LEGISLATIVE COUNCIL

Monday 14 February 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.20 p.m. and read prayers.

AIR WARFARE DESTROYERS

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement about the air warfare destroyer made today by the Premier.

RAILCAR MAINTENANCE CONTRACT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement about the railcar maintenance contract of TransAdelaide made earlier today in another place by the Hon. Trish White.

QUESTION TIME

PRIVATE PUBLIC PARTNERSHIPS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Treasurer or the Minister for Infrastructure a question about PPPs.

Leave granted.

The Hon. R.I. LUCAS: In the weekend newspaper, *The Sunday Mail*, there was an announcement from the Minister for Infrastructure in relation to the first PPP project to evidently be concluded and which is to provide six police stations and court complexes in regional areas. The article claims the following:

> The government will spend $40 million—included in the last two budgets—on leasing the buildings for 25 years. Infrastructure Minister, Pat Conlon, said a consortium known as Plenary Justice was the successful bidder.

My questions to the Treasurer and/or the Minister for Infrastructure are as follows:

1. What would the cost have been if the traditional capital works budget procurement method was to be used for the construction of these six projects? What are the total payments over 25 years to the consortium to lease the buildings? Are these lease payments over 25 years on or off budget?

2. Did the government sell land to the consortium as part of a series of deals and, if so, at what price?

3. Does the government intend to release the contract that has finalised the details of this particular PPP?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for Infrastructure and bring back a reply.

COURTS, CRIMINAL

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question about criminal courts.

Leave granted.

The Hon. R.D. LAWSON: Last Friday, the Australian Bureau of Statistics issued a report on the Australian criminal courts. That report presents statistics relating to the criminal jurisdictions of the supreme, intermediate and magistrates courts of Australia for the period from 1 July 2003 to 30 June 2004. These courts, of course, are those responsible for trying and sentencing persons and organisations charged with criminal offences. The figures relating to the rate of custodial sentences served by those who are found guilty in the higher courts, of significance to South Australians, and, in particular, the figures published by the Australian Bureau of Statistics, show that in South Australia the lowest proportion of persons found guilty by higher courts are actually sentenced to serve custodial sentences.

In particular, in South Australia only 49 per cent of those proven guilty have a custodial sentence imposed. The highest jurisdiction is that of the Northern Territory, where 85 per cent are sentenced to custodial sentences. It is well over 70 per cent in New South Wales and in Western Australia, yet in this state we languish at the bottom of the table at only 49 per cent. My questions are:

1. Is the Attorney aware of these figures?

2. Is he satisfied with the results of this survey?

3. If not, what does the government propose doing about it?

4. Why was this statistic omitted from the self-congratulatory scorecard on law and order which the Premier published last week?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Attorney-General in another place and bring back a reply.

EYRE PENINSULA BUSHFIRES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question on the Eyre Peninsula bushfires.

Leave granted.

The Hon. CAROLINE SCHAEFER: Over the weekend I was contacted by an Eyre Peninsula farmer who was burnt out during the fires, with a report that the Army had been prevented from clearing fence lines because the Native Vegetation Division of the Department of Environment had deemed the clearance to be too severe. Apparently, the government acted quickly and that matter has been fixed. However, another farmer has complained that officers from the Department of Environment have physically prevented him from continuing with his work clearing burnt out fences from the roadside and made a request that he move his new fence line some 15 metres further into his paddock to make a wider roadside verge. My questions are:

1. Is the minister aware that such pressure is being put on farmers at this time?

2. Is he aware that by state standards the roadside vegetation areas are very wide on Eyre Peninsula anyway?

3. Is he aware that this would mean a loss of valuable farming land and, if so, is the minister going to purchase this land?

4. Finally, will the minister undertake to give me a reply by the end of the week?

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

The Hon. Caroline Schaefer: By the end of the week?

The Hon. T.G. ROBERTS: He will be able to read *Hansard.*

The Hon. J.F. STEFANI: I have a supplementary question. Has there been a decision to compulsorily acquire such land and, if so, under what direction?

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

GEOSCIENTIFIC DATA

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about geoscientific data collection.

Leave granted.

The Hon. CARMEL ZOLLO: One part of the government's PACE program was a geochemical survey for the entire state. My question is: when will this survey begin, what will it achieve and when will the information be available to companies seeking to explore in South Australia?

Members interjecting:

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am very pleased with the honourable member's interest in this subject. I am disgusted with the opposition's contempt for this matter, given the great success this state has had in developing mining exploration in South Australia. I suppose members opposite are embarrassed by their relatively poor performance in this area over the eight years they were in government. I am very glad to inform the council that work will begin almost immediately. The successful tenderer for the project is Terra Search Pty Ltd. The state government has signed—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Well, members opposite were the ones who made all those interjections. What does the honourable member expect me to say when there is that sort of a reaction?

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: How was the honourable member's earlier comment bipartisan? Let us put on the record—

The PRESIDENT: Order! There are no bipartisan interjections.

The Hon. P. HOLLOWAY: That interjection was certainly not bipartisan. The state government has signed a contract to expand the amount of geochemical data available to assist mineral exploration in South Australia. As the Hon. Carmel Zollo explained, the work is part of the government's plan for accelerating exploration (PACE), which aims to increase mineral exploration in South Australia to $100 million by 2007 and mineral production and processing to $4 billion by 2020.

This tender is for geochemical data compilation of calcrete samples from the central Gawler Craton area, which makes up about half of South Australia's land area. Geochemical surveys indicate the distribution of valuable ore elements, such as copper, gold or nickel, in various rock types. The surveys are mainly conducted by exploration companies, which undertake a surface soil sampling program, usually grid based in design or samples from drill core. The samples are analysed and the results are used to assist in defining the position and extent of mineralisation. If the geochemical patterns coincide with favourable geology or geophysical responses, companies may choose to drill test those targets seeking economic ore grades. Expanding the amount of geochemical data available is one direct way of encouraging further exploration of the state's mineral resources. Geochemical data is one of a number of different data sets which explorers need to identify potential areas of interest. Others include magnetic data and gravity data.

The Canadian-based Fraser Institute has rated South Australia number one in the world for its provision of exploration data, but we may lose that position unless we constantly update and expand the pre-competitive data through positive initiatives, such as new data compilation.

At its completion, the current baseline geochemistry program under PACE will add over 120 000 new geochemistry data points to our existing coverage. Data such as this is extremely valuable to mining exploration companies in minimising the risk associated with high cost drilling, particularly in remote areas. I expect the data required by this project will be available to exploration companies by the end of May. This information, together with the annual $1.7 million funding for collaborative drilling through PACE, will help provide strong incentives for a dramatic increase in exploration across South Australia this year.

MOTOR VEHICLES, YOUNG DRIVERS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, questions about young drivers and V8 and supercharged motor vehicles.

Leave granted.

The Hon. T.G. CAMERON: Yesterday's *Sunday Mail* published a poll showing community concern about the rising toll amongst young drivers that is fuelling support for tough new restrictions, including raising the driving age to 18 and banning young drivers from driving powerful cars. The *Sunday Mail* poll asked people to rate a wide range of motor safety issues on a scale of 1 to 10, and it found that restricting P-plate drivers from driving powerful cars rated an 8 (and that would come as no surprise in a poll). Research shows that young people are three times more likely to be involved in a serious crash than older, more experienced drivers. Half the state's 10 road fatalities this year have been people under the age of 20, while last year about one quarter of the state's 139 road deaths were aged 17 to 25.

I understand New South Wales is currently in the process of banning P-plate drivers from driving V8 turbo-charged or super-charged cars—a move that is being monitored by the South Australian government. However, as part of their program to reduce young driver deaths both New South Wales and Victorian state Labor governments have introduced road safety education classes into primary and secondary schools. No such programs exist here in South Australia. My questions to the minister are:

1. Has the government undertaken any studies into the correlation between P-plate drivers who drive V8 turbo-charged or super-charged cars and the number of accidents? If so, what were the results?

2. Will the government heed the call by the RAA and follow the example set by its interstate counterparts and move to introduce road safety education classes into primary and secondary schools?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the Minister for Transport in another place and bring back a reply.

The Hon. KATE REYNOLDS: I have a supplementary question. Can the minister please indicate how the education department currently supports schools such as those in the Adelaide Hills and the Barossa who do provide some driver education for their senior secondary school students?

The Hon. P. HOLLOWAY: It appears that that supplementary question actually contradicts the original question. It is to a minister I do not represent in this place, but I will see what information we can obtain for the honourable member.

The Hon. NICK XENOPHON: I also have a supplementary question which is linked to this whole issue of young drivers and young driver safety. Has the government looked at the effectiveness of laws in some US states which place restrictions on very young drivers having young passengers in their vehicles?

The Hon. P. HOLLOWAY: I will refer that question to the Minister for Transport. I understand we have a Road Safety Advisory Committee that is chaired by Sir Eric Neal that I am sure does a very good job and that looks at all these things. However, I will see what information I can get for the honourable member.

The Hon. J.F. STEFANI: Can the minister advise whether she has looked into the advanced training school that Honda conducts in Victoria with the Victorian government in relation to young drivers and young motor- cyclists?

The Hon. P. HOLLOWAY: I seem to recall that that was asked as a supplementary question last year and I thought I had seen a response. I am not sure whether it got through to the honourable member. I will also take that question on notice and bring back a reply if the honourable member has not yet received one.

POLICE, TRAINING

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Police, a question regarding police training.

Leave granted.

The Hon. IAN GILFILLAN: In the *Flinders Journal* of 15-28 November last year there is an article on the front page headed 'Men behaving badly are all part of an unofficial military culture.' Unfortunately, police training is embraced in this. Part of that first page article reads:

> Abuse by soldiers of other soldiers and civilians is an endemic part of military culture, not simply a case of a 'few bad apples', according to Dr Ben Wadham, a lecturer in education at Flinders University. Dr Wadham is currently researching military culture and the processes employed in army training to create the Australian soldier.

Part of this issue was focused on a so-called prank photograph of a Ku Klux Klan presentation by military trainees. The article continues:

> Dr Wadham said the Ku Klux Klan 'prank' photo—the subject of recent controversy—is an example of a type of behaviour not unusual in arms-corps culture.
>
> 'Men are asked to develop strong bonds to manage the challenges of infantry life and to join together to overcome intense adversity,' Dr Wadham said.
>
> Those bonds, however, often result in men relinquishing any sense of individual responsibility to others, resulting in abuse.

The article further states:

> General Peter Cosgrove and the Prime Minister have argued that the photograph is a military 'prank' that went too far.

The article continues:

> 'There is an identifiable process of constructing soldiers which exists in some form across most armies across the world,' he said.
>
> 'That process involves the stripping away of the "civilian self" in order to create the solder.'

This is the point I want to emphasise:

> 'Similar processes are used in the training of police, paramilitary and torturers and involve bastardisation and abuse alongside professional training procedures.'
>
> Speaking from his own experience, Dr Wadham argues that the process of training works through relinquishing a sense of personal responsibility in favour of loyalty to the group.

The South Australia Police personnel are seeking a ringing rebuttal of the inference made quite clearly in this article. I ask quite simply: will the minister respond to the allegations publicly and lay to rest that the training of police in South Australia does not involve the bastardisation and dehumanising that is identified in military training?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am sure that the Minister for Police would be pleased to respond to the matters raised by the honourable member. I will refer the question to him.

PUBLIC SERVICE MORALE

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Premier, a question about public service morale.

Leave granted.

The Hon. J.M.A. LENSINK: Reports produced by the Office for the Commissioner for Public Employment (OCPE) make interesting reading about the state of our Public Service in South Australia. Comparisons of the work force information collection annual reports show a disturbing trend in average rates of sick leave per full-time equivalent. They were, as follows: 2001, 6.1 days per FTE; 2002, 6.7; 2003, 7.2; and in 2004, 7.4.

The Hon. R.I. Lucas: They are sick of working for Rann!

The Hon. J.M.A. LENSINK: Indeed. Mike Rann is making the Public Service sick. The most recent work force perspective survey was conducted by the OCPE in 2003, when there were 6,328 respondents (a 36 per cent response rate). In this survey, more than one quarter of respondents—that is, 26 per cent—said that they had experienced workplace bullying in a 12-month period; of these, only one-third reported it because they 'were not confident any good would come out of it'. In all, 20 per cent of respondents reported that they had experienced unwelcome behaviour and, in response to the question, 'How has your morale changed, if at all, over the last 18 months?', 40 per cent said it had deteriorated, or deteriorated greatly.

On 31 January 2005, I received an email from a public servant who, understandably, wishes to remain anonymous. The following comments were made:

> I attended the IPAA Governance seminar today. It was addressed by Nick Poletti of the Public Sector Reform Unit, Monsignor Cappo, Terry Tysoe (on the State Strategic Plan) and Kate Costello on Boards. I was surprised by the anger and mistrust shown towards the government. I was aware of it, but I hadn't seen how strongly others felt.
>
> When it came to the panel discussion at the end it was painfully obvious that Nick Poletti (ex Victoria) 'didn't get it' and he was surprised by the suggestions that the public sector in SA would not take any steps towards innovation and risk taking while they know that any mistake will be punished.
>
> Kate Costello suggested that governments of all political persuasions should lead by example in creating a positive culture in

the public sector. Innovation, appropriate risk taking and change will only occur in a positive working environment. Governments cannot introduce cultural change by decree. Where people are concerned, emotions are involved and it's up to governments to demonstrate the necessary leadership so often demanded of the private sector.

He concludes by saying:

I have not attended a gathering of senior public servants like it in the 20 plus years I have been in the service.

Two days later it was reported in *The Advertiser*, in an article entitled 'Public Service anger at Rann cabinet', that South Australia will lose its best and brightest public servants unless the state government stops berating its work force. A ballot of Public Service Association members shows that goodwill and support under Labor have evaporated. Instead, President Lindsay Oxlad said that the government was perceived to be bitter and acrimonious. PSA General Secretary Jan McMahon described Labor's attitude to the Public Service as dismissive, confrontational and uncompromising. 'This has been a source of great disappointment and disenchantment across the public sector,' she said.

The Hon. R.K. Sneath: Opinion, opinion.

The Hon. J.M.A. LENSINK: No, I am quoting. She said:

They are not happy with the government and neither should they be. Its attitude has created widespread anger, frustration and disillusionment.

The Premier's response was to say:

The PSA has got this one wrong. I respect our professional public servants and enjoy working with them. On countless occasions I have praised and honoured them.

My questions are:

1. Who is correct—Kate Costello, the PSA, the OCPE or the Premier?

2. Will the government follow up on the last work force perspective survey which contains such disturbing trends, and when?

3. Is the government concerned at the potential loss of public servants, and what is it doing to reverse it?

4. What is the government doing to reverse the ageing of the Public Service?

5. When will cabinet members start showing some leadership and stop blaming public servants?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): We have had quite a lengthy thesis from the honourable member suggesting that this government is in some way critical of senior public servants, but the only evidence the honourable member could provide in her question was a quote from someone within the Public Service Association. I would have thought that, if this government had been making such public criticisms of public servants as is alleged, the honourable member would be able to show those examples in the media or in parliament or elsewhere where this government has been critical of public servants.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Where is the evidence? Where is this criticism? Jan McMahon allegedly says that this government has been critical of public servants. Where is it? Where is it in the newspapers? Where is the criticism? All I can say is that most ministers in this government and I are very appreciative of the high calibre of public servants we have in this state and we are very fortunate to be served generally by such a high level of public servants and they do a very good job. I have not seen any evidence that this government has been critical of—

The Hon. J.M.A. Lensink: Kate Lennon?

The Hon. P. HOLLOWAY: Kate Lennon was criticised by the Auditor-General. The Auditor-General brought out a report saying that there had been unlawful behaviour in the presentation of the financial reports. All that had happened in relation to Kate Lennon was that the Premier wrote her a letter asking her to explain the criticisms that had been made by the Auditor-General. To suggest that this government has been widely critical of public servants is incorrect.

Members interjecting:

The PRESIDENT: Order! The actions of Ms Lennon are the subject of a select committee, and I have ruled that we will not go into those matters any more. Has the minister concluded his answer?

The Hon. A.J. REDFORD: Mr President, I would be interested to know precisely which standing order prevents us from talking about or mentioning the words 'Ms Lennon'.

The PRESIDENT: The minister was talking about the criticisms of Ms Lennon made by the Auditor-General. Those subjects have been handed to the select committee.

The Hon. A.J. Redford: That doesn't gag us.

The PRESIDENT: The standing orders gag members from constant interjection. That does not seem to have stopped the honourable member very much in the past. If the Hon. Mr Redford wants me to pay particular attention to the standing orders, I am happy to do that.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! The standing orders are very clear. I am very concerned about public statements by a range of members about matters before the select committee in breach specifically of standing orders 190 and 193.

The Hon. R.I. Lucas: There was a brilliant ruling in the House of Assembly today.

The PRESIDENT: Honourable members know quite clearly that they are not to refer to proceedings in the other place without leave.

The Hon. P. HOLLOWAY: I accept your ruling, Mr President.

Members interjecting:

The PRESIDENT: Order! The standing orders apply to all members on both sides of the council.

The Hon. P. HOLLOWAY: I can only reiterate that this government respects the work that our Public Servants do. Certainly, a public sector reform unit has been established which seeks to improve the efficiency of our Public Service; and it is right and proper that we should do that. In relation to any of the other matters in the honourable member's question—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: One of the problems we have, and the honourable member mentioned it, is that our work force is ageing, and I suspect there may well be a correlation with increasing sick leave and age, because people tend to get sicker as they get older, and that is a problem. One of the honourable member's questions related to what the government was doing in relation to the ageing of the work force. I know within my department that, out of a work force of just over 100, something like four new graduates have been recruited into the department specifically in just the past 12 months. So I know within my own agency a number of measures are being taken to increase the recruitment of young people.

But, obviously, in some areas of government, particularly nursing and teaching, and other areas where it takes some years to recruit people and where the average age of that work force is increasing towards the 50 years mark, all of us

ought to be concerned generally about the ageing of the workers. Of course, the broad scale response of this government is in relation to population policy, and that is why we have had to try to recruit police officers from the United Kingdom, for example, because we do not have sufficiently qualified people here. That is a serious question and I will get some further information for the member, because it is a very serious challenge to government.

POLITICAL ADVERTISING

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, a question about political advertising.

Leave granted.

The Hon. T.J. STEPHENS: Members would be aware that the government recently announced some very minute changes to its policy regarding land tax valuations and tax rates. Under the heading 'Land tax relief', a full page advertisement was taken in the Real Estate section of Saturday's *Advertiser*, the point being to highlight changes made, for obvious political benefit.

Members interjecting:

The PRESIDENT: Order! I am having trouble hearing the question.

The Hon. T.J. STEPHENS: Thank you, Mr President. That was scathing. Included in the advertisement are also details of other tax changes the government claims as its own that have little to do with land tax and, in fact, were agreed to under the GST arrangements under the Olsen government. My questions are:

1. Does the minister concede that the inclusion of details from last year's budget about payroll tax and debits tax have little relevance to an advertisement supposedly informing people about land tax, as in Saturday's advertisement?

2. Does the minister agree that these inclusions clearly identify the advertisement as political advertising at the taxpayers' expense?

3. Does the minister concede that the government has misled the public by claiming that the Rann government has cut $360 million of taxes when much of this was already going to be implemented by the GST agreement signed under premier Olsen?

4. Can the minister provide the council with information about how much the advertisement cost and which minister or official authorised its publication?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am sure the public of this state is delighted that this government has provided $605 million over the next four years in tax relief. Like other governments in the past, when there have been changes to taxes, the government advises people of that so they can take advantage of those announced cuts. But, I do not accept the honourable member's assertion that some portion of this $360 million was purportedly committed by the previous government. That is a complete joke.

If we were to take that to its logical conclusion, presumably every government would spend the forward estimates for the next decade in advance, and then everything that happens in the future would be the responsibility of that government. The fact is that, when this government came to office, there were, in accrual terms, budget deficits. This government has turned the finances around; it has put the state into accrual surpluses; it has restored the AAA rating; and, of course, in addition to that, it has had to supply the finance into the forward estimates for tax cuts.

The fact is that every government has to balance its budget every year, and the requirements, however they arise, have to be met during the course of the financial year. This government has done that, and it has been able to restore the state's finances to a AAA rating. To try to suggest that somehow or other those cuts to the various taxes that were announced in this budget were in any way due to the previous government is really stretching the truth to ridiculous extents.

The Hon. T.J. STEPHENS: I have a supplementary question arising from the answer, or lack thereof. Does the minister agree that the ad was blatantly political?

The Hon. P. HOLLOWAY: I have not seen the advertisement, but, no, I do not believe that it would have been political.

The Hon. J.F. STEFANI: Can the minister advise of the length of time people need to wait before they get their refund cheque from land tax?

The PRESIDENT: I do not know that that question is anything about political advertising.

The Hon. P. HOLLOWAY: I am sure the government will be seeking to send out those cheques as soon as possible.

ABORIGINAL EDUCATION

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about Aboriginal education and training.

Leave granted

The Hon. J. GAZZOLA: The minister has reported to the council on previous occasions the importance of school retention and achieving the South Australian Certificate of Education for Aboriginal students. He has also informed the council of the importance that this and training has on the move into higher education and the long-term employment prospects of Aboriginal students. Given this, my question is: will the minister inform the council of the achievements in the area of Aboriginal education and training?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question. I am pleased to inform the council that there is a record number of Aboriginal students completing the South Australian Certificate of Education. Last year we had 92 students completing their SACE, compared to 61 the previous year. One of the problems we have in placing Aboriginal students who do qualify at senior levels, or go on to university, is that there are not enough positions made available in the private sector. The public sector is trying to increase the numbers throughout the public service, but there are special requirements that we need to be aware of when placing Aboriginal students in positions where they do not receive adequate support.

The achievements that we have been able to gain from the increased numbers of students can be put down to the strong support that individuals get from their families and their extended families, and they can all be proud of their efforts. It is also a direct result of the positive and sustained strategies for change from the community and the state government. We now put greater value and place more emphasis on Aboriginal cultures within the SACE. The state government has funded a $28.4 million package of social inclusion initiatives to

support and encourage students at risk to stay in school longer.

There are more programs in school communities that focus on case management, mentoring and parent involvement in students' studies. Also, the celebration of Aboriginal students' achievements in a number of schools and communities also helps to provide a focus for many Aboriginal students. We are also seeing some really pleasing outcomes in other areas such as trade qualifications and, although, they are not in volume, they are certainly starting to come through the system.

One such example is Nathan Smith who is a 22-year old from Port Victoria. Nathan is the first person to have completed an apprenticeship through the Narunggar Aboriginal Progress Association's Community Development Employment Program. In May 2001, Nathan successfully applied for an apprenticeship in painting and decorating which he completed in 2004. He is a great source of pride to the NAPA program and the community, and a great role model for young indigenous kids. Nathan has been nominated by NAPA for the 2005 Outstanding Young Indigenous Achiever, one of eight awards to be presented in April 2005 to South Australian young people achieving excellence in their chosen field. Young indigenous role models do inspire others, and I congratulate Nathan and wish him every success in the Young Achievers' awards.

We are also working on building into some of the tendering processes affirmative action programs so that training can be a part of those modules in remote and regional areas. I recently visited—and I am sure that other members in this chamber, including you, Mr President, are aware of it—the Port Pirie program running alongside the TAFE and the education system where carpentry and housing building skills are being put into effect. Hopefully we can extend some of those trade skills and qualifications using self-employed contractors who are encouraged to employ Aboriginal people, particularly in regional and remote areas, so that those skills can be built up and passed on to remote communities.

The Hon. KATE REYNOLDS: I have a supplementary question. Can the minister tell us how many students who completed SACE in 2004 are from remote Aboriginal communities?

The Hon. T.G. ROBERTS: I do not have that breakdown, but I will endeavour to get the breakdown and refer it to the honourable member.

SCHOOL BULLIES

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Education and Childrens Services, a question regarding bullying in schools.

Leave granted.

The Hon. KATE REYNOLDS: Seven months ago the government announced that it was putting school bullies 'on notice by upping the ante on harassment, bullying and abuse' in the schoolyard. In July the government announced that 100 school counsellors and student wellbeing officers—and I have to confess that I am not sure what a 'student wellbeing officer' is—would attend two-day workshops to be trained as leaders in dealing with bullying, harassment and violence. A survey was published last year by the University of South Australia which showed that 40 per cent of students saw physical bullying and about 70 per cent saw verbal bullying at least once a week. Further research by the Queensland University of Technology showed that only one-third of recently graduated teachers believed themselves confident to deal with classroom bullying, and various other studies, both nationally and here in South Australia, have shown that bullying and harassment and abuse of staff in schools is also a serious and worsening issue. My questions to the minister are:

1. Since the launch of the information and training program last July, how many counsellors and student wellbeing personnel (as the government calls them) have participated in the workshops?

2. What assistance is being provided to schools to develop anti-bullying policies which I understand all schools must have in place by the end of this school year?

3. What assistance is being provided to schools to develop and implement anti-bullying strategies, as opposed to policies?

4. What practical assistance is being provided to schools to support students such as Peter Dempsey who, Mr President, you would have read about in today's *Advertiser*? Peter abandoned school after years of bullying and harassment.

5. What plans does the Education Department have to measure the success of the training program. in terms of the confidence of those participants in dealing with bullying and, in particular, how is the Education Department measuring the impact of this training program for all students and for all staff in schools?

6. What plans does the Education Department have to train and provide practical support for the other thousands of staff in South Australian schools to deal with bullying and harassment?

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.

LAND ACQUISITIONS

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Administrative Services, questions about the compulsory acquisition of land owned by Roy and Verna Henderson of Victor Harbor.

Leave granted.

The Hon. NICK XENOPHON: On 19 February 2004, I asked a number of questions about the compulsory acquisition of land owned by Roy and Verna Henderson by SA Water. The land situated at Victor Harbor was ostensibly to have been used for a waste water treatment plant. Several months after the acquisition process had taken place, it transpired that SA Water had changed its mind about using the Henderson's property and that the land was re-zoned for residential purposes and is now worth many times more than it was acquired for, even allowing for inflation and increased property values.

In his answer to me on 3 May 2004, the Minister for Administrative Services said:

> In relation to land which is compulsorily acquired and then not required there is no whole-of-government policy. In the case of SA Water, I am advised that there have been instances where previous owners have been offered acquired land no longer required by SA Water. Further to the provisions of this information—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: In answer to the Hon. Mr Redford, I do not buy lottery tickets in case I win; it would be politically embarrassing. Further to the provision of this information, my questions are:

1. How many cases have there been of previous owners being offered back land acquired under the Land Acquisition Act 1969, in particular, involving SA Water or its predecessor?
2. Where were such properties located?
3. Will the minister provide a schedule of:
   (a) the dates on which the abovementioned properties were acquired;
   (b) the dates on which they were offered back to the previous owners; and
   (c) whether or not the offers were accepted by the former owners and, if so, how many, and subsequently returned to them?
4. Given the circumstances of the Henderson case, what consideration was given to the Hendersons being offered back their property, and for what reasons was no such offer made?

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. I suggest that the honourable member could put a needy person's name on a lottery ticket he may wish to buy.

DUKES HIGHWAY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question about the rehabilitation of the Dukes Highway.

Leave granted.

The Hon. D.W. RIDGWAY: I was in the South-East last weekend, and whilst I was there I met with a number of people, in particular, a number of people who live alongside the Dukes Highway. They expressed some concerns at some new growth of trees that has occurred on what we will call the batter of the highway (that is, the sloping bit of the embankment) since the highway was last redeveloped some 15 years ago. These trees are between 50 and 100 millimetres in diameter, according to the residents.

This morning, I also spoke to a Mr Angelo Lanzilli, who is a project manager for Transport SA. He said that most of those trees fell outside the scope of the project and would not be removed. In fact, he said that some parts of the pavement will be dug up and replaced, and therefore the batter would not be touched. It seems crazy that yet again we are going to see a redevelopment of this road and that only half the job will be done. After 15 years, these trees are some 50 to 100 millimetres in diameter—and I suspect that they will be 100 to 200 millimetres in diameter in 10 or 15 years—and present a significant road traffic hazard.

I also draw to the Legislative Council's attention an advertisement placed in both the *Border Chronicle* and *The Advertiser* regarding this rehabilitation. The advertisement states:

> Rehabilitation of the Dukes Highway, between Bordertown and the Victorian Border will start in early February
>
> The project is essentially a large repair treatment to specifically rehabilitate approximately 17 kilometres of the failed existing pavement west of Bordertown.

As members in this chamber would know, the Victorian border is on the eastern side of Bordertown. If I did a quick quiz in the Legislative Council, everyone would answer, 'It is on the eastern side of Bordertown.' Further on in the advertisement it says:

My questions are:

1. Will the minister and Transport SA address the new growth of trees on the batter of the highway?
2. Will Transport SA please clarify whether it will rehabilitate the badly damaged road surface east of Bordertown or rehabilitate a perfectly good piece of road west of Bordertown? Or does it really know?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am sure that the bureaucrats of this state can sleep easy at night knowing that the Hon. David Ridgway goes through the fine print of every announcement the government ever makes looking for mistakes that some poor, hapless bureaucrat has made somewhere along the line. Nevertheless, I will refer that question—

The Hon. A.J. Redford: It is interesting the way you continually blame the public sector for your own shortcomings.

The Hon. P. HOLLOWAY: Continue blaming the public sector! We had one of the most disgraceful attacks I have ever heard last week from the Leader of the Opposition. Talk about attacks on public servants: we could name Ray Garrand and Paul Grimes, and we even had an attack on a legal officer within the Attorney-General's Department who, I understand, joined that department more than a decade ago but because—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —well after that period—one of her relatives met the Premier somehow, in the eyes of the opposition, that enabled that person to be criticised before select committees of the other place and by the Leader of the Opposition in this place. If there is any evidence at all of anyone maligning public servants in this parliament, the main culprit would be the Leader of the Opposition—and he has done it on numerous occasions.

The Hon. David Ridgway, as I said, applies himself diligently to looking at these articles and I am sure he is correct that the road that is to be repaired is east of Bordertown. I will refer the other question to the Minister for Transport and bring back a reply.

CAMPBELLTOWN COUNCIL

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for State/Local Government Relations, a question regarding the operations of the Campbelltown council.

Leave granted.

The Hon. J.F. STEFANI: Honourable members would be well aware that I have previously raised a number of questions in this place regarding the operation of the Campbelltown council. The last question I asked on this issue was on 22 November 2004. I have not as yet received any response to my questions from the minister.

During the past three months I have received numerous telephone calls and correspondence from concerned residents, including phone calls from a number of Italo-Australian ratepayers. I also believe that a number of councillors and residents have expressed their concerns to both the Premier and the Minister for State/Local Government Relations on a number of occasions and letters have been written to the Premier and to the minister dealing with many of the issues

affecting the Campbelltown ratepayers. From the information I have received there appears to be a clear case for an independent investigation to be conducted into the affairs of the Campbelltown council. In view of the serious situation which exists in relation to the administration of this local government entity, my questions are:

1. Has the minister received any direction from the Premier regarding the correspondence the Premier has received dealing with the problems of the Campbelltown council?

2. What action has the minister taken concerning the serious issues outlined in the correspondence he has received?

3. Will the minister take the appropriate action, as he did in the case of the Barossa Valley council, and initiate an independent investigation into the operations of the Campbelltown council?

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.

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the minister for WorkCover, a question about WorkCover.

Leave granted.

The Hon. A.J. REDFORD: Yesterday's *Sunday Mail* contained an article entitled 'Work injury cases face new scrutiny', written by Kevin Naughton. In summary, the article reported that:

(a) WorkCover has targeted 1 000 long-term claims;

(b) WorkCover will take over 220 of the most complex claims and manage them in-house by WorkCover staff;

(c) these 220 claims have cost $75 million in three years (on my calculation, that is an average of a whopping $340 909 per claim, which is an extraordinary figure);

(d) a further 750 claims will receive closer attention; and

(e) Jardine Lloyd Thompson (JLT, as it is popularly known) has been engaged to advise on the resolution of these 220 claims.

The article further states that these measures are 'the latest in a shake-up of WorkCover' and also states that, half way through last year, WorkCover had moved to improve its financial position by outsourcing claims management to Vero, Allianz, QBE and CGU. My recollection is that Vero, Allianz, QBE and CGU have been claims managers since the inception of claims management in the mid-nineties. Notwithstanding that, I am told that the existing claims managers were not consulted at all regarding this outsourcing and that the contract went to Jardine Lloyd Thompson.

Two issues have been raised with me: first, this is a clear breach of the 'no more privatisation' promise made by the Premier on the pledge card and, secondly—and importantly—none of this went to tender. Indeed, in a letter sent by WorkCover to claims agents on Christmas Eve (leaked to me by WorkCover), claims agents were given approximately seven working days over Christmas to come up with strategies regarding long-term claims—a completely unreasonable timetable, as reported to me by certain people. The letter also told them that WorkCover would be taking over 270 files but did not identify which ones, and I am told that those files have still not been specifically identified. In the light of this, my questions are:

1. Why did the work granted to Jardine Lloyd Thompson not go to tender?

2. Given that contracts to implement or manage programs to assist or encourage workers to return to work are authorised contracts pursuant to section 14 of the WorkCover Corporation Act, why has a regulation not been promulgated authorising the JLT contract pursuant to section 14(4) of that act? What is the impact of that failure?

3. How much has JLT been paid? How will its performance be measured or monitored, and is it being paid at the same rate as the other four claims managers?

4. Given that renewal agreements with the other four claims agents were signed with existing claims managers in the third week of December, why are they now described in the *Sunday Mail* article as 'being under scrutiny'?

5. Can the minister confirm that the average cost of the 220 claims over the past three years is $113 000 per claim per annum? If that is not the case, what is the true cost?

6. Can the minister rule out that this measure, and as yet unannounced measures (which I will outline over the next few days), is evidence that the government and the WorkCover board are panicking in the light of rumours that the unfunded liability is likely to blow out substantially in the short term?

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

ABORIGINAL MESSAGE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question relating to *Aboriginal Message*.

Leave granted.

The Hon. J.S.L. DAWKINS: Radio listeners in metropolitan Adelaide and parts of country South Australia can tune into a weekly half hour radio program called *Aboriginal Message*, which is broadcast on Radio Adelaide 101.5 FM on Wednesday afternoon. It apparently also airs on indigenous radio across Australia. My questions are:

1. Will the minister advise the council of the role, if any, played by DAARE in assisting the production of this program?

2. Will the minister indicate which other South Australian radio stations broadcast *Aboriginal Message*?

3. Has the minister appeared on the program?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): No, I am not aware that I have appeared on the program. Sometimes ministers get taped at functions by amateur or community radio programs and we may not be aware of their identification. I have not appeared on that radio program in accordance with the question asked.

I am unaware that DAARE has any funding responsibility for this radio station. Most of the community radio stations are commonwealth funded and have a wide audience, particularly in the north. The ones in the south struggle for audience listening numbers but nevertheless the messages that they provide are important. A lot of syndication goes on with recorded programming throughout Australia, not just South Australia. Where the *Koori Mail* and the indigenous news are involved, if there is a particular issue within South Australia, the other states are keen to see how we deal with

those problems and try to get some of the benefit of experience passed on to them. It is a good networking system. Central Australia, through Alice Springs, is also a provider of networking news. I will refer those parts of the question that I have not been able to answer to DAARE and bring back a reply.

EYRE PENINSULA BUSHFIRES

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement on the subject of Eyre Peninsula bushfire relief made by the Treasurer on 10 February.

INDUSTRIAL LAW REFORM (ENTERPRISE AND ECONOMIC DEVELOPMENT—LABOUR MARKET RELATIONS) BILL

In committee.

(Continued from 10 February. Page 1006.)

Clause 6.

The Hon. T.G. ROBERTS: There were a number of questions asked by a number of members, and this is probably a good time to put it all on the record. In relation to declaratory judgments, before progress was reported on the last day of sitting, a number of questions were raised about the government's proposal for declaratory judgments. As well as providing the answers to those questions I will also respond to a number of assertions made about the proposal.

The Hon. Mr Lawson claimed that declaratory judgments are entirely new to the South Australian system of industrial law. That is plainly and demonstrably wrong. Section 13 of the existing act states that the court has jurisdiction to make declaratory judgments conferred by other provisions of the act. Whilst, at present, other provisions of the act did not confer jurisdiction previously, section 111(3) of the act gave the court jurisdiction to make declarations in relation to the Termination of Employment Convention 1982. Clearly, it is completely wrong and misleading for the Hon. Mr Lawson to claim that declaratory judgments are entirely new to the South Australian system of industrial law.

The Hon. Mr Lawson went on to make the claim that this was some fanciful attack on the labour hire industry. Thus, the bulk of the labour hire industry employs the workers they use and treats them as employees, and that is the whole point here. This is about businesses who, under the existing law as set out by the High Court of Australia, get people to do work in a way that the High Court of Australia would call employment, but they pay them and treat them as contractors. This is about people who flout the law of the land for their own commercial advantage. There are businesses that break the law and do not pay people what they are entitled, and people are often scared, rightly or wrongly, of doing anything about it.

The reality is that these workers who are being wrongly labelled (sometimes wrongly labelled as part of a cynical attempt to defy the law for commercial advantage) usually do something about it when either they stop working for that particular business (so they cannot be sacked for asking for the law to be observed) or when they get seriously injured. This is not some fanciful attack on labour hire, as the opposition wants to pretend for its own advantage. This is a basic proposal to see the law of the land observed.

The Hon. Mr Lawson made another claim that is plainly wrong. He said that this government is trying to break down and undermine existing subcontracting arrangements. This is nonsense. Lawful existing subcontracting arrangements will have been put in place having regard to the common law and the definition of a common law contract of employment under the act. As members would be aware, the proposal in the bill says, 'In determining an application under this section the court must apply the common law and the terms of the definition of contract of employment under this act.' Simply put, the common law and the definition of contract of employment under the act are already the law.

This means that clause 7, which inserts section 4A(2), makes it crystal clear that this is about seeing the existing law observed. This does not change the line in the sand about who is an employee or who is a contractor. It simply creates a better way of making sure that the existing law is observed. No-one who is operating, contracting or subcontracting an arrangement that complies with the existing law should have any concerns about declaratory judgments. However, those who cynically flout the law for commercial advantage should be concerned, and rightly so.

The Hon. Mr Lawson went on to say that it is envisaged that such applications be made in respect of those who currently describe and consider themselves as subcontractors and who the common law says are subcontractors. Again, this is nothing more than cynical scare mongering and a blatant distortion of the truth. I remind all members that clause 7(4)(a)(ii) of the bill provides that, in determining an application under this section, the court must apply the common law and the definition of contract of employment under this act.

I also remind members that, under our bill, the definition of contract of employment in the act is unchanged, with the exception of the insertion of the word 'clean' into the definition of an out worker. As such, it has barely changed from the definition which was a result of the former Liberal government's legislation in 1994. The Hon. Mr Lawson went on to say that the power is so wide that the court could declare that a company, partnership or trust is actually an employee for the purposes of the industrial legislation. As I pointed out previously, the bill provides for declaratory judgments to be made by reference to common law and the definition of contract of employment under the act. If this was a genuine and major issue, there would be evidence of that occurring in cases under our existing law.

It must be understood that the declaratory judgment provisions are not a change to the substantive law: they are an additional process to ensure that the existing is observed. The Hon. Mr Lawson also said it would reduce the certainty that presently exists in relation to these arrangements, because they have been evolving over recent years. In the past 10 years or so, we have had a fairly settled regime in relation to labour hire. Declaratory judgments do not change the law as to who is or who is not a contractor; this is simply an additional process to see that the existing law is observed. It will add to certainty, not reduce it, as being claimed.

The Hon. Mr Lawson also made the false claim that declaratory judgments will lead to less choice for business. This is very clearly not true, because there is no change to the law of who is and who is not a contractor. This litany of disgraceful and paper-thin misrepresentations is all that the

opposition can bring forward to impose this sensible proposal. Not only did the Hon. Mr Lawson misrepresent the provisions of the bill but he also made claims that demonstrated either a complete misunderstanding of the issue, a slavish following of the propaganda fed to him or an attempt to deliberately muddy the waters. It could even be a combination of all of those. He said that if we introduce this into the South Australian industrial relations system, it is undoubtedly the fact that it will encourage employers to move out of the South Australian and into a federal system. Genuine contractors are not involved in the state or federal system of industrial relations, because those systems are about employment, not about contracting.

The Hon. Mr Xenophon said that the independent contractor industry argues that this provision will be relatively unique in the Australian jurisdictions. That is one of the arguments. Just because it is unique, it does not mean that we do not go down that path. As has been observed, the Federal Court of Australia can make declarations about certain matters. Declarations have been sought on a wide range of issues. The Full Court of the Federal Court has made declarations as to the validity of commonwealth regulations and has heard an application for a declaration that a respondent is required by the commonwealth Work Place Relations Act 1996 to produce documents.

I am advised that, as an inherent power of superior courts to make such declarations, these may be made in relation to issues such as pronouncing upon the existence or non-existence of a state of affairs. The Hon. Mr Xenophon referred to an article written by Robert Gottliebsen (providing, of course, that it is the article published on 8 November). Mr Gottliebsen has based his article on misconceptions. I have already dealt with the claim, for example, that companies, trusts and so on, are at risk of being declared employees. The Hon. Mr Xenophon and the Hon. Mr Redford have raised the provisions of clause 7(4A)(7), which provides:

> A person or association acting on behalf of a person under subsection (6)(c) (the *relevant person*) may, in accordance with any relevant rule of the Court, decline to disclose to any other party to the proceedings the actual identity of the relevant person but must, at the direction of the Court, disclose the identity of the relevant person to the Court, on a confidential basis, in accordance with rules.

The purpose of this provision is to ensure that individuals who are fearful of jeopardising their relationship with the employer or of being discriminated against seeking the declaratory judgment are protected and not discouraged from making an application for fear of reprisal.

As members may be aware, it is usually when the working relationship comes to an end or if a serious injury is sustained that the person who believes they have been incorrectly labelled as a 'contractor' tries to resolve the matter. Commonly, this is after many years of being treated as a contractor, even though under the existing law the person was really an employee. By providing a mechanism where a worker can have their situation clarified without fear, these issues can be resolved early in a relationship, which reduces the chances of underpayments accruing over time into large amounts.

As to matters of procedural fairness which were raised, for an applicant to succeed they will need to establish that the particular type of relationship in question is one of employment. They will require that evidence to lead us to how the relevant relationships operate. If any person involved in the application disputes either the evidence or the legal construction placed upon it, they will have ample opportunity to put their side of the story. It is, after all, the applicant who must satisfy the court. I remind all members of section 154 of the Industrial Employee Relations Act 1994, as follows:

> 154(1) In exercising its jurisdiction, the court or the commission—
>
> (a) is governed in matters of procedure and substance by equity, good conscience and the substantial merits of the case, without regard to technicalities, legal forms or practices of courts. . .
>
> (2) The court and the commission must observe the rules of natural justice.

So it is very clear that the court must provide procedural fairness to all parties.

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order!

The Hon. T.G. ROBERTS: As to the Hon. Mr Redford's various questions about this provision, the advocate who is acting for the applicant will call their witness or witnesses, whether or not an individual plaintiff is a witness. The question that will be determined is simply whether a particular class of arrangements described by reference to the elements of the particular work arrangement is one of employment or of contract. If there are 10 workers engaged in the same fashion, any one of them is likely to be able to attest to the circumstances in which they were engaged.

As to the Hon. Mr Redford's question about sanctions, there are none planned as the matter of non disclosure of identity is essentially one that is between a plaintiff and their advocate. The Hon. Mr Cameron asked, 'What areas of work are we looking at?' This proposal is not based around any particular industry. It is to assist in assuring that the law of who is and who is not an employee is better understood and observed in general.

If the members would like an example of a possible area of application, there was a recent case involving a woman who was picking tomatoes for about $6 per hour who was treated as a contractor. Unfortunately she was injured and had to contest whether or not she was an employee, in the course of a WorkCover claim. Ultimately she was successful, but if we had a declaratory judgment in place there would have been a mechanism for her work arrangements to be considered and a decision made before an actual problem arose. The Hon. Mr Cameron also asked whether an industrial magistrate could make a declaratory judgment, and the answer is yes, just as industrial magistrates currently make decisions about whether someone is an employee or a contractor in the course of underpayment of wage claims. The Hon. Mr Cameron said:

> It is also my understanding that the act itself would not prevent a person from using a declaratory judgment to separately claim an award breach, for example, underpayment of wages or unfair dismissal.

If I have understood the point being made correctly, I can confirm that, if a person establishes that they are an employee via declaratory judgment, that is likely to be of assistance to them in pursuing an underpayment where the question is whether the relationship is one of employment or not, providing of course that the circumstances of the relationship examined in the declaratory judgment are not different to those when the underpayment is claimed. The Hon. Mr Cameron also sought information about the Queensland and New South Wales experience. As has already been stated, the proposal here is entirely different, and the features of the Queensland provisions were read into *Hansard* to make that point.

Under the Queensland provisions, for example, factors entirely foreign to the common law and our definition of

'contract of employment' are used to expand the 'pool' of who is an employee. Under our proposal, decisions must be made by declaratory judgments—despite the misconceptions that have been publicised—which is a straightforward proposal to see the law better observed and understood.There is no threat to genuine contractors. The process is designed to ensure that workers who are fearful of trying to have their rights observed can have meaningful access to justice. I hope that answers the questions members have placed on the record. It will probably raise more questions from honourable members.

The Hon. NICK XENOPHON: Further to what the minister has put to us, does the minister acknowledge that the provisions in the Federal Court are much more narrowly based or much more circumscribed than is proposed in clause 7 of the bill, particularly relating to the class of persons who can make an application—the applications being made where the identity of the relevant person is not disclosed? Can the minister clarify that point?

The Hon. T.G. ROBERTS: In relation to an applicant's identity, the answer is yes.

The Hon. Nick Xenophon interjecting:

The Hon. T.G. ROBERTS: No, it is narrow.

The Hon. Nick Xenophon: Narrower?

The Hon. T.G. ROBERTS: Yes, the Federal Court is narrower.

The Hon. R.D. LAWSON: Can the minister indicate any Federal Court decision where a declaration of this kind has been made?

The Hon. T.G. ROBERTS: I am advised that Federal Court declarations are not pointed at identity: they are pointed at other matters.

The Hon. R.D. LAWSON: In other words, the Federal Court has not made a declaration in circumstances similar to those posited in this section?

The Hon. T.G. ROBERTS: The Federal Court has made declarations, but they have been about other matters.

The Hon. R.D. LAWSON: Mr Acting Chairman, I know that you would not be deceived by the mischievous answers the minister has provided in his response. He has been suggesting to the committee that this is just an innocuous provision which is hardly altering the powers of the commission. Really, butter would not melt in this government's mouth on this issue. This change to the powers of the commission is a significant change. It is giving to the Industrial Relations Commission a power to make declarations in circumstances under which it does not have such power at the moment, and which power no other commission in the country nor the Federal Court may exercise. It is also giving this commission the power to make declarations on the application of third parties, that is, persons who are not privy to the particular employment or contractual arrangement.

The Hon. T.G. Cameron: Who would they be?

The Hon. R.D. LAWSON: The minister, the UTLC, Business SA or other peak bodies which the minister might include by regulation. In these proceedings the identity of individuals does not have to be stated. Notwithstanding all the assurances and the smooth talking of this minister, this is not just some minor procedural change, as the minister has said, to catch those who are cynically flouting the law. If there is cynical flouting of the law, there ought be procedures for the prosecution of such people.

This is not for those who are cynically flouting the law: this is what I would term a busybody provision which enables third parties, namely peak organisations or the minister, to seek to invoke the jurisdiction of the court. Individuals who are adversely affected by any industrial matter—whether it is underpayment of wages, etc.—already have a right to go to the court and receive a declaratory order and a judgment in respect of their particular situation. That power already exists. Contrary to what the minister is suggesting, this is not just some minor issue to overcome particular transgressions by particular individuals.

The Hon. A.J. REDFORD: During the course of the response as to why this provision is needed the minister referred to an example of someone who had worked fruit picking or something for a long period of time and then suffered injury. He said that it is important to clarify right at the commencement whether or not a person is a worker within the meaning of the WorkCover legislation and whether that person can make a claim. That is my understanding of what the minister said, but I ask him to correct me if I am wrong because I have a question about that.

The Hon. T.G. ROBERTS: The honourable member is not strictly correct. The illustration of the tomato picker clarifies common law and clarifies it under the definition of employment under this act.

The Hon. A.J. REDFORD: That is the point, and I am glad that the minister has come to that conclusion just by my simple question. In fact, the only example he has given in support of this is not relevant to this legislation. If it was going to be made relevant to the WorkCover situation, we would have a bill amending the terms 'contract of employment' or 'contract of service' in the WorkCover legislation. We have not got that, so the example given that would help people understand what their legal position is vis-a-vis WorkCover is simply not correct. That is my first point.

My second point is this: the most significant driver of people who enter into these sorts of relationships tends to be how they are going to be treated for the purposes of income tax and, again, whatever we do here bears absolutely no relevance to that situation because that classification will be determined by federal law and the application of that federal law by federal tax officers. So, it is not relevant for that purpose, either.

I am at a loss to understand why we need this in terms of either WorkCover or taxation. The only example the minister gave was for the purpose of WorkCover, but he has now said that we do not need it for the purpose of WorkCover, so I am interested to know why we need it given that we do not need it for taxation purposes and we do need it for WorkCover purposes.

The Hon. T.G. ROBERTS: It is not only taxation. Taxation is a driver where individuals need to clarify their own personal situations in relation to their employment, but the situation where we are trying to get some clarity is also driven by the underpayment of wages, and the status of people wanting to know what their contract of employment is in relation to a whole range of matters. It is not just taxation.

The Hon. R.D. LAWSON: I refer the minister to his example of the tomato picker who is paid $6 an hour. How does the minister envisage that this provision will apply in relation to such an individual? If the person is covered by an award, that individual could make an application for underpayment of wages and have his or her status resolved in that application by the court. If that individual is not covered by an award, is that not the traditional function of the union movement to go out, get members and expand the coverage of the award to include people in that situation?

Let us assume that, in that particular case, a declaration is obtained that that individual (it is a bit hard to do if it is an anonymous situation) is, in fact, an employee and not a subcontractor. What is the consequence of that if there is no award? If the individual is not mentioned, is it expected that the Industrial Relations Commission will make a declaration that all tomato pickers are employees and not subcontractors? How could it be done and on the basis of what evidence? What is the utility of a declaration in that situation?

The Hon. T.G. ROBERTS: In response to the honourable member's questions, as I have said previously, individuals are often fearful of making applications in their name for fear of any adverse consequences. If there is no award, the consequences of a declaration are that they are to be treated as an employee and receive minimum standards. However, a lot of people in a lot of industries are unable to exert any pressure individually to change their circumstances because they are not a member of a union and a contractor is acting on their behalf. It is good to have the status clarified, and that is what we are trying to do. As to the class, that would be described by reference to the particular aspects of the work arrangements.

The Hon. A.J. REDFORD: Is the government aware of statements made by the transport industry that this is the provision that will be used to target them and the arrangements they have with driving contractors?

The Hon. T.G. ROBERTS: That is not correct, if that is what is being said in relation to this bill.

The Hon. A.J. REDFORD: I refer to a constituent of mine whom I understand the Hon. Bob Sneath knows very well, namely, Mr Alan Scott, who is a significant investor in this state and who employs thousands of people. In correspondence to the minister (and I have seen this correspondence), he has said that he is concerned that this will be used to upset contractual arrangements that he and other people in his industry have entered into with owners of trucks in relation to the provision of trucking services. That, I know, has been put to this government by Mr Scott. What can I say to Mr Scott that will alleviate what I see as his quite well-founded fears?

The Hon. T.G. ROBERTS: I would like to pass my condolences on to Mr Scott lying back in a hospital bed in Mount Gambier. I am not sure who is advising him in his hospital bed but I understand that this bill will not interfere with lawful subcontract arrangements that I understand Alan Scott has been involved in for a number of years. I do not think that he needs to be worried that this bill is singling out his business. It is a matter of clarifying a whole range of subcontracting arrangements across industry. It is not particularly directed at the transport industry.

The Hon. A.J. REDFORD: Can the minister indicate whether or not he has had any submissions from worker representatives or unions to the effect that the transport industry will receive any attention under this provision?

The Hon. T.G. ROBERTS: I am advised that there have been a lot of submissions on the bill, as members would expect, but from my recollection no correspondence has been singled out in the direction that the honourable member indicates.

The Hon. A.J. REDFORD: Similar to the series of questions relating to the transport industry, have there been any suggestions on the part of the CFMEU or any other group involved in the building industry that it proposes to use this provision on the hundreds of residential building sites around this state to change arrangements between builders and subcontractors, or alternatively on the very few—given the nature of this government—commercial building sites?

The Hon. T.G. ROBERTS: The information available to me at this stage and the advice given to me is that there has not been any directed as the honourable member indicates.

The Hon. R.D. LAWSON: Is the minister aware of correspondence that has been forwarded to all members by the IT industry, the building industry, the independent contracting sector and the trucking industry deprecating the introduction of this provision on the basis that it will create uncertainty?

The Hon. T.G. ROBERTS: There is a wide variety of correspondence on this bill, as I have indicated, and there has been a lot of interest in it. I am sure that, if the honourable member had correspondence of the nature that he is suggesting, he would pass it on to us.

The Hon. R.D. LAWSON: I am asking whether the government is aware of submissions made by those bodies and also the South Australian Farmers Federation, which is particularly concerned by these declaratory judgment provisions.

The Hon. T.G. ROBERTS: The correspondence from a wide range of employer organisations indicates that the assessment they have made in relation to their interpretation of the bill is incorrect.

The Hon. R.D. LAWSON: All of these business associations and their advisers are mistaken in the intended effect of this provision; is that the government's statement?

The Hon. T.G. ROBERTS: The government stands by the view that it has set out in the replies given to questions.

The Hon. A.J. REDFORD: I received a submission from the Housing Industry Association in relation to clause 7, and I understand the minister also received a copy. I will be interested to hear the response of the government in relation to statements made in it. First, I refer to page 9 of the submission made in March of last year, and I acknowledge that the bill was in a different form when the submission was made. However, the thrust of the argument is pertinent. It says that clause 7(2) of the bill gives jurisdiction to the court to declare existing relationships contracts of employment. The jurisdiction granted refers to criteria that are impossible to quantify with any degree of certainty. It then goes on and refers to provisions that were in the bill which was put out for public consultation but are no longer contained in the bill.

My question is: how does this make life any more certain in the case of individual employees? If I pick up the point that the Hon. Robert Lawson was making, it is hard to imagine a $6 an hour tomato picker going off to see a lawyer and then marching into a court, tribunal or commission to seek a declaration. It is more likely that they are to be taken up by organised labour: and that is the second aspect of my question. Is that not the case?

The Hon. T.G. ROBERTS: I am advised that inspectors could play that role. They periodically inspect workplaces to inquire about certain matters. People may report areas of work that need attention. It could be done by the CEO of the department; it could be done by a union; it could be done by the Ombudsman.

The Hon. Nick Xenophon: There is an amendment on file to include the Ombudsman.

The Hon. T.G. ROBERTS: Yes, there is one on file to include the Ombudsman, and I guess if that tomato picker knew a lawyer, he might do work pro bono.

The Hon. R.D. LAWSON: Minister, realistically, is it not the case that it is more likely that one of these applications

will be made by a person seeking to establish whether a particular arrangement or class of arrangement under which he or she may be determined or a person or association acting on behalf of such a person, namely, a union? Is it not most likely that an application under this section will be made by unions rather than by either peak bodies or the chief executive of a department?

The Hon. T.G. ROBERTS: I guess the point that the honourable member makes does not necessarily rule out unions. It could be any other person, as I have advised.

The Hon. R.D. LAWSON: It is only the unions that are seeking this particular power, is it not? It is not the peak bodies.

The Hon. NICK XENOPHON: I indicate that we are dealing with the definition clauses at this stage, not with the substantive—

The Hon. A.J. Redford: This is a test clause.

The Hon. NICK XENOPHON: The Hon. Mr Lawson and the Hon. Mr Redford say it is the test clause in terms of the interpretation of the bill. My understanding is that this is about whether there ought to be declarations as to employment status, but the extent to which such declarations can be made and the circumstances in which they can be made is something that will be determined when clause 7 is being debated, and I have already indicated my reservations about the form in which declarations could be made. So, my position is not to oppose the definition matter that is being dealt with by this particular amendment, but that does not mean that I support clause 7 in its current form.

The Hon. R.D. LAWSON: As the minister does not seem to be sufficiently aware of exactly what the South Australian Farmers Federation says about this matter, I should perhaps read its submission into the record for the benefit of the committee. The submission that I have is undated and it is clear that it refers to the bill as introduced into the House of Assembly, but the comments are general. The submission states:

> 1.3.1. There is a substantial use of independent contract labour in the farming sector. This leads to efficiencies in the use of men and machinery. For example, one farmer may have harvesting machinery which is routinely contracted for use on other nearby farms which cannot afford to make such an acquisition. Likewise, contractors are used extensively in coping with seasonal demands of the industry.
>
> 1.3.2. The effect of this amendment is to create an employment relationship in the place of an independent contract or relationship.

In that, they are correct. The submission continues:

> Persons engaged in such contracts will be regarded as employees, whereas previously they were independent contractors. Significant on costs will flow as a consequence of this deeming.
>
> 1.3.3. This reform, coupled with the proposed reforms relating to workers engaged for specific tasks or periods, will act as a disincentive to farmers engaging independent contractors.
>
> 1.3.4. A disincentive to engage independent contractors is equally damaging to rural communities as a disincentive to employment.

Although the section I just read refers to deeming, and although the government has said, 'No; this is not a deeming provision similar to the Queensland provision' (about which there is a great deal of criticism), the procedural effect of this provision will be exactly the same. It will provide an avenue for parties who are not party to a particular relationship to have a declaration made.

The Hon. T.G. ROBERTS: Lawful subcontracting will not be affected by this bill. I am familiar with the contracting industry in the regional areas of the state, and there are legitimate subcontractors who have been operating for a long time. There are fly-by-nighters whom this bill may affect, but lawful subcontracting and contracting arrangements will not be changed.

The Hon. A.J. REDFORD: I must say that I am a bit confused with what the Hon. Nick Xenophon said. The amendment we are dealing with seeks to insert, or include in the definition of contract of employment, a contract that falls within the ambit of a declaratory judgment under section 4A. If I understand the Hon. Nick Xenophon correctly, he says that this is not a test vote for the insertion of proposed section 4A. As I understand what he is saying, that is because there might well be amendments to proposed section 4A. There are no amendments filed in relation to proposed section 4A. The government's position is that it wants it in; the opposition's position is that we want it out. I will be interested to know whether or not the Hon. Nick Xenophon has any specific amendments in relation to proposed section 4A. Alternatively, are there parts of proposed section 4A which he is urging us not to include?

The CHAIRMAN: The committee is aware that we do not generally allow discussion further ahead. There is an obvious marriage between this definition and this clause, and both sides of the committee have referred to both clauses. If we are really starting to talk about the Hon. Mr Xenophon's amendments and what he thinks of the bill, that is another question.

An honourable member interjecting:

The CHAIRMAN: Exactly. It is very difficult to talk about amendments not even on file about a prospective clause.

The Hon. A.J. REDFORD: He also said that the other alternative was that they were part of proposed section 4A that he would seek to delete. I think that the committee is entirely right in asking, in the politest possible way, what bits of proposed section 4A the Hon. Nick Xenophon prefers, and what he does not.

The CHAIRMAN: We are talking about the definition of contract of employment.

The Hon. NICK XENOPHON: I am more than happy to answer the Hon. Mr Redford's question; I see it as legitimate one. I think we can both be right on this one, in the sense that I indicated last week in the committee stage a number of concerns about inserting after section 4 a new section 4A(7) where the court would decline to disclose to another party at the proceedings the actual identity of the relevant person. I put a number of issues on the record in terms of how that would work and how it would ensure procedural fairness, and I indicated my significant reservations with respect to that. Also, new subsection (8) is interrelated with that subsection. I have indicated that I could not support it—

An honourable member interjecting:

The Hon. NICK XENOPHON: Well, I indicated fairly strongly that I was not convinced that it should be supported in its current form, given issues of procedural fairness to employers. So, if there is a vote with respect to subsection (7), I indicate that I will oppose that. My office spoke to parliamentary counsel this morning, and I wanted to look at some amendments to confine it more narrowly but, realistically, I do not want to delay the committee stage of this bill. I indicate that I would be more than happy to discuss that with the opposition and the government so that there was no issue before anything with respect to the potential amendment was tabled.

I also indicate that, with respect to the applications, a lot has been said by the government about how this clause

interrelates with federal law. It seems that it goes beyond federal law in terms of declarations and what the definition of class of persons would be. In other words, would it have industry-wide coverage, or are there issues of its being circumscribed to a particular workplace or a particular class of employees for a particular employer? That is something that I would like to discuss with my colleagues in government and the opposition and, indeed, my crossbench colleagues. So, if this clause survives I would be seeking to move some amendments to circumscribe the circumstances in which declarations could be made. There is no secret to that. It is essentially something I would like to discuss with my colleagues on both sides of the committee.

The Hon. T.G. Cameron: But wouldn't we need to see your amendments before we voted?

The Hon. NICK XENOPHON: I guess the difference is that I have significant reservations about clause 7 in its current form. I am prepared to support the definitional clause, if you like, in clause 6(4), and then to take it from there. That does not mean that I am in any way locked into supporting the government's clause in its current form, and I have already indicated the reservations about the confidentiality issue.

The Hon. A.J. Redford: That locks you into the example.

The Hon. NICK XENOPHON: It would lock me into—and I do not take issue with the questions that have been asked—moving amendments that, in my view, would improve this clause, but it could be that those views are not shared by the government or the opposition. That is where it is at, and I have outlined that as well as I could to the committee.

The Hon. T.G. Cameron: When do we see the amendments?

The Hon. NICK XENOPHON: I am trying to get them drafted today.

The Hon. T.G. ROBERTS: As a way to proceed, as a suggestion, we can deal with the clause before us and then when we get to clause 7 we can deal with it then.

The CHAIRMAN: That sounds eminently sensible to me.

The Hon. A.J. REDFORD: With respect, I do not think it is sensible at all. I think it is unfair. This bill was put out for public consultation prior to Christmas 2003. I make no criticism of the government for that. Again last year in October it was put out for public consultation. In respect of this bill, we went through the whole process of having it dealt with by the other place prior to Christmas, and here we are ready to deal with this clause. I am just not sure what the Hon. Nick Xenophon is driving at, because to support this clause means that you support some form of section 4A, but the Hon. Nick Xenophon cannot describe what form of proposed section 4A we are going to be considering.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: It does not matter. I think for the benefit of the whole of the committee we all ought to know where we are at. The government sits there and, as soon as something new comes up that might adversely affect the government's position on something or the government wants to go away and consider it, the matter is adjourned, whereas what we have here is us voting on this clause in a fog, because, despite two years of public consultation and process, we do not known what the Hon. Nick Xenophon will come up with. All I can say is that that is unsatisfactory. We get paid $100 000 a year; some of us are on committees and get paid an extra $8 000 or $9 000 a year; and some lucky few of us have motor cars and various other things. We get superannuation, and we have to be ready on time, and I am disappointed that we will be voting on this while not knowing what the impact of that vote might be.

The Hon. P. Holloway interjecting:

The CHAIRMAN: Order! I draw members back to the rules of the committee. The definitions in almost every bill are always discussed at the very outset of the proceedings. That has occurred. There have been a couple of hours debate on this clause and this definition. It has been roundly canvassed and I was prepared to allow it to go forward because of the connection between the two. People now seem to want to hijack the committee to stop this one because of something further down the track. That is really breaching the rules of the committee.

I think that the Hon. Mr Xenophon has attempted to put his position. I think he has put it clearly. He is clearly not here for cross-examination. He has put his position in respect of the clause which is before the committee. If someone wants to talk about the clause before the committee, I think that is fair enough, but I think in all honesty there has been a very wide-ranging debate about this definition. If people do not like the definition, vote against it. If they like it, vote for it. I think it is really time we started to get somewhere near that, otherwise this committee will go on forever.

The Hon. R.D. LAWSON: The difficulty is that the definition which we are here debating is one which includes a reference to section 4A. Section 4A is presently in the bill. However, the Hon. Nick Xenophon has foreshadowed certain amendments that he proposes moving to section 4A.

The Hon. A.J. Redford: They might be acceptable to the opposition.

The Hon. R.D. LAWSON: At the moment, the committee is oblivious to exactly what the Hon. Nick Xenophon wants to include. I am not criticising that. This is a difficult matter. It would have been better if he had had his amendments here, but why should not the committee report progress? We have reached an impasse at this stage. Why take a vote?

The Hon. P. HOLLOWAY: Quite clearly, the Liberal Party of Australia is doing what it does best. It is obstructing—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: It is. What could better describe it? On a number of occasions this chamber has dealt with issues like this. It has already been made clear that, if the Hon. Nick Xenophon wishes to have amendments before this committee and have a vote on them, we will see those amendments tomorrow or some time after, but there is absolutely no need to curtail debate at this stage on the definitional clause; absolutely no reason whatsoever. There have been plenty of other examples in this parliament where debate has proceeded where issues have come up in debate. They have either been dealt with through recommittal or subsequently through debate. It has happened numerous times, so let us have none of this nonsense that we cannot proceed.

The CHAIRMAN: The minister has made a good point. On many occasions, as a bill goes through the chamber, we make certain decisions. If the committee is of a mind that something is not how it first wanted it, there is a process of recommittal. I have no motions before me, other than the amendment proposed by the Hon. Mr Redford, about which we have had an exhaustive debate. The committee needs to make a decision about it or take some other procedural action.

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

That progress be reported.

The committee divided on the motion:

AYES (11)

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.
Xenophon, N.	

NOES (8)

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

PAIR

Stephens, T. J.	Kanck, S. M.

Majority of 3 for the ayes.

Progress thus reported; committee to sit again.

The Hon. P. HOLLOWAY: This is really a black day in the life of the Legislative Council, given that the Liberal Party of Australia has taken the business out of the hands of the government. I move:

That the council do now adjourn.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: I rise on a point of order. On what basis has the leader taken it upon himself to stand up and start addressing this place? Is there a motion; is there a personal explanation?

Members interjecting:

The PRESIDENT: Order! The point of order is clear. There are two matters: no-one is allowed to rise to their feet and talk about a subject we have just debated. The debate has been concluded. I was trying to get through to the minister but with the yelling and carrying-on I could not attract his attention to stop him. But he has, I believe, moved that the council do now adjourn.

Members interjecting:

The PRESIDENT: I think he did.

Motion carried.

At 4.32 p.m. the council adjourned until Tuesday 15 February at 2.15 p.m.