmental agreement, I will raise a series of questions to which, at least overnight and through the early part of tomorrow morning, the minister's advisers can hopefully provide him with some answers to assist us in our consideration of exactly what this minister has signed us up to in relation to the intergovernmental agreement. If the intergovernmental agreement becomes available, we will hopefully have a half an hour or so to read it, together with any answers from the minister to questions I put. We might then be in a position to at least know a little of the detail we are probably going to see around September this year when the amendments to the national electricity legislation will be presented to the parliament.

The structure we have at the moment is that the South Australian government, as the lead legislator, is moving legislation of a shell-like nature to set up the Australian Energy Market Commission. The commonwealth parliament has passed very similar shell-like legislation to provide for the establishment of the Australian Energy Regulator. One of the issues will be: at what stage will the National Electricity Coordinating Authority (NECA), which is stationed here in South Australia, be abolished? There was some debate about this matter in the House of Assembly. From South Australia's viewpoint, when NECA was first established a pre-condition of the agreement the then South Australian Liberal government had was that, if we were going to be part of the national electricity market, one of the two key authorities (either NECA or NEMMCO) had to be based in South Australia. It was a condition of the operation of the national market.

We understand that the Minister for Energy has blithely gone off to negotiate on our behalf, NECA is to be abolished, the Australian Energy Regulator will be established in Melbourne, and the partial replacement for NECA, which is the AEMC, will be established in Sydney. So, the deal that has been done by the Minister for Energy is that the two key regulatory authorities will now be located in Sydney and Melbourne, and the only key regulatory authority, which managed the oversight of all the co-changes for the national electricity market, was located in South Australia. We had key officers, such as Stephen Kelly from NECA, and others, located in South Australia who were therefore aware of the particular South Australian concerns of the national electricity market. I hasten to say that, in many respects, the concerns that we have in South Australia are quite different to the concerns and views that the eastern states (in particular, Sydney and Melbourne) might have on an issue as sensitive as the national electricity market.

I cannot believe that this government and, in particular, this Minister for Energy (given what he has said about the national market on previous occasions) has negotiated a deal, evidently, that has sold out South Australia to the extent that NECA is closed down and its replacement is located in Sydney. We were the lead legislator previously, and we still are, but under the former government a necessary part of the deal was that one of the two regulatory bodies had to be established in Adelaide. Obviously, the leader of the government will need to explain this to us in committee, but why did he and the Minister for Energy go off and just agree to a deal where Sydney takes over the responsibility that Adelaide previously had in terms of the location of such a key regulatory authority?

Some questions have been asked in another place, for example, 'Well, what is the urgency in relation to 1 July?' It was because all the leaders of the government said that it was going to be up and going by 1 July. That was plan A. When the advisers told the ministers, 'That is impossible', they said, 'Well, it is going to start in some form or another.' And this is plan B, or the compromise; that is, we are passing shell-like legislation. As I said, in the second reading in the House of Assembly yesterday, and even in the second reading (which was mistakenly read by this minister, the leader of the government) in our house today, we were told that the Ministerial Council on Energy was still meeting, and maybe even the shell-like legislation that we had would be further amended. Further amendments were moved in the House of Assembly yesterday—

The Hon. Sandra Kanck: And still we have not got a bill.

The Hon. R.I. LUCAS: Yes. We are being required to vote on a bill of which we still do not have a copy. The processes of parliament are such that once a bill is amended in one house it does take at least 24 hours for it to be reproduced so that members in this chamber can see an amended piece of legislation. Anyway, because everyone wanted to have this up and going by 1 July, plan B was, 'All right, we won't know exactly what these bodies are going to

do. We are still negotiating them. That won't happen until, at the every earliest, maybe September. But we have to have something up by 1 July, so we will put through the federal parliament the shell legislation for the AER and we will put through the South Australian parliament the shell legislation for the Australian Energy Management Commission.'

When the Minister for Energy was asked, 'What is the body going to do until we give it its powers, sometime, at the very earliest, in September (and more likely to be later, one would suggest); what is it going to be able to do?' the minister indicated that, in this interim period, it would have to start advertising for commissioners, looking at offices and those sorts things. I have a copy of the press release from the federal minister Ian Macfarlane which is dated 25 June and in which he indicates that the Australian Energy Regulator (AER) which will operate as a separate entity under the umbrella of the ACCC (and that is an issue that we will need to explore in committee) and which is to be based in Melbourne is now advertising for a chairman.

It is clear, for example, that the federal government is already taking action in relation to the Australian Energy Regulator and advertising for a chairman, so I think this committee is owed a fuller explanation from the Minister for Energy, via the leader, as to exactly what the Australian Energy Market Commission and the AER will be doing between now and September at the earliest, when the precise nature of the powers will be provided to the national parliament and the South Australian parliament. In the case of amendments to the national electricity law, I understand that it has to go before all the state parliaments for consideration and possible approval.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: The Hon. Sandra Kanck asks whether I think that Pat Conlon knows—I do not think that he does. I have read the House of Assembly debate, and I have heard the minister speak at a number of national conferences on the issue of the national electricity market. His attention to detail is not great, and those who attend these conferences will know that his knowledge of these issues is not great. He certainly speaks with a rhetorical flourish, and returns to the opposition days of pre-2002 when it was much easier—he could just criticise what was going on and talk interminably about the problems that he saw with SNI.

At a conference I attended around Christmas last year, when the national electricity market and these two bodies were being discussed, the minister was not in a position to provide any detail or answers in relation to what was intended. Part of his response at that time might have been that he was still thinking about it, but at this stage—June 2004—he ought to be in a position to tell both the House of Assembly and the council in greater detail not only what is intended between now and when the changes are made but more particularly what will be happening after the changes to the national electricity law in September at the earliest.

I refer to one area in particular, and that is the change to the national electricity code. As I said NECA, the body previously established in Adelaide, had a pre-eminent, key role in terms of changes to the national electricity code, and that is a critical part to any reform or process of the national electricity market. The old arrangements attracted some criticism—and, certainly, there should have been the prospect for some reform—and they were that NECA would undertake an extensive consultation process on a code change. That would then have to go to the ACCC, which would go through an extensive consultation process, and it would have the final say. The minister has indicated that there will be changes to the code change process, and I think that this council deserves an indication from the minister—given that he has agreed to NECA no longer being in Adelaide—as to what he is agreeing to in terms of the code change process.

There has been general discussion about the Australian Energy Market Commission taking over from NECA—that is, it will be the driving body in relation to code changes—but a lot of the operators within the market are saying that the ACCC will not give up its ongoing role. Woolly words are being used to say that it is reserving its right, in terms of certain code changes, to say whether it will be the approving body for those code changes, and it may seek to delegate approval for some of the code changes to the AEMC. But we need to know what the Minister for Energy has agreed to in relation to the ACCC reserving the right to make changes to the national electricity code. We have seen nothing from the Minister for Energy in relation to this issue, other than general woolly words in conferences and in the House of Assembly regarding what he is supporting and what position he is pushing in relation to changes to the national electricity code.

We were being told that this would be some massive downsizing of the regulatory structure within the states and nationally. At the moment, we have three pre-eminent bodies at the national level: NECA, NEMMCO and the ACCC. After all these bold changes foreshadowed by the Minister for Energy, we will have four bodies and no reduction. In some cases, the ACCC will still have some role in relation to the national code process and competition policy. Instead of NECA, there will be the National Energy Market Commission, the Australian Energy Regulator and NEMMCO. So, the bold reform that the Minister for Energy talked about having championed at the national level has replaced three national regulatory agencies, in one form or another, with four agencies at the national level.

There has also been discussion (but there is no mention of this in the second reading explanation, and I seek an answer from the minister) about a fifth body at the national level in relation to interconnector planning or transmission projects. I concede that discussions thus far have not involved that body being at the same level and status of the other four but, potentially, there was to be another advisory body to help in that process. Of course, at the same time the federal Labor opposition has indicated that it supports a new body or company at the national level in relation to the national grid. In my view, when one looks at what the state and federal Labor Party offers, we see a much more confused set of bodies and agencies operating at the national level.

Perhaps I am a cynic (although I have some experience of discussions at the national level, albeit at the later stages of the national electricity market), but I am certainly not convinced that we will see major changes in the operations of the national electricity market from those that the Minister for Energy and other governments have been talking about, particularly as they relate to South Australia. I want to continue to make that point, because it may well be that some of these changes will have a national benefit, particularly for the larger states such as New South Wales and Victoria.

Therefore, when one looks at the national interest (which is, of course, the position the federal government must adopt), it may well be that there is such a benefit. Of course, we should be aware of the arguments for the national interest but, unashamedly, we should also argue strongly for South Australia's interest. As I indicated before in relation to the

Australian Energy Market Commission being located in Sydney rather than in Adelaide, I strongly believe that this Minister for Energy—through laziness, incompetence or negligence or what, I do not know—has let South Australia down in the negotiations thus far.

The Hon. Sandra Kanck: Frank Sartor chucked a fruity.

The Hon. R.I. LUCAS: The Hon. Sandra Kanck interjects that Frank Sartor, who is the New South Wales Minister for Energy, chucked a fruity. That may be so, but the task for the Minister for Energy in South Australia is not to roll over and have his tummy tickled by Mr Frank Sartor or, indeed, by anybody else in the eastern states. His job is to do what the former premier John Olsen did (although I think he was minister for infrastructure at the time), that is, make it non-negotiable that NECA (one of the two key regulatory authorities) should be located in South Australia. For some reason, this Minister for Energy was not prepared to take on his colleagues and friends in New South Wales. I will not delay the chamber on this occasion by highlighting the undue influence I believe that New South Wales Labor Party has on state Labor policy in South Australia, as we saw that well evidenced during the SNI and Riverlink debate.

In the period between the passage of the legislation (potentially tomorrow) and whenever the national electricity law changes occur, I think this chamber needs to know the role for NECA. What will be the roles for the AEMC, and the Australian Energy Regulator? We also need to know the arrangements in relation to the role for NEMMCO, the National Electricity Market Management Company, during this period, but also long term. My understanding had been that NEMMCO was largely unaffected by these changes. That is, NECCA would be affected, the ACCC might be, but NEMMCO would continue to manage the market. I do note that in the bill we are being asked to debate the last clause which talks about transfer of assets from NEMMCO, and I seek from the government indications of what the impact on the operations of NEMMCO might be and in particular what is envisaged by the minister in relation to the transfer of assets from NEMMCO to in this case I presume potentially the Australian Energy Market Commission. The Ministerial Council on Energy we are told has met recently. I seek from the government the date of that meeting and ask the minister to confirm that the amendments that were moved in the House of Assembly were the only amendments that were approved at the Ministerial Council on Energy at that recent meeting.

I think another issue in relation to the Ministerial Council on Energy is the issue of what exactly its role will be vis-a-vis the AEMC and the Australian Energy Regulator. Clause 6 provides the functions of the AEMC as follows:

> The AEMC has the following functions:
>
> (a) the rule-making market development and other functions conferred on the AEMC under National Energy Laws, or Jurisdictional Energy Laws.

Further on, clause 9 provides:

> Independence:
>
> (1) The AEMC is not subject to direction by the minister in the performance of its functions.

Therefore, one should read that as saying the AEMC is not subject to direction by the minister in the performance of its function of rule making, for example.

The first issue to clarify I guess is which minister we are actually talking about here. Are we talking about the Minister for Energy in South Australia, or some other South Australian based minister in terms of this legislation? I have assumed it is the Minister for Energy in South Australia, but I am not sure. Then subclause 9(2) provides:

> Subsection (1) does not limit any provision of the National Energy Laws about the giving of directions to the AEMC by the MCE.

I just want to clarify whether this is saying that the Minister for Energy in South Australia cannot direct the AEMC in relation to the performance of its functions. There is another question subsidiary to that; namely, can the Minister for Energy in South Australia direct the AEMC in any other matter, other than in the performance of its functions? Does this clause 9 mean that, whilst our minister cannot direct, the ministerial council is able to direct the AEMC?

If that is the case, which I would understand it potentially to be, can the minister indicate what the voting provisions on the Ministerial Council on Energy will be? Could he just clarify for the sake of members the exact nature of the Ministerial Council on Energy so that we can put on the record who is on the Ministerial Council on Energy? More particularly, what is the voting nature of the Ministerial Council on Energy? Does each state have a veto right in relation to these sorts of issues? This has been the case in relation to some aspects of national electricity law, which therefore gives a small state like South Australia a significant veto power. I indicate that that power in some cases was very important in debates with people like Mr Frank Sartor, or his predecessors, because it meant that big states could not ride roughshod over little states like South Australia in terms of the national market.

However, if the voting provisions on the MCE are now to be just a majority vote, the interests of small states like South Australia might be overridden comprehensively by the big eastern states. It is important that we know what the voting provisions on the MCE will be, because it may well affect South Australia on important issues. If I can talk about one without boring the council with the detail, it would be nodal pricing, which is an issue that some at the national level have been pushing for some time. It would mean that, in a state like South Australia, we might have a state divided up into a couple of areas with different pricing being applicable in two parts of South Australia. In the past, South Australia has opposed that—I am not sure what this government's attitude is towards it.

We have been able to say no to the big states on occasions and to hold up their push for nodal pricing, for example, from being further pursued or explored. If this is just a majority vote on the MCE, something like that, which may well be to the long-term detriment of South Australia, it might be forced through by the big eastern states' interests in Sydney and Melbourne, in particular. Clause 9 is critical.

The information paper put out by the Ministerial Council on Energy says that the MCE will have the power to issue policy directions to the AEMC with respect to rule-making or electricity or gas market reviews. If that memorandum is correct, it would appear to indicate that the MCE can issue policy directions to the AEMC with respect to rule-making, which is a critical part of the potential work of the Australian Energy Market Commission. This issue of the big states overriding the little states is a critical part of this whole debate in relation to the AEMC and the Australian Energy Regulator.

There has been some public discussion, in part promoted or prompted by evidence that the Essential Services Commissioner Lew Owens was going to give to the electricity select committee; it was put up on his web site and he gave a

number of public interviews and created public debate. As part of that, I think that for the first time I have to say that I am appalled at the South Australian media, given the importance that they have seen in the electricity issue over the past five years or so, at their lack of willingness to look at what is envisaged by this minister and these changes.

Commissioner Owens has publicly indicated that he, and some other regulators, had indicated some concerns about the proposal for the establishment of the Australian Energy Regulator—and these are not his words but mine—because, in essence, it means the gutting of the powers of the state-based regulators. It is clear that many of the issues that the Essential Services Commissioner (previously the Independent Industry Regulator) has involved himself with in South Australia in talkback radio and the media involve meter reading problems, computer glitches with accounts, the number of meters that farmers did or did not have, where security keys were kept for meter readers, service issues in communities like Kangaroo Island—

The Hon. Sandra Kanck: The Hon. Sandra Kanck receiving the Hon. Ian Gilfillan's account.

The Hon. R.I. LUCAS: And the Hon. Sandra Kanck receiving the Hon. Ian Gilfillan's account. All of those issues and many more have attracted much media attention and publicity. We have had somebody at the commissioner level, with staff underneath him, trying to resolve those issues locally. There are dozens of other issues which I will not recount but, if one goes back, the developer charges that Mr Xenophon has talked about, the problems with inset pricing in shopping centres for tenants, the problems with caravan parks and the amount that could be charged to people were all issues that the South Australian based commissioner or regulator actively engaged in in terms of trying to explain and potentially sometimes seeking a solution. The Essential Services Commissioner of South Australia has indicated that his understanding of the current arrangements is that eventually most of these responsibilities will be transferred to the Australian Energy Regulator, which will be stationed in Melbourne.

I noticed, and I will explore in a moment, some comments made by the Minister for Energy in the House of Assembly in relation to the Australian Energy Regulator but, certainly in the public information that the commissioner has put on the public record, he indicated that, from around 2006 onwards, all those issues would be resolved by the Australian Energy Regulator. All the commissioners of the Australian Energy Regulator, or the people at that level, will be located in, one would presume, the eastern states. Certainly, Mr Owens believes that if there is to be any presence in South Australia it might be at officer level, but that has not been resolved and it certainly would not be at the commissioner level as we currently have, not only with Commissioner Owens, but also we have four essential services commissioners located in South Australia. I have been amazed that, given their interest in all this, the media in Australia have either ignored or not been aware of the changes that the Minister for Energy in South Australia and Premier Rann have been proposing to, in essence, hand over most of the responsibilities of the South Australian regulator to a national regulator located in Melbourne.

Why is that important? I want to refer to one example of why it is important, and that is the issue that was considered by the South Australian Independent Regulator back in 2001-02 of whether TransGrid should be issued with a transmission licence for what was known as the Riverlink interconnector or SNI. Without going into all the detail, when one looks at the draft determination of April 2001, one sees that the Independent Regulator indicated:

> The regulatory test used by NEMMCO making this assessment requires that the market overall must obtain a net benefit as a result of a regulated SNI compared with all relevant alternatives.

The regulator was making a point about NEMMCO, and the arrangements were such that the national interest was the critical issue—the impact on the national electricity market—not necessarily the interests of South Australian consumers. So, if the interests of the eastern states outweighed any negative costs to South Australia, NEMMCO and the national authority could approve a project going ahead even though it was not in South Australia's interests.

The independent regulator in South Australia made clear that the legislation that the former government put in place meant that when he considered this application he had to look at the interests of South Australian consumers and not just the interests of the National Electricity Market and all consumers within that market. When one looks at the draft determination and also the discussion paper, one sees statements from the Independent Regulator stating:

> The discussion paper stated that the SAIIR intended to give careful consideration to the possible impact of SNI on the achievement of those general factors, in particular within SA.

He also says:

> Consequently an assessment of impacts on SA consumers in particular, was not necessary for the NEMMCO regulatory test.

That is it in a nutshell. Under the old arrangements, if NEMMCO did not look after the South Australian interests in relation to a big project such as SNI, when the Independent Regulator looked at the transmission licence application he had to look at the interests of South Australian consumers.

My question to the Minister for Energy is: under this bold new world that he is talking about, with the Australian Energy Regulator located in Melbourne (even if there are offices in South Australia), will the regulatory arrangements that he has agreed to ensure that, in circumstances such as the one that I have outlined, the new Australian Energy Regulator will have to take into account, in something like a transmission licence application, the impact on South Australian consumers as being the most important issue? Specifically, we should know whether or not the Minister for Energy has again sold out South Australia's interests in relation to his negotiations, so that what the South Australian based regulator was able to do in relation to the TransGrid application would not be possible under the Australian Energy Regulator arrangement, which will be located in Melbourne. There are a number of other examples that one could put on the record but, given the lateness of the hour, I will not do so. That is just one—

The Hon. Sandra Kanck: Oh, good!

The Hon. R.I. LUCAS: The Hon. Sandra Kanck said, 'Oh, good.' The reason we are here at 10 past 12 is that this government is trying to force the legislation through. The opposition believes that this issue is critical to the interests of South Australian consumers and, frankly, we will not be browbeaten by this Minister for Energy and this government in relation to at least not being able to ask some of the questions of the Minister for Energy, and at least having on the record what he did or did not do to try to protect South Australia's interests and what he will or will not do between now and when we see the changes to the national electricity law in September.

The Hon. Sandra Kanck: It's 1 July now.

The Hon. R.I. LUCAS: I am not sure what the significance of—

The Hon. Sandra Kanck: It was supposed to be passed by 30 June.

The Hon. R.I. LUCAS: Therefore, we do not have to do it—is that what the member is suggesting?

The Hon. Sandra Kanck: No, but you can leave it until tomorrow.

The Hon. R.I. LUCAS: I would like to do that but our dilemma, as I understand it, is that the government wants to know the sorts of questions that we are raising so that officers can look at it before we move to the committee stage later today.

One of the other issues that the minister raised in the debate in another place was that he conceded that he has evidently signed off in principle to the shifting of distribution and retail regulation to the national regulator. He indicated that that was at the insistence of the commonwealth. I ask the minister: what power did the commonwealth have over the South Australian minister to insist that the shifting of distribution and retail be moved to a national regulator? What did he believe he achieved in his negotiations? If he is going to argue that there was a trade-off, what is he saying that he believes we in South Australia received, if he is arguing that the commonwealth insisted on the shifting of distribution and retail regulation to the national regulator? The minister went on to say:

> As a precondition for any retail and distribution going to the commonwealth, we will insist that it will continue to be done locally.

He later indicated:

> Again I stress, for the protection of South Australians, it will not occur unless there is an agreement that locals regulating what needs to be regulated locally will continue to do that within the AER based in Adelaide. That is a non-negotiable condition. The distribution in particular must be regulated locally.

I seek an explanation from the minister as to what he means by that. Is it correct that he has only raised this issue in recent times with the commonwealth and other governments? Given that the government of South Australia has already signed this intergovernmental agreement, can he assure the council that, as part of that intergovernmental agreement, we will see, hopefully in the next few hours, that it has included this precondition—this non-negotiable condition—that distribution and retail regulation will be done locally?

It is the opposition's suspicion that the government has been unwilling to provide us with a copy of this intergovernmental agreement because the agreement will not include this supposedly non-negotiable condition. I am sure with your union background, Mr President, you would appreciate that, if one is going to put down a non-negotiable condition, you would be sensible or wise to include it in any agreement you are signing with other governments and the commonwealth government. If, for example, you have signed an agreement with the other governments and have not put a non-negotiable condition in that agreement, the claims by the Minister for Energy made in another place that this was a non-negotiable condition, will certainly be exposed and will be further evidence of my view that this minister, whether through laziness, incompetence, negligence or all of the foregoing, has sold South Australia's interests down the drain in terms of his negotiations for this national agreement.

I will raise a number of other smaller issues in committee. They are the major issues that at least the government officers will have an opportunity to look at in the morning and hopefully provide answers prior to the committee stage. If you have looked at this bill, as I suspect you might have, Mr President, you will realise that the committee stage of this debate will be such that certainly in one of the earlier clauses many of these issues would be profitably explored by the committee, given that we are being asked to hasten through this legislation much earlier than we would normally be considering legislation of this importance. I thought it might be wise to at least forewarn you of that, as it may well expedite the committee stage of the debate to a more manageable time period, given that we are in the last days of this week's session.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

LAND AGENTS (INDEMNITY FUND—GROWDEN DEFAULT) AMENDMENT BILL

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

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

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

CONVEYANCERS (CORPORATE STRUCTURES) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): 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 seeks to carry out the Government's obligations under National Competition Policy to reform the ownership restrictions in the *Conveyancers Act 1994* (the Act).

The Bill makes these amendments to the present ownership restrictions in the *Conveyancers Act 1994*:

- It removes the present ownership restrictions, but precludes land agents or financial institutions and others who finance land purchases from owning, or being directors of, conveyancing companies;
- It modifies the present requirement that all directors of incorporated conveyancers must be registered conveyancers such that only a majority of the directors need be registered conveyancers, with the business to be managed by a registered conveyancer.

A National Competition Policy (NCP) review of the *Conveyancers Act 1994* (the Act) was done in 1999. The review panel found that the Act's restriction on ownership of incorporated conveyancing businesses could not be justified. It found that the restrictions inhibit the development of multidisciplinary practices, which may offer economies of scale and flexibility of service provision. The report recommended replacing the ownership restrictions with provisions that require the proper management and supervision of a registered incorporated conveyancing business by a registered conveyancer, and to make it an offence for directors to influence conveyancers unduly in the performance of their duties.

Although a Bill to carry out these recommendations was introduced into the South Australian Parliament by the former Liberal Government, it lapsed on the calling of the election.

The Government has considered the recommendations of the NCP review of the Act and formed a different response to the recommendations of that review, which it seeks to implement with this Bill.

The objective of restricting the ownership of conveyancing practices to registered conveyancers is to ensure that professional and ethical standards are adhered to and potential conflicts of interest avoided. The Government is not convinced that these benefits can be as effectively delivered by alternative measures such as a code of conduct or professional management requirements.

There are, though, certain circumstances in which there would be little risk to conveyancers' independence and ethical and professional responsibilities, for example, where conveyancers retained control of the conveyancing business. In such circumstances advantages may be gained from removing the restrictions on ownership of conveyancing businesses to assist flows of additional capital into the conveyancing sector and promote competition in a form that benefits consumers.

The aim of restricting the ownership of conveyancing practices to registered conveyancers and their prescribed relatives or employees is to ensure that professional and ethical standards are adhered to and potential conflicts of interest avoided. This is of clear benefit to consumers, as transactions involving the transfer of real property tend to be the most important transactions consumers ever enter into and the potential losses where a transaction goes wrong are great.

The benefit of an independent conveyancer acting at all times in the best interests of his or her client is considerable. Examples include where a land agent has prepared a defective vendor disclosure statement that does not disclose, for example, an easement or other encumbrance on the property to be transferred. In such a scenario the conveyancer acting for the purchaser should alert the purchaser about the deficiency, thereby giving the purchaser the opportunity to decide not to proceed with settlement. However, where the conveyancer is associated with or related to, for example, the land agent, the conveyancer may have a conflicting interest in ensuring that the transaction is completed so that the agent receives its commission on the sale of the property.

Other relationships or associations that may give rise to similar conflicts include those with a financial institution financing the purchase, which stands to benefit from the completion of a land sale by earning loan fees and interest on the mortgage.

A recent case illustrating such conflicts is that of Sharkey v Combined Property Settlements Pty Ltd [1999] WADC 41. In that case the two non-conveyancer directors of an incorporated conveyancing practice were also directors of companies that included one of the vendors of the property being transferred, the land agent engaged to sell the property, as well as of a building company that was to build a medical centre on behalf of the purchasers. When one of the non-conveyancer directors learned through his association with the purchasers' builder that it was planned to include a pharmacy in the proposed medical centre, he instructed the conveyancer director of the conveyancing practice to terminate the contract on behalf of the vendors by exploiting a condition in the sale contract that required that a contract with the builder be signed within a certain period. This non-conveyancer director instructed this on the basis that he also had an interest in another development, which was also to include a pharmacy and would have faced competition from the pharmacy to be located in the proposed medical centre. The Western Australian District Court found the conveyancing company breached the Settlement Agents Code of Conduct for acting where a conflict of interest was foreseeable and for failing to disclose interests the conveyancing company had in the transaction.

The situation in this case arose notwithstanding the existence of a code of conduct dealing with conflicts of interest and that the company argued that the conveyancer-director was in day-to-day control of the business. Therefore, it is the Government's view that, at the very least, land agents and financial institutions offering credit should be precluded from owning conveyancing businesses.

This would not preclude financial institutions from employing in-house conveyancers to perform conveyancing work on behalf of the financial institution (e.g. preparing mortgages and attending to settlement on the bank's behalf), however, a financial institution would be precluded from owning a separate conveyancing business, where that business could then potentially act for the vendor in a transaction in which the financial institution has an interest in terms of providing finance to the purchaser.

Apart from the conflicts that may arise where there are links to other specific occupations such as those identified above, a more general conflict could arise where non-conveyancers control conveyancing businesses between the client's interests and the owner's interest in maximising profit. It may be that a conveyancer perceives a conflict of interest in acting for a particular client, or more likely, in circumstances where the legislation permits the conveyancer to act for both parties to the transaction. Although the conveyancer's duties to the clients may be to disclose the conflict and cease acting for one or both parties, the conveyancer may be under express or implied pressure from the non-conveyancer employer to continue acting for both and therefore generate revenue from the transaction.

The Australian Institute of Conveyancers argues that non-conveyancers are less able to recognise conflicts of interests and where they may arise. This suggests that, even if a provision were enacted making it an offence to give an improper direction to a conveyancer employee, there is no guarantee that a director will recognise when such an improper direction is being made. This supports the argument that conveyancers retaining control of conveyancing businesses ensures that ethical and professional standards are adhered to. Dealing with this objective by imposing conduct rules or other legislative prohibitions may be less effective, as the Sharkey case demonstrates.

Ownership restrictions have been argued to inhibit the development of multidisciplinary practices, which may offer economies of scale and flexibility of service provision. This argument has been advanced particularly for legal practitioners and various medical occupations. However, it is not immediately clear what other disciplines would logically be combined with conveyancers, apart from those areas where conflicts are likely to arise, such as combined services with land agents or financial institutions. It may be that legal practitioners would seek to set up multidisciplinary practices with conveyancers, however, given that many legal firms in South Australia already employ conveyancers to offer cheaper conveyancing services to clients, it is not clear that this would necessarily result in greater flexibility of service delivery than already exists. Possibly, conveyancers may set up business with surveyors to deliver a package of services for development and land division.

It is suggested that there are limited costs arising from the ownership restrictions on conveyancing practices, in comparison with the significant benefits derived from ensuring that conveyancers act ethically and professionally, avoiding conflicts of interest (bearing in mind the big losses than can result from such an important transaction as the transfer of real property).

However, there may be certain circumstances in which there would be little risk to conveyancers' independence and ethical and professional responsibilities, for example, where conveyancers retained control of the conveyancing business. In such circumstances advantages may be gained from removing the restrictions on ownership of conveyancing businesses to remove impediments to flows of additional capital into the conveyancing sector.

By way of example, if the ownership restrictions were removed but were to be replaced with a requirement that the majority of directors or partners in a conveyancing practice are registered conveyancers, this would allow investment in a conveyancing business by a person interested in business management and marketing, who could help the business grow by carrying out innovative business and marketing strategies.

The Government has considered adopting the New South Wales and Western Australian models of requiring that at least one director of a conveyancing company must be a registered conveyancer. However, while this option would minimise the risks to consumers by ensuring that at least one director is aware of conveyancers' ethical and fiduciary responsibilities, this would not be as effective in ensuring that conveyancing companies act in accordance with these responsibilities as a model retaining conveyancer control of the company.

The Bill therefore makes these amendments to the present ownership restrictions in the Conveyancers Act 1994:

- Removes the present ownership restrictions, but precludes land agents or financial institutions and others who finance land purchases from owning, or being directors of, conveyancing companies;
- Modifies the present requirement that all directors of incorporated conveyancers must be registered conveyancers such that only a majority of the directors of the directors need be registered conveyancers, with the business to be managed by a registered conveyancer.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Conveyancers Act 1994*

4—Amendment of section 3—Interpretation

It is necessary to include a definition of ***close associate*** for the purposes of the amendments proposed to be made to section 7 of the Act.

5—Amendment of section 7—Entitlement to be registered

This clause amends section 7 of the Act, which deals with the entitlement to be registered as a conveyancer under the Act. The amendments specifically relate to the registration of companies as conveyancers. Currently, the directors of a company seeking registration must be natural persons who are registered conveyancers (except in the case of a company with only 2 directors, where 1 director may be a prescribed relative of a registered conveyancer as the other director). There are also restrictions on who can own shares or exercise voting rights in the company, and in relation to the disposal of shares in the company (amongst other things). It is proposed that it now be the case that the rule is that a company have a majority of directors who are registered conveyancers, that the voting rights be exercisable by a majority of persons who are registered conveyancers, and that certain persons be excluded from participating as a director or from being entitled to a distribution of profits (*see* the definition of ***prescribed person***). It is intended to retain the requirement that the sole object of the company must be to carry on business as a conveyancer.

6—Insertion of sections 9A and 9B

This clause provides for the creation of two new offences under the Act.

9A—Company conveyancer's business to be properly managed and supervised

New section 9A requires a company that is a registered conveyancer to ensure that the company's business as a conveyancer is properly managed and supervised by a registered conveyancer who is a natural person.

9B—Improper directions etc relating to conveyancing

New section 9B provides that if a director or manager of a company that is a registered conveyancer directs or incites a registered conveyancer or other person employed by the company to act unlawfully, improperly, negligently or unfairly in the course of managing or supervising or being employed or otherwise engaged in the company's business as a conveyancer, the company and the director or manager are each guilty of an offence.

7—Amendment of section 10—Non-compliance with constitution

8—Amendment of section 11—Alteration of constitution

These are consequential amendments.

9—Amendment of section 45—Cause for disciplinary action

This clause amends section 45 of the principal Act, which sets out the circumstances in which there is proper cause for disciplinary action against a conveyancer. In addition to the existing grounds for disciplinary action, this amendment provides that there is proper cause for such action if—

(a) in the case of a conveyancer who has been employed or engaged to manage and supervise a company's business as a conveyancer—the conveyancer or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business; or

(b) in the case of a conveyancer that is a company—a director or manager of the company has been convicted of an offence against new section 9B.

Schedule 1—Transitional provisions

These provisions make express provision for the continuation of the current arrangements relating to the constitutions of existing companies.

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

ADJOURNMENT

At 12.21 a.m. the council adjourned until Thursday 1 July at 11 a.m.