LEGISLATIVE COUNCIL

Tuesday 15 February 2005

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2003-04—
Corporations—
Playford
Victor Harbor

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

Regulation under the following Act—
Security and Investigation Agents Act 1995—Process Servers

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

Regulation under the following Act—
Fisheries Act 1982—Abalone Fisheries.

ZF LEMFORDER

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement in relation to ZF Lemforder made today by the Premier.

QUESTION TIME

COURTS, CLEARANCE RATE

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 the criminal courts.

Leave granted.

The Hon. R.D. LAWSON: Members will be aware that earlier this year the Productivity Commission released its latest report on government services, and amongst the figures reported on were those relating to the clearance rates of South Australian courts and the courts of other jurisdictions. The report noted that the South Australian Supreme Court had the lowest clearance rate of any such court at 66.7 per cent. The comparable figures for other states were 98.2 per cent in New South Wales, and in Queensland, Western Australia and Tasmania the figure was over 100 per cent. I am still waiting for a response to a question which I asked of the Attorney-General earlier about what steps he has taken in relation to that matter.

Late last week the Australian Bureau of Statistics released its latest reports on our criminal courts, and amongst the statistics collected were those relating to the number of defendants who are acquitted in our criminal courts and the higher courts. The figures show that in South Australia, in the last year in which the previous administration held the Treasury benches, some 1 131 defendants were finalised in the higher criminal courts and, of that number, some 7.6 per cent were acquitted. For the latest year, 2003-04, the number of defendants finalised in the criminal courts had fallen from 1 131 to 869 and the number of defendants acquitted had risen to 9.5 per cent, which is the highest acquittal rate of any of the Australian mainland states—that figure of 9.5 per cent is significantly higher than the national average of seven per cent. My questions to the Attorney are:

1. Is he aware of the higher acquittal rates currently occurring in the South Australian criminal courts?

2. Is he aware of any reason for that higher acquittal rate?

3. What steps has he taken to satisfy himself of the reasons for it?

4. Will he report to the parliament on it?

5. When can this council expect a response to my question asked concerning the Productivity Commission on 7 February?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for his question. He has, of course, asked a number of other questions in relation to those statistics. I will make sure that this question is added to those other questions, and I will bring back a response to the parliament.

CHARTER FISHING BOATS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the minister representing the Minister for Agriculture, Food and Fisheries a question about the charter boat management plan.

Leave granted.

The Hon. CAROLINE SCHAEFER: The Charter Boat Owners & Operators Association of South Australia is the peak body for charter boat operators within South Australia, and it represents over 45 per cent of those operators. For some time now, the government has undertaken the development of a management plan which, amongst other things, would encompass a licensing scheme and a mandatory code of practice for charter boat operators across South Australia.

Early last year, a working group was set up to discuss the proposed plan, and members of the Charter Boat Owners & Operators Association were part of that group but, by no means, in the majority. A draft plan was published last year. However, the association felt that it would like to discuss the issues with the minister that it believes are relevant to the industry. The association first began seeking a face-to-face interview on 19 February last year. The association received a letter dated 9 August from the current minister which states:

> Once the final management arrangements are developed, please contact my office again to arrange a meeting with me. I look forward to working with the association to ensure the orderly development and management of the charter boat industry.

Despite repeated attempts to meet with the minister, the charter boat owners association has steadfastly met with either a brick wall or a refusal. A letter dated 1 December 2004 that the association sent to the minister requesting a meeting with him before he signed off on the management plan has had no response to date. However, the association has been told that the minister has, in fact, signed off on the management plan and that in the near future it is to be presented to cabinet. My questions are:

1. Why has the minister refused to meet with this peak body?

2. Has the minister already taken the document to cabinet?

3. Will he undertake to meet with the Charter Boat Owners & Operators Association before he progresses this mandatory code of practice any further?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for her question.

Obviously, this is an issue in which I have some interest, having been the minister at the time when that—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: In fact, I did speak to a number of the people from the industry at the time, but it is an area that has been left unregulated for some time. Obviously, the charter boat industry is one which has had an increasing impact upon certain fish stocks, particularly the whiting stocks, which is why I took the action I did at the time in giving notice to the industry. I am not aware of what the current state of play is, and I will, like other members, await with interest. It is certainly important that we get the management arrangements in relation to charter boats correct because they were, in my time as minister, having an increased impact upon fishing stocks.

There are clearly a number of inconsistencies in relation to regulation. In particular, it appeared that some of these boats had been surveyed, and others had not. They are operating under different licences from different agencies, and so forth. So, it is important that this matter is finalised, and I will seek to get a reply as soon as I can for the honourable member.

NICOL REPORT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister representing the Attorney-General a question on the subject of openness and accountability in government.

Leave granted.

The Hon. R.I. LUCAS: On 31 May last year, the board of inquiry report into the handling of sexual abuse complaints—a confidential report to the Archbishop of the Diocese, the Most Reverend Ian George AO—was released, by agreement with the archbishop, by the Hon. Michael Rann, Premier of South Australia, and tabled in parliament. The presiding members of the inquiry were the Hon. Trevor Olsen AO, MBE and Dr Donna Chung, who were engaged by the Synod of the Diocese of Adelaide to form a board of inquiry. They were assisted by an executive officer, Mr John Witham, a former employee of the Supreme Court of South Australia.

In response to that report, the opposition has a copy of a report by Mr Ian Nicol, barrister and solicitor to the Supreme Court of the Australian Capital Territory and a partner of Williams Love and Nicol, to the Primate of the Anglican Church of Australia. The report is entitled 'Into the report of the board of inquiry into the handling of claims of sexual abuse and misconduct within the Anglican Diocese of Adelaide by the Hon. Trevor Olsen and Dr Donna Chung delivered on 26 May 2004.'

Without going into all the detail of the report, it is fair to briefly summarise it by saying that it argues, from a legal perspective, that there are a number of errors in the board of inquiry report. It also argues, again primarily from a legal background, that some of the findings of that board of inquiry are flawed. My attention was drawn to a number of pages but, in particular, to the second last page of the report which says:

> The writer is left with the overall impression that the diocesan council were interested in finding someone to take the blame rather than implementing solutions. The diocesan council responded to the public demands of the Deputy Premier, later reinforced by the Premier, that the archbishop should resign by passing a resolution advising the archbishop to resign.

Further on the report to the primate says:

> The archbishop pointed out that his resignation was not a response to media hysteria, the self-serving statements of politicians (who were desperately trying to deflect public demands for a royal commission into the abuse of state wards and children in state institutions) or to the extraordinary lack of loyalty and support from the diocesan and council.

As you know, Mr President, there was some argument yesterday when there was an attempt to have this report tabled in the House of Assembly. The Rann government, led by the Attorney-General, voted against it and refused permission for that report to be tabled.

The Hon. T.G. Cameron: Table it!

The Hon. R.I. LUCAS: The Hon. Terry Cameron has invited me to table the report, and I take up that invitation. I seek leave to table the report by Mr Ian Nicol of the Supreme Court of the Australian Capital Territory to the Primate of the Anglican Church of Australia.

The Hon. P. HOLLOWAY: I understand that this report has been widely available to many people. I have not yet had a chance to read it. The Leader of the Opposition has made allegations—

Members interjecting:

The PRESIDENT: Order! Minister, we have a procedural problem here. The Leader of the Opposition has sought leave; you cannot debate it.

The Hon. P. HOLLOWAY: I was taking a point of order on his explanation in relation to the matter.

Members interjecting:

The PRESIDENT: Order! What is your point of order?

The Hon. P. HOLLOWAY: My point of order is that I believe the Leader of the Opposition, in his explanation, has misrepresented the position of the Attorney-General in another place. The Attorney-General, in another place, suggested that all members should read the report and the house should then come to a decision as to whether the document should be tabled.

Members interjecting:

The Hon. P. HOLLOWAY: I have not seen a copy either, but apparently they are readily available.

Members interjecting:

The Hon. P. HOLLOWAY: What happens if you table it before people read it—

The PRESIDENT: Order! I have to call the minister to order. The normal procedure in a matter of this nature is that, if any honourable member quotes from a document, it is perfectly legitimate for any member to call for the document to be tabled. We have not reached that stage yet—that motion has not been moved. The Leader of the Opposition, having been invited—albeit out of order—to table it, has sought leave to table the report. The only question before the council now is whether leave is granted. I do not know the status of this document, but the chamber itself will make its own determination as to whether or not leave is granted. I have no alternative but to put the question—is leave granted?

The Hon. P. HOLLOWAY: No, sir, not until I have seen the document.

The PRESIDENT: Leave is not granted.

The Hon. R.I. LUCAS: We will pursue that issue. My questions to the Attorney-General are as follows:

1. When the Attorney-General and the Rann government opposed the tabling of this request, were they trying to hide and prevent the public release of information critical of the Rann government and, in particular, critical of the role of the Deputy Premier and the Premier in relation to this issue?

2. Does the Rann government believe that it is consistent with the principles of natural justice to agree to the tabling of the original board of inquiry report and not this report by Mr Nicoll to the Primate of the Anglican Church of Australia?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): As I indicated earlier, my understanding of the debate that occurred yesterday in the House of Assembly is that the Attorney indicated that the report is apparently widely available.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Then go and give it to the media.

The Hon. R.I. Lucas: It is critical of you.

The Hon. P. HOLLOWAY: I have no idea what is in the report, but the Attorney indicated yesterday in the House of Assembly that members should read it and the house should determine whether that document is tabled.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I listened to the question in silence. Why won't the leader listen to the answer?

The PRESIDENT: There is too much interjection. This is obviously a matter of some sensitivity. The majority of the question was heard in silence. I suggest that we get the answer and we may even have a resolution at the end of the answer.

The Hon. P. HOLLOWAY: As far as I am aware from what has been said (and I have not read the report), the Attorney indicated that, in relation to the question of whether it should be tabled, once any document is tabled within this parliament it has parliamentary privilege. If that document defames any person, that defamation can then be repeated without any question of its coming back on the author. I do not know whether that is the case here. There has been some question of whether there is defamatory material. If there is not, let it be tabled.

It is incumbent upon all of us to look at the material and, if the council then wishes, it can be tabled. As I understand it, this document has been made available fairly widely. I notice that the Attorney and the Leader of the Opposition obviously have a copy, as have members in another place. The question is whether this parliament should allow the tabling of a document that potentially may contain material that is defamatory.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: If somebody had circulated something in the honourable member's electorate that was defamatory of the honourable member—

Members interjecting:

The Hon. P. HOLLOWAY: It may well be in the public interest—that is for this parliament to determine.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Let us all read it. If we have copies of this, why not let every member look at it and, within 24 hours, this council can make a determination on the matter. I have not seen the document and I have no idea what is in it. I certainly deny some of the information contained in the leader's question about cover-ups and so forth in relation to the issue of child—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: We all know what happened in the Anglican Church. It was a matter for the Anglican Church. I do not believe it is the parliament's role to be an umpire in relation to matters that happened within—

Members interjecting:

The Hon. P. HOLLOWAY: The parliament should decide when everyone has had an opportunity to look at the information. Let us all have a look at the information and let us make a determination.

The Hon. R.I. LUCAS: As a supplementary question: given the leader's explanation that everyone should have a look at the report before it is tabled, did he provide a copy of the original board of inquiry to every member of the Legislative Council before it was tabled in this parliament?

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I think all members know exactly what happened in relation to those allegations that were made public in relation to the Anglican Church. I think we all know the situation. The behaviour of the government at that time was appropriate, and it is appropriate now.

The Hon. KATE REYNOLDS: I have a supplementary question arising from the previous answers. Is the Leader of the Government in the council aware of whether or not the Attorney-General circulated a copy to all members of the other place, and will he circulate a copy to all members of this place?

The Hon. P. HOLLOWAY: It is my understanding from the comments I read of the Attorney—and I have not spoken to him about this matter—that it had been fairly widely available. But if I can get a copy of it I am happy to do that.

The Hon. Kate Reynolds: Why won't you table it?

The Hon. P. HOLLOWAY: Once it is tabled, it then has parliamentary privilege; it can be repeated outside parliament. I do not know what is in there. There has been some suggestion it has defamatory material. I do not know whether that is the case or not.

The Hon. R.I. Lucas: Who suggested that?

The Hon. P. HOLLOWAY: Well, press reports. As I said, I have not read it. I do not know whether it has or not.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: I have a supplementary question arising from the answer. Given that prior to the last election this government promised to promulgate a right of reply in the other place, why has not the government taken steps to initiate a right of reply so the archbishop can defend himself, as he might have been able to do in this place?

The PRESIDENT: Order! I do not know that that is a supplementary question arising from the answer, or from the original question. It is a question about parliamentary procedures and backed up with some convenient facts. Does the Hon. Mr Xenophon have a supplementary question?

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. It did arise out of the answer in the sense that he talked about the archbishop not having a right of reply and documents not being able to put the archbishop's point of view in the other place, and the fact that he cannot do that because it is inconsistent with government policy is appropriate for a supplementary question. And certainly you are the only one, Mr President, with the greatest respect, who seems to be pulling us up on these issues.

The PRESIDENT: Well, I am the only one who is the President—which may come as a shock to many members. There is one President, and the sessional orders of the House of Assembly are neither my business nor the business of—

The Hon. A.J. Redford: Government policies are.

The PRESIDENT: You kept saying 'you' when you were addressing your question. Does the Hon. Mr Xenophon have a supplementary question which is relevant to the answer?

The Hon. NICK XENOPHON: I hope so, Mr President. Can the minister confirm that the board of inquiry report tabled last year had terms of reference that were approved by both the Diocesan Council and the archbishop?

The Hon. P. HOLLOWAY: That certainly seems highly likely, but I am not familiar enough with the matter to make that claim. However, I will certainly check that and bring back a response.

KALKAROO PROSPECT

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Havilah Resources' Kalkaroo prospects.

Leave granted.

Members interjecting:

The Hon. R.K. SNEATH: I will tell members opposite where it is in a minute. The minister has outlined to the council on a number of occasions the so far successful exploration efforts of Havilah Resources at their Kalkaroo prospects near Olary—and Olary is on the road to Broken Hill, for those over there who do not know. My question is: is there any further information that the minister can provide to the council about this very exciting prospect?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am very happy to answer this question because the latest news from Havilah is excellent indeed. Today the company announced to the Stock Exchange that it has completed a resource and mine plan evaluation study based on drilling completed in 2004 at its 100 per cent owned Kalkaroo copper-gold-molybdenum project. This means that there is a very high probability of mining taking place at Kalkaroo.

Important conclusions arising from this study are: Kalkaroo contains a measured resource of 80 million tonnes at a copper equivalent grade of 0.9%, calculated in accordance with the JORC Code. Converted to gold equivalent terms at current metal prices, this equates to a gold deposit of approximately 5.2 million ounces at a grade of 2 grams per tonne. Within this measured resource envelope, the current open pit mine design captures 56 million tonnes at a copper equivalent grade of 1.04 per cent or 2.4 grams per tonne gold grade equivalent.

This resource is sufficient to maintain a mining operation for a period of at least 10 years at an annual production rate of approximately 25 000 tonnes of copper, 78 000 ounces of gold and 680 000 kilograms of molybdenum. Based on initial estimates of expected capital and operating costs for the preliminary mine plan, the mining operation can generate an operating surplus of approximately $90 million per annum at current metal prices. This translates to a net present value for the Kalkaroo deposit of $237 million at a 10 per cent discount rate. The favourable economics are a function of the soft overburden (not requiring blasting), the relatively low waste to ore ratio of 1.4:1 (cubic metres of waste per tonne of ore) and the almost 2 kilometre length of the ore body that lends itself to low cost coal mining methodologies where the waste is dumped in the open pit behind the advancing mine face.

There is excellent scope to expand this resource for minimal additional cost, because currently it remains along strike and down dip; in other words, the resource is heading into the ground. The mineralisation and host geology is remarkably continuous between drill holes, and Havilah's drilling results are very comparable with those of earlier explorers, namely, Placer, Newcrest and MIM. It is for this reason that the resources have been placed in the highest category, namely, that of a measured resource, and it is unlikely that further drilling within the currently measured resource will markedly alter the size or grade parameters.

The following key factors are relevant to the resource and mining model. The modelling carried out by external mining engineering consultants is geologically based, relying on detailed geological interpretation supplied by Havilah geologists. Geological resource and mining models were constructed using VULCAN 3D mining software, applying grade cut-offs of 0.4 per cent copper equivalent and a density of 2.7. Havilah has verified assay data quality as far as possible by use of its own internal standards, blanks and duplicate samples and by employing a range of assay methods. Over the next few months Havilah will be addressing various forward planning issues, including ore metallurgy, geotechnical studies, refining capital and operating cost estimates, permits and infrastructure developments, all with the view to commencing a mining operation as rapidly as possible. The government will work closely with Havilah to ensure that the necessary approvals are processed smoothly and in a timely fashion.

At the same time, Havilah will continue exploration at several of its other promising mineral projects, including the geologically similar North Portia prospect, since any other further economic discoveries in the district will have significant planning implications for the location of a mining site and related infrastructure developments. Members may recall that Havilah plans to drill a new area nearby, part financed by the government's PACE initiative. This is a very exciting announcement by Havilah and is excellent news for the state. I offer my congratulations on their efforts so far and wish them every success in their endeavours to bring this mine to fruition, as well as with their further exploration in the area.

ADOPTION

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 Families and Communities, a question about section 31 of the South Australian Adoption Act.

Leave granted.

The Hon. KATE REYNOLDS: Concerns have been raised that parents planning a protest rally on the steps of this place on Thursday may be gagged by the state government under section 31 of that act. Section 31 relates to the publication of names, etc. of persons involved in proceedings and specifically carries a $25 000 fine for a person who publishes or causes to be published in the news media the name of a child or parent or material tending to identify a child or parent in relation to whom proceedings have been taken under the act. However, it seems there are exceptions to this section of the act, made under the discretion of the chief executive.

I acknowledge that section 31 is intended to protect children, relinquishing parents (especially relinquishing mothers) and adoptive parents, but my office has been contacted by families who believe that the government is misusing this section of the act to censor issues that would

attract negative publicity while approving and in some senses initiating other articles and media commentary that promote the government in a favourable light.

Ms Cynthia Beare, who is the Manager of the government's Adoption and Family Information Service, was interviewed on ABC Asia Pacific's *Nexus* program on Friday 25 January 2002, along with two adoptive parents who spoke about the experience of adopting a child from overseas. My office has also been informed that a Gawler couple, known simply as Lisa and Mark, were contacted by Ms Beare and persuaded to be both photographed with their son Bailey and interviewed for an article which was then published on the front page of the Gawler *Bunyip* on 8 December last year, which I note is just after the government had decided to defund the non-government organisation providing adoption services. The couple was initially reluctant to take part but felt obliged as Ms Beare told them that she knew the journalist personally and believed that it would be a 'happy family story'.

However, of most concern to me is the fact that just today I have been informed by the member for Newland, who had been approached by a constituent connected with the non-government organisation, that she was unable to have a meeting with the constituent scheduled for Monday because the non-government organisation had been instructed on Friday by AFIS to not meet with her. My questions to the minister are:

1. On what basis are exemptions made to section 31 of the South Australian Adoption Act, and at whose discretion? What criteria must these exemptions meet, and who assesses each situation against these criteria?

2. Will parents who attend Thursday's rally regarding the government's takeover of adoption services be given a guarantee by the minister that they will not be prosecuted under section 31 of the act if they are identified by the media?

3. Will the media reporting on the rally be given a guarantee by the minister that they will not be penalised under section 31 if they broadcast footage or comments made at the rally or if they identify parents at the rally?

4. Was authorisation given by the chief executive prior to the ABC Asia-Pacific interview and prior to the article published in the *Bunyip* in December 2004? If not, why not, and what action will be taken?

5. On what basis did AFIS instruct people associated with the non-government organisation that they were not to meet with members of parliament, and will the minister immediately confirm to those people that it is in fact the constitutional right of any citizen to meet with any member of parliament they choose?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The honourable member has made a series of allegations within her question. I will refer those to the Minister for Families and Communities in another place and bring back a reply. However, I think her suggestion that some of the people would have a section of the act used against them is fairly outrageous. The Adoption Act has been in place, on my understanding, for a number of years. I think it was last amended when the Hon. David Wotton was the minister, and I think that section was supported by all members of parliament. I think it is pretty obvious what that section the honourable member referred to is for, and I really think her suggestion is fanciful. However, I will refer the question to the Minister for Families and Communities in another place and bring back a reply.

SCHOOL BULLIES

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question concerning bullying in schools.

Leave granted.

The Hon. A.L. EVANS: In yesterday's *Advertiser* there was an article by Peter Dempsey, a young South Australian who endured many years of bullying in both public and private schools in South Australia. His story is distressing and worrying in that it appears schools are losing the fight to minimise bullying in schools. The Child, Adolescent and Mental Health Service (CAMHS) is a service available to children, adolescents and their families. CAMHS uses a multidisciplinary approach and works with other government agencies where appropriate and necessary. Services provided by CAMHS include: community mental health care; early detection and early intervention services; counselling and other therapeutic services; inpatient and outpatient psychiatric care; school support teams based at Berri, Elizabeth, Flinders Medical Centre, Mount Gambier, Murray Bridge and Port Adelaide; and mental health education. My questions are:

1. Will the minister advise whether consideration has been given to establishing demonstration projects within a select number of South Australian schools with the aim of evaluating existing strategies and implementing new strategies to reduce the incidence of bullying and specifically utilising the expertise of CAMHS staff?

2. Will the minister advise whether the school support teams have any specific service delivery outcomes to address bullying in schools in relation to both the victims and perpetrators of bullying?

3. Will the minister advise whether she has given consideration to expanding the school support team program currently operating in metropolitan and other regional centres specifically to help schools address bullying?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the minister for education and bring back a reply. I know that in my school days bullying was around and, clearly, it is regrettably still present in our public and private schools these days. I know that my colleagues, the current and previous ministers for education, have put in significant efforts to ensure that this matter is addressed. Of course, it is a social problem which, sadly, has been with us, if not forever, for many years; I am not sure that it will be easily eradicated. I will refer the question to my colleague and bring back a reply.

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the minister responsible for WorkCover, questions about WorkCover and the lucky 40.

Leave granted.

The Hon. A.J. REDFORD: Yesterday I raised a series of questions about correspondence sent by WorkCover to its claims agents on Christmas Eve—a time when the Hon. Terry Roberts and I were hanging up stockings over the fireplace for our young children. As I said yesterday, there is more. WorkCover was not exactly idle between Christmas and New Year. On New Year's Eve—at a time when the Hon. Nick Xenophon was rushing around looking for a babysitter, you, Mr President, were probably working out what horses to

nominate in the next harness meeting, the Hon. John Gazzola was scaling fish and the Hon. Bob Sneath was considering extending goodwill and best wishes to someone he suspected voted Liberal once—WorkCover was in a panic.

On 31 January, it is the half-year cut-off, and following that time actuaries sit down and work out what the unfunded liability of WorkCover is—a fact that obviously has not escaped the attention of senior management in WorkCover. I am informed that on 31 January WorkCover sent an email to the four claims agents. In that email the claims agents were told to redeem 10 specified or nominated claims at more than $100 000 each, being a total of $4 million for the lucky 40 claimants. I understand that they were nominated and there were precisely 10 WorkCover claimants per agent, and I suspect that is not coincidental. In light of this, my questions are:

1. How did WorkCover identify these 40 lucky people?

2. Were these offers made on the basis of any advice pertinent to the individual claims? Was there any principle used in determining the actual figure of 40 claims?

3. Why were exactly 10 of these allocated to each claims agent? Was any analysis done to determine whether some claims agents had more serious claims than other claims agents?

4. Is it not the case that this was done simply to avoid recording a blowout in the unfunded liability of WorkCover and had nothing to do with any considered claims management principles?

5. Why is WorkCover micromanaging claims despite telling parliamentary committees that it is not into micromanaging claims?

6. What is the estimated effect on the unfunded liability if these lucky 40 claimants should accept the offer?

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

The Hon. NICK XENOPHON: I have a supplementary question. Was this in breach of WorkCover protocols for the settlement of such claims? Can the minister indicate what the protocols are in such matters with respect to the resolution of claims?

The Hon. P. HOLLOWAY: Before he can answer that question, my colleague in another place will have to check. All we have at this stage are a series of allegations, but I will add that to the questions to be passed on to my colleague in another place.

The Hon. A.J. REDFORD: I have a supplementary question. Given that, on average, it takes more than 10 months for this minister to answer questions, is there any chance that I am likely to get an answer to these questions within the next three or four weeks?

The Hon. P. HOLLOWAY: I am sure that my colleague in another place will give due consideration to the importance of this question. It was interesting that, in the honourable member's original question, he described what members, including yourself, Mr President, would have been doing, including fishing, at the time that WorkCover was busily working. I am actually delighted that there are some public servants around the place who do take their job seriously and work hard. It was an interesting preamble to the question in which the honourable member was critical of that organisation—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Does it really matter, if it is sending out correspondence and things that, ultimately, will get out and will be read? Presumably it was passed then because it was a very good time to send out correspondence. I know that, within my department, that period just before and just after Christmas is a very good time to catch up on backlogs. It is interesting that the honourable member should ask this question and, in doing so, accuse the department of being too diligent. I suppose it is a bit of a change from the questions we get that claim departments are not diligent enough.

BUSINESS INNOVATION CENTRE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question regarding the Business Innovation Centre.

Leave granted.

The Hon. J.S.L. DAWKINS: The New Business Innovation Centre (BIC) is co-located with the Salisbury Business Export Centre at Technology Park, Mawson Lakes. I understand that the BIC has been established within the Department of Trade and Economic Development to help enterprises of high growth potential identify and pursue opportunities in the dimensions of leadership, organisation, product, market and money. In addition, the BIC is currently establishing the South Australian node of the Innovation Xchange Network. My questions are:

1. Will the minister provide the council with details of the Innovation Xchange Network?

2. What contacts have been developed between the Business Innovation Centre and individual regional development boards across country South Australia?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will get that information from my colleague the Minister for Regional Development and Small Business.

MINING EXPLORATION, APY LANDS

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question regarding mineral exploration in the APY lands.

Leave granted.

The Hon. J. GAZZOLA: Since the proclamation of the Anangu Pitjantjatjara Land Rights Act, there has been very little mineral exploration in the APY lands. What is the government doing about mineral exploration that occurs in that part of the state?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank the honourable member for his important question. The resources industry does have the potential to dramatically change the fortunes of the Anangu Pitjantjatjara people for the better. However, like most people in this state, their experience of mining and exploration is relatively limited. My department organised a trip to the Northern Territory and the Kimberley region of Western Australia that included members of the Anangu Pitjantjatjara Yankunytjatjara Lands Council (APYLC) and members of the Tjukurpa Anangu Pitjantjatjara Yankunytjatjara Law and Culture Corporation (TAPY L&C), together with representatives from PIRSA.

The purpose of the trip was to visit indigenous groups, and to learn how they benefit from mining and how they maintain their law and culture. The trip was planned to expose TAPY

L&C to a functioning Aboriginal law and culture group, namely, the Kimberley Aboriginal Law and Culture Centre (KALACC). KALACC has been successful in raising money via corporate sponsorship of cultural events and receiving grants from government as well as donations from philanthropists from the United States of America.

PIRSA has been supportive of the TAPY L&C with the guidance of the APY Executive. Any monetary support to TAPY has been conducted through the AP Executive, and with its approval. This support recognises the importance of the knowledge held by senior men and women and how they can play a major role in resolving some of the social problems currently experienced in the APY lands communities as well as leadership in new economic development issues facing the lands.

The main strategic direction for the APYLC is the protection of culture, language, tradition and heritage and to develop culturally appropriate business and economic development strategies for Anangu. The trip to the Kimberley region aimed to build upon knowledge gained during the earlier tour of the Northern Territory mine sites. That tour took a representative group of 15 Anangu Pitjantjatjara Yankunytjatjara community members to the Northern Territory to observe first-hand a range of natural resources development projects and associated support services. Sites and groups visited included the Mereenie oil and gas field, the Granites gold mine, the Yuendumu Mining Company and the Central Land Council.

The visit to the mine sites was designed to give the APY executive a better appreciation of the size of different styles of mining operations and the levels of disturbance associated with mining. The visit to the Central Land Council and Yuendumu Mining Company was designed to provide the APY executive with an awareness of how indigenous communities can participate and benefit from mining projects. The recent trip was of seven days duration, starting in Alice Springs and finishing in Broome.

During the course of the trip the group had a meeting in Katherine with representatives of the Northern Land Council (NLC). The group met with Garry Richardson and others to discuss the role of the NLC and how it deals with mineral exploration, mining, work area clearances, and to discuss how they distribute payments from mineral exploration and mining royalties. It met with Fred Murray, from the Argyle Diamond Mine, and Paul Davies, the Business Development Manager of the Wunan Foundation. The ATSIC Wunan Regional Council established the Wunan Foundation in 1997. The foundation's objectives are to alleviate poverty among Aboriginal people in the East Kimberley area by supporting long-term Aboriginal community development.

The group visited the Argyle diamond mine and were shown sites of alluvial mining which had been rehabilitated. These sites are monitored, and the return of termite mounds to the area demonstrates that the ecology has been returned to pre-mining status. The group also inspected the open cut pit, a haul truck and the diamond display room.

During the trip the group also met with representatives from the Kimberley Language and Resources Centre (KLRC) which was established in 1985 because of concerns from older Aboriginal people that the introduction of the English language has had a dramatic negative effect on these traditional languages. This meeting was very useful and has provided the TAPY Law and Culture with ideas of what services they can provide to maintain the Anangu language and culture.

The group also meet with Marmingee Hand, the chairperson of Garnduwa Amboorny Wirnan Aboriginal Corporation (Garnduwa). Garnduwa was incorporated in 1991 and is the Kimberley-wide youth, sport and recreational development body. The meeting discussed how Garnduwa organised sporting carnivals and what programs they delivered. On their trip the group also met with the Kimberley Aboriginal Law and Culture Centre (KALACC), based at Fitzroy Crossing. It is a successful group that coordinates law and cultural activities for the region's indigenous population and was formed to 'protect indigenous land rights from mining companies'. This meeting was useful because KALACC outlined its role in maintaining law and culture and described various projects that it is involved with.

The Kimberley trip was designed to introduce Anangu to indigenous groups affected by mining and to learn how these groups have worked with the mining industry and how they maintain their law and culture. Many opportunities were presented to Anangu, and the PIRSA Mineral Resources Group will continue to work together with the APYLC to assist in culturally sustainable economic development on the APY lands.

In summary, I believe the trip was very worthwhile in enabling the APY to understand how issues are being dealt with in other parts of this country where mining is taking place. Hopefully, as a consequence of that, we will be able to further develop sustainable development within this state that is acceptable and beneficial to the APY people.

The Hon. KATE REYNOLDS: By way of supplementary question, will the minister provide to me the names of all members of TAPY and the APY executive who attended the trip?

The Hon. P. HOLLOWAY: Certainly, I will provide that information to the honourable member.

The Hon. J.S.L. DAWKINS: By way of supplementary question, was consideration given to taking representatives of the indigenous mining contracting company on the trip?

The Hon. P. HOLLOWAY: I think the honourable member asked a question earlier about the indigenous company that Onesteel is supporting. It is my view that, where appropriate, these sort of companies should be set up because what better way is there to get the indigenous communities to participate fully in sustainable economic development, other than getting them involved in business activities? In the more remote regions of this state mining is perhaps in many cases the only likelihood of any economic development of significance. It is important that where that does happen the indigenous community benefits to the maximum possible extent in relation to that. Those issues are certainly meant—

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

The Hon. P. HOLLOWAY: The whole idea of these sort of trips is that the APY people who go on them would see the possibility in these communities of such organisations and would then establish similar organisations, if appropriate (and if they wish—it is their decision, after all, all the way through). If they wish, they could set up similar organisations within their regions, and clearly that could be one of the outcomes of such a successful visit.

One has to allow exploration and discover mines before one can think about the next stage and, in relation to the APY lands, there is a long way to go yet, and that community has to make its own decisions in that regard. If that is to happen,

clearly it is those sorts of issues that the community would address. Having visited the Pilbara region several years ago, I was greatly impressed with what occurred there. In the mining towns such as Tom Price, where a significant proportion of the work force—15 to 20 per cent—is indigenous, the company benefited from that in that the indigenous people were more likely to stay in the area than were other itinerant miners, which was good for the community and for the companies.

The important thing in some of those areas was the education and other training programs. I was told that the particular program that Rio had introduced within the Pilbara region had led to about half the Aboriginal graduates at year 12 level coming out of one training program in the region, so successful was it. There is a lot to be learnt from those communities. The important thing the APY people tell us is that before any economic activity comes into their area there must be protection of the law and culture, which is clearly a key element. It is important that those communities in the APY lands understand that there are other models that operate in other parts of the country, in particular, the Kimberley, where that law and culture is also protected, as it is an important prerequisite before any economic activity takes place within the lands.

Essentially, the honourable member is asking about one way in which the benefits of economic activity can be distributed to indigenous groups, and clearly that is one of the outcomes. In relation to taking any specific group, I do not believe that was the case on this trip, but hopefully one of the outcomes will be that similar groups are more widely established across the state. I assure him that the Department of Primary Industries and Resources is committed to increasing the number of indigenous groups involved in the support to industries for which they are responsible, because that is a good way of ensuring that economic benefits in the community are more widely distributed through indigenous communities.

The Hon. KATE REYNOLDS: I have a supplementary question arising from the answer provided by the minister. Given the minister's enthusiasm for these sorts of trips as learning opportunities for Anangu, does this mean that the government may be establishing some new opportunities for Anangu to visit other parts of Australia to look at programs and services that would build capacity in relation to health, education and other areas where those communities are clearly very disadvantaged?

The Hon. P. HOLLOWAY: As I said earlier, I believe that one of the best ways in which disadvantage can be addressed in the communities is to ensure that, if there is sustainable economic development that provides jobs and wealth, the communities are involved in that, and essentially that is the role of the Department of Primary Industries and Resources, and that is what we have supported with at least two visits. I think in relation to health and other matters, they are better handled by my colleagues, the ministers who are responsible for those matters. Certainly, as far as I am concerned in relation to mining and economic development which comes within my portfolio, we certainly have supported the APY community in making them more aware of the potential that is happening in other parts of this country, and I believe it has been very successful. In relation to the questions about health aspects asked by the honourable member, I think they are better answered by people with more expertise in those areas than I have.

GREAT ARTESIAN BASIN

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the use of Great Artesian Basin water by the Olympic Dam mine operators.

Leave granted.

The Hon. SANDRA KANCK: In 1996, this parliament passed legislation amending the Roxby Downs Indenture Act to allow the further expansion of the Olympic Dam mine. At that time we had a considerable debate about the issue of the extra Great Artesian Basin water that would be required to meet the expansion. It was envisaged that the then 15 megalitres per day of Great Artesian Basin water being used to run the mine could be upped to 42 megalitres per day at no cost to the operators of the mine. The government and WMC Resources have recently been talking about the possibility of doubling the output from the Olympic Dam mine, which would mean even greater water usage. My questions are:

1. How many megalitres per day of Great Artesian Basin water are currently being used at the Olympic Dam mine by WMC Resources and, most importantly, what equipment is being used to measure this consumption, and who does the measuring?

2. With a doubling of mineral output from the mine, what is the estimate of water that would be required per day; will that extra water all be sourced from the Great Artesian Basin?

3. Will a change in ownership of the Olympic Dam mine require any legislative change?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): In relation to the latter question, I understand that no legislative change is required, at least at the state level. However, I believe there are provisions in the indenture which require the permission of the minister in relation to any changes that take place, and obviously when this matter came up I sought legal advice in relation to those matters. In relation to the first part of the question and the expansion of the Olympic Dam mine, water is clearly one of the key issues, and that is all part of the feasibility study.

I think at this stage it would be fair to say that a number of options for sourcing that water are being considered, obviously because it is one of the key questions. At this stage, I do not think that it would be possible to give a definitive answer as to what source might be used but, in relation to the quantities involved, I should be able to provide that information to the honourable member, and I will take that part of the question on notice.

SPEED CAMERAS

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 Police, questions about attacks on speed camera officers and equipment.

Leave granted.

The Hon. T.G. CAMERON: Police are reviewing safety precautions for speed camera officers after a spate of violent attacks from abusive motorists. In some cases vehicles have been rammed, with operators complaining they feared for their lives. The rising incidence of physical threats and abuse has prompted union calls from the PSA for urgent action to safeguard camera operators. The recent attacks have included (but not exhaustively) vehicles being deliberately rammed and sideswiped, operators and their vehicles being pelted with rocks and beer bottles, aggressive motorists kicking and

punching at operators' cars, burn-outs alongside operators' vehicles, mirrors and aerials broken, signs stolen or defaced, the beeping of horns, finger gestures and abusive language. One long-serving operator was recently quoted in *The Advertiser* as saying:

> . . . the job had become frustrating and stressful. We work in a very hostile environment and we have to be on guard all the time. Motorists are definitely getting angrier. The violence and aggression seems to increase every time there is publicity about speed camera revenue.

The police say operators are trained in conflict resolution and have the backup of the government radio network in their vehicles. My questions to the minister are:

1. Since March 2002, how many reported assaults have occurred against speed camera operators, and how many motorists have been charged with assaulting a speed camera operator?

2. How many incidents occurred where speed cameras and/or their vehicles were damaged, and what was the cost of these repairs?

3. What actions will the government take to safeguard speed camera operators?

4. Have any studies established a correlation between where the attacks occur and the location of speed cameras; for example, at the bottom of hills or on main arterial roads?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will undertake to get that information from the minister and bring back a reply.

REPLIES TO QUESTIONS

FILM CLASSIFICATION

In reply to **Hon. A.L. EVANS** (23 November 2004).

The Hon. P. HOLLOWAY: The Attorney-General has provided the following information:

1. Before 2001, the Classification (Publications, Films and Computer Games) Act 1995 provided, by s. 42, for four categories of persons to seek a review of a classification decision. They were the applicant for classification, the publisher of the item, the Commonwealth Attorney-General and a 'person aggrieved'. The latter term was not further defined in the Act.

In 1999, the controversial film Lolita was released in Australia with an R classification. The film dealt with a sexual relationship between an under-age girl and her step-father. Some people wanted it banned. Three organisations concerned with the prevention of child abuse applied to the Review Board for a review of the R classification. They claimed to be 'persons aggrieved' within the meaning of s. 42. The Review Board refused these applications. It held, in two cases, the these were not 'persons aggrieved'. The other application was refused because the applicant did not pay the fee.

The commonwealth government then introduced a bill, the Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 1999, to amend the Act to add to s. 42 new sub-sections (3) to (5). Those sub-sections do not limit sub-section (1). They add to it by providing an aid to proof of who is a 'person aggrieved' in the case of a decision to classify an item in a way that legally restricts its availability to the public. A decision to classify a film MA, R, X or RC is a restricted decision. In that case, because of sub-sections (3) to (5), certain organisations can qualify as persons aggrieved. These are organisations whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter. Also, researchers or those who conduct activities relating to the contentious aspects of the film can qualify as aggrieved. (There is an exception in sub-section (4) where the research was only undertaken, or the relevant objects of the organisation began, only after the classification decision.)

The Attorney-General understands that the purpose of the amendment was to expand the range of persons and organisations covered by the term 'a person aggrieved'. In cases where there is some public concern about a decision, the amended provision makes it easier for some organisations to seek a review. The expanded right of review relates only to classification decisions that fall within restricted categories.

2. As the Attorney-General understands the Commonwealth Act, it does not now prevent any person claiming to be aggrieved from seeking a review of an unrestricted decision. The Member referred to Young Media Australia, an organisation that takes an interest in classification standards as they affect children. Nothing prevents such an organisation from claiming to be aggrieved by an unrestricted classification decision, for example, the decision to classify the film *Scooby Doo* G, as the Honourable Member mentioned. The question would be whether that organisation could satisfy the Review Board that it was a 'person aggrieved', without the help of s. 42(3). That expression is not defined in the Act but has been judicially considered in other statutory contexts. It is also possible to challenge a ruling of the Review Board on this point by an application for judicial review.

In that sense, the present law does not prevent appeals by aggrieved persons about advisory classifications, as the question might suggest. It is true, however, that under the present law these persons do not have the benefit of s. 42(3) and (4) where the decision is not 'restricted'.

As for a review, members would realise that the Attorney-General cannot, himself, review a provision of the Commonwealth Act. Any amendment or review of the Commonwealth Act is a matter for the Commonwealth Parliament. Nothing prevents the Honourable Member, or anyone else, however, from lobbying the Commonwealth Attorney-General for such a review. Accordingly, the Attorney-General will write to other censorship Ministers proposing that this matter be discussed at their meeting, held in conjunction with the Standing Committee of Attorneys-General. An item can be added to that agenda with the agreement of other participating Ministers.

In the meantime, I point out that a person need not qualify as a 'person aggrieved', or satisfy any other test, to be entitled to draw a classification decision to the attention of the South Australian Classification Council, which has authority to classify films for South Australia. Any classification attached by that Council prevails, in South Australia, over a national classification. The same is true for the classification of a film by the South Australian Attorney-General.

LAND MANAGEMENT CORPORATION

In reply to **Hon. J.F. STEFANI** (26 October 2004).

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

1. The written minute issued by the Treasurer, to the Minister for Infrastructure which approves that Land Management Corporation declares and pays a special dividend of $50 million is dated 27 October 2003. This notice is pursuant to Section 22(5) of the Public Corporations (Land Management Corporation) Regulations 1997. A copy of this minute is attached for tabling.

2. The date the Land Management Corporation Board consulted the Minister for Infrastructure regarding payment of the special dividend is evidenced by a minute dated 16 September 2003 from the then Land Management Corporation Chief Executive, Mr Bruce Harper, to the Minister for Infrastructure and the Treasurer titled Special Dividend for 2003-04.

3. The written recommendation of the Land Management Corporation Board forwarded to the Treasurer in relation to the payment of the specified dividend is as follows:

> It was resolved that the Board formally approve payment of a special dividend for the sum of $50 000 000 payable by the end of September 2003.
>
> Moved: Pamela Martin, Seconded—Mark Day—Motion carried unanimously.

MURRAY RIVER

In reply to **Hon. CAROLINE SCHAEFER** (7 December 2004).

The Hon. P. HOLLOWAY: The Minister for the River Murray has provided the following information:

1. I have approved the release of up to 1.2GL of water to undertake a fish trapping program at the Tauwitchere barrage to test the effectiveness of the fishways. The trapping program will allow comparisons between the rock ramp and the vertical slot fishway and will also provide information on any modifications that may be required. The release of water may also provide significant ecological benefits for the Coorong fishery by allowing freshwater outflow

from the Lakes to the Coorong. Water was released over the fishways on 16 and 17 December and will continue in January.

2. The Minister for Environment and Conservation has agreed to activate 0.8 GL of water held on his licences as a contribution toward the release. SA Water has also agreed to provide 0.4GL.

3. The releases sought by the Association are proceeding and I will be advising the Association of the arrangements.

NICOL REPORT

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

That Standing Orders be so far suspended as to enable the Hon. R.I. Lucas to table the Nicol report to the Primate of the Anglican Church of Australia.

The thought had crossed my mind earlier in the day when I became aware of the decision in another place to prevent the tabling of this report, hence my decision here today to attempt to have this report tabled. I would hasten to add that this is in no way connected with the original questions asked by the Hon. Mr Lucas. However, his questions have provided me with an opportunity to seek the tabling of the report. I am always concerned when governments move to prevent reports from being tabled—that they be gagged or stifled. I have always argued that all matters like this should be put into the public arena.

We live in a society where we still have the right to make free speech. I am puzzled as to why the government does not want the report tabled. It has only made me more inquisitive as to what is in the report. Notwithstanding the comments made by the Leader of the Government, nobody had approached me or other members of parliament whom I had approached earlier in the day. I am not quite sure where the Hon. Robert Lucas was able to get his quotes from, but this document is not as easy to get hold of as the Leader of the Government has suggested.

The Hon. P. Holloway interjecting:

The Hon. T.G. CAMERON: Well, just support my resolution and it will sort out the matter right then and there. I notice that this resolution was defeated in another place, and I would urge all members of the Legislative Council not to be swayed by any decision taken in another place. I remind honourable members that the decision in another place was defeated only on the casting vote of the Speaker so, quite clearly, there is some intense action—

Members interjecting:

The Hon. T.G. CAMERON: They can continue their debate: I will just keep talking, Mr President. So, members should not be influenced by what transpired in another place. This council has a long history of declaring its independence and being decisive when it determines that it wants something done. We have never been dictated to or stood over by the other house, and I would hope that we are not on this occasion also.

For the life of me, I cannot understand why the Leader of the Government keeps mumbling about defamation and if it is tabled in this place it will trigger a litany of defamation suits. That only has me more curious as to what is in this document, and I think comments such as that by the Leader of the Government only underscore the necessity and the need for this document to be tabled, and to be tabled in the Legislative Council.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Mr President, I will not waste much of the time of the council because, clearly, we are seeing just another delaying tactic. We saw it all yesterday with the disgraceful behaviour. There is a principle involved here that documents that are tabled should at least be considered by this council, particularly if a private member is seeking to table a document. There is a principle that the matter ought to be considered. After all, the tabling of the document gives it parliamentary privilege. If we set the precedent of tabling every document that comes in—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I know it is debatable, but there is parliamentary privilege.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Well, it is certainly the expectation out there that that is the case. If we get into the habit of tabling in parliament documents that at least have the perception of immunity from prosecution because they have parliamentary privilege, I believe that is a very bad precedent because it clearly will provide an avenue whereby if you want to defame someone you can get a member to table it in the house. The Hon. Terry Cameron's rules are: anything goes; it is Rafferty's rules; and table what you like. If you get someone out there to write something defamatory about a person, we will table it in here and it can then be published.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: No, it is a simple fact. The principle is as simple as that. I do not want to waste time. The government will not divide on the motion because it does not have the numbers. Let us just get on with it. But, as a matter of principle—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: No, it is not at all. But, as a matter of principle, I am persuaded by the fact that the Liberal Party has the numbers in this place and it is completely without morality. This is another demonstration showing the electors of South Australia how unfit it is to govern. So, let it be. Let it all take place. Let the public of South Australia see that the Liberal Party of Australia is without any principle and morality. Let it go ahead and break these conventions: it is just another example. Let us get on with the real business of the council.

The Hon. SANDRA KANCK: The Democrats have long advocated openness and accountability and, therefore, we support the motion. I do not believe that this question of privilege being attached to the document should be a part of the consideration when we are looking at the wider question of accountability. For anyone who thinks that simply tabling the document means open slather, I believe they should think again. I took advice a few years ago about a speech I made in this parliament, and the advice I was given was that the speech, in its written form, as I printed it out from my computer, had only qualified privilege and that it was something that could be tested in court. So, anyone who thinks that the tabling of this will allow them to go out and quote anything open slather needs to think twice. It certainly appears to me that the government is trying to protect the Treasurer, and I am wondering whether the Treasurer is becoming a bit of a liability to the government. He has certainly got his government into trouble over the Pitjantjatjara Lands; he has got it into trouble over Kate Lennon; and now this.

The Hon. P. Holloway: Have you read the report, Sandy?

The Hon. SANDRA KANCK: Of course I have not read the report—I am waiting for it to be tabled. It appears that the Treasurer is more prone to opening his mouth than thinking on occasion, but that is not a good enough reason to prevent this document from being tabled.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise briefly to support the motion. The comments made by the Hon. Sandra Kanck summarise, in part, the position put by the opposition. We support the Hon. Terry Cameron's motion. I indicate that the opposition does not go into this issue willy-nilly without any consideration of the appropriateness or otherwise of this position. I consulted my colleague the learned shadow attorney-general, who is well versed in these issues of possible defamation and others, and I am satisfied completely by the response that the shadow attorney-general gave in relation to this issue.

Each of us as members are charged with the responsibility of handling ourselves properly and appropriately before the chamber and, on this issue, in seeking to table the document in the first instance and now supporting the motion of the Hon. Terry Cameron, we do so having satisfied ourselves absolutely in respect of this issue and, as I said, based on the advice of my learned colleague the shadow attorney.

The Hon. T.G. Cameron: Supported by Sandra Kanck.

The Hon. R.I. LUCAS: The shadow attorney has had the opportunity to consider further the actual report. The Hon. Sandra Kanck is approaching this issue as a matter of principle and having done her own research in the short time available. I support the leader of the Democrats' position that the government obviously has something in relation to this issue that it does not want made public. I am very disappointed in the approach that has been adopted by the Leader of the Government, in particular, on this issue.

The Hon. NICK XENOPHON: I indicate my reluctant support for this motion for the following reasons. I take on face value what the leader has said in relation to the Hon. Robert Lawson looking at the document and his own assurances to me that he does not consider that there is anything defamatory in the document. My concern was that the document would make reference to victims, or include disparaging remarks with respect to victims, and that has been my primary concern. I disclose that the Reverend Don Owers and the Reverend Andrew King approached me a couple of years ago about this, so I have had some knowledge of this matter in terms of the way the allegations have led to the inquiry.

The fundamental difference between this report that is being sought to be tabled and the one tabled in parliament last year is that, as I understand it, the Diocesan Council of the Anglican Church, together with Archbishop George, had agreed to the terms of reference. I will stand corrected on that, but that is my latest information. We also had eminent persons involved, namely, former Supreme Court Justice Trevor Olsson and Dr Donna Chung, well-known for her work in child protection.

There were some fundamental differences between this report prepared by a barrister outside the process of consultation with respect to the earlier report. I place on record that, just because you support a document that is being tabled, it does not mean that you endorse the contents of that document, or whatever. I want to put that on the record so that there is not any misapprehension that simply tabling a report means that you agree with its contents.

The Hon. IAN GILFILLAN: I would like to indicate what seems to me to be an anomaly in the leader's argument. I understand that it is in order for any member to call for a speaker who is quoting a document to table that document, which will then automatically be tabled without any other member seeing the document before it is tabled. So, I do not see that there is a great challenge in the precedent in this.

The PRESIDENT: A different procedure is involved there.

Motion carried.

Members interjecting:

The PRESIDENT: Order!

DOCUMENTS, TABLING

The PRESIDENT: In his contribution, the Hon. Mr Gilfillan talked about the procedure of laying documents on the table. There is a procedure for laying documents on the table. I think members ought to be aware of what is required of them. If you quote from any document, and someone moves that the document lay on the table, it needs to be seconded, and then it is carried; it is almost automatic. Generally, no one votes against it. This issue has involved the suspension of standing orders, which is a different procedure again. That is why there is a debate, and 15 minutes is allowed for that debate, and an absolute majority must be present for it to occur. This procedure is seldom used with a private member; it is a procedure that is exclusively used for ministers.

There is one other precedent that I am aware of where it has occurred. So, the precedent is there, and at all times the council is in charge of its own destiny. If a motion is moved for a suspension of standing orders after debate, and it is carried, the procedure is legitimate. When these decisions are made, there has been in the past few weeks a propensity for some members to go outside of the council and make comment about the decisions of the council. I point out to all honourable members that it is against the standing orders and highly disrespectful to condemn any decision of the council. Whether or not you agree with it is not the question; it is highly disorderly for honourable members to criticise decisions of the council. Dissent is not a defence.

The Hon. IAN GILFILLAN: Mr President, can I ask you for clarification of one point? Does the calling of one voice against the tabling of a document which, I assume, the Leader of the government did, prevent that document being tabled?

The PRESIDENT: No; that is a different question. The Leader of the Opposition sought leave to table the document of his own volition. Leave, as all honourable members should be aware, can be stopped by one voice. If a member wanted the document tabled at that particular time—for example, if Mr Cameron wanted it tabled at that time—he could then move that the document be tabled. That motion could be seconded by any other member and determined without debate. But, because it was after the business had been dealt with, the Hon. Mr Cameron rightly used the procedure that is available to all honourable members and moved for a suspension of standing orders.

Members interjecting:

The PRESIDENT: Well, leave of the council was sought but not given. The Hon. Mr Cameron, if he wished, could have moved that it be tabled, and it could have been seconded and voted on immediately. That is the way it needs to happen.

CRIMINAL LAW CONSOLIDATION (CRIMINAL NEGLECT) AMENDMENT BILL

Adjourned debate on the question:

That this bill be now read a second time.

which the Hon. R.D. Lawson had moved to amend by leaving out all words after 'That' and inserting the words:

the Bill be withdrawn and referred to the Legislative Review Committee for its report and recommendations.

(Continued from 7 February. Page 890.)

The Hon. IAN GILFILLAN: I indicate that the Democrats will not be supporting this bill. Frankly, we find ourselves wondering where the government is finding these outrageous ideas for bills that keep appearing before this council. This bill is based on a flawed premise: that it is acceptable to automatically find someone guilty of an offence when you cannot prove that someone else is guilty of an offence. The Law Society has reviewed this bill and I find this one line of their opinion to be quite compelling:

The stated purpose of obtaining the conviction of persons who did not commit the unlawful act which causes the death or serious harm of a 'protected person' is a matter of serious concern.

Serious concern indeed, Mr President. The main purpose of this bill is to add the full weight of the law behind the reprehensible practice known as the 'prisoner's dilemma'. In case any members have not stumbled across this particular method of manipulation, I will give a small account of the usual method. Two people are accused of a crime and neither admit guilt nor implicate the other. As there is insufficient evidence to make a case, the following deal is put on the table:

1. If neither person admits guilt or implicates the other, both get a six-month sentence on a minor charge.

2. If you implicate the other guy, you go free and he or she gets 10 years.

3. If you both implicate each other, you both get six years.

In this situation the prisoners are not allowed to communicate with each other and, as a result, will always choose to implicate each other, thus making a weak case strong and resulting in six years' imprisonment for each of them.

The Hon. Sandra Kanck: That's clever.

The Hon. IAN GILFILLAN: It may be clever but I put it to the council that it is immoral. It is an immoral situation and is considered to be an abuse of power, because the prisoners will, naturally, seek to reduce the length of their own imprisonment, even when neither has committed the offence in question. My concern is that, if people are put under this kind of duress, especially with the government's criminal neglect bill as backing, people will be pressured into fabricating a story of another person's guilt.

Be aware, Mr President, that creating this kind of pressure is clearly the Attorney General's intention, as indicated by this excerpt from his second reading explanation where he discusses the case of a child who has died from a severe beating with neither the mother nor her partner admitting to the offence:

The mother has every incentive to tell what happened if the boyfriend actually killed the child once she appreciates that she is likely to take the blame for the child's death with a conviction for criminal neglect while he gets off scot-free. It is intended that the bill will create an incentive for at least one of the suspects to say what happened.

My concern is that the mother has exactly the same incentive if she does not know what happened—

Members interjecting:

The Hon. IAN GILFILLAN: It is nice to know that some honourable members in this chamber are following the general thread of this argument and gently, if illegally, interjecting. My concern is that the mother has exactly the same incentive if she does not know what happened because the beating was administered by a third party, unbeknownst to either the mother or her partner. The Law Society is also of the opinion that this bill creates an unreasonable incentive to fabricate evidence about a co-accused.

I note that the Attorney-General used pejorative terms in his examples to lead the reader to believe that there is only one possible interpretation of events, thus bolstering his own very shaky case for the bill. In his example of an Alzheimer's patient falling downstairs, one person is labelled as a 'junkie grandson' and another as a 'victim' of Alzheimer's, thus forcing the conclusion that the 'junkie' pushed the 'victim' down the stairs. An equally acceptable alternative explanation is that the wheelchair-bound 'victim', for reasons known only to herself, perhaps reasons attributable to her illness, attempted to climb down the stairs and failed, resulting in the fatal injury. However, under the provisions of this bill, the junkie's sister could be pressured to fabricate evidence against her brother, leading to a serious miscarriage of justice.

We have seen, in South Australia, cases where it is argued that an explanation has been seized upon as the only possible explanation where other explanations clearly exist. In any circumstances where there is no witness to an event and confused and frightened guardians can be held to have a 'duty of care', this bill will enforce blame to assuage the government's desire to paint people as evildoers and secure criminal convictions at all costs. We believe this is an odious bill. The Democrats do not support it and we will be voting against it at every stage.

The Hon. NICK XENOPHON: I will support the second reading of the bill. I will confine my remarks to the motion moved by the Hon. Mr Lawson that the bill be referred to the Legislative Review Committee. I note the reservations of the Hon. Mr Lawson to the bill and the correspondence from the Law Society of South Australia that the Hon. Mr Gilfillan has referred to in relation to its concerns about how this bill would operate. My view is that this bill has been introduced to remedy what is seen by the government as a defect or loophole in current provisions and is based on United Kingdom law that was passed, as I understand it, last year.

I have had an opportunity to read all the material that has been provided to me in relation to this bill and have also read the Hon. Mr Lawson's contribution. My view is that it is not appropriate that this bill be referred to the Legislative Review Committee, that the concerns of the Hon. Mr Lawson ought to be fully ventilated in committee and that, if Mr Lawson wishes to put amendments, they need to be seriously considered in the context of this bill. There has been a lot of argy bargy about the bill and I note the press report in this morning's *Advertiser* about the bill, which I thought was putting the government's position, but the government has jumped the gun in terms of its criticism of the Hon. Mr Lawson.

There are legitimate concerns, but referring this to the Legislative Review Committee is not the preferred course. Let us deal with the bill comprehensively in committee and,

if there are amendments that the opposition believes will improve the bill to make its intents clearer, they can be dealt with. I also note the opposition of the Democrats to the bill in toto in its current form, but I would like to think that the committee will deal with the bill and, if necessary, pass it with amendments so that it can ultimately deal with those cases where a child or vulnerable adult has died or suffered serious harm as a result of criminal neglect. There are some novel concepts in this bill, but I would have thought that the committee stage in this place can adequately deal with such concerns in a comprehensive manner.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ENVIRONMENT PROTECTION (MISCELLANEOUS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Environment Protection (Miscellaneous) Amendment Bill 2004* represents a significant strengthening of the *Environment Protection Act 1993* and, together with the Statutes Amendment (Environment Protection) Act 2002, demonstrates the Government's commitment to enhancing environment protection in South Australia. The *Statutes Amendment (Environment Protection) Act 2002* addressed the Government's election commitments to increase the independence of the Environment Protection Authority (the "EPA") and introduce stronger penalties.

This second Bill seeks to extend the powers available to the EPA and proposes a number of changes to the legislation to improve the administrative efficiency of the Act. Further, the Bill establishes a system to encourage Local Government involvement in the administration of environment protection legislation.

Accordingly the Bill offers opportunities for more effective administration of the Act leading to better protection of our environment.

Most of the proposed changes in the Bill arise from the recommendations of a review of the Act undertaken by the previous Government between 1999 and 2002. The review included the release of two major discussion papers and covered a wide range of issues, including:

- offences and penalties; and
- the powers and responsibilities of the EPA; and
- miscellaneous amendments to improve the effectiveness and efficiency of the Act.

An inquiry by the Environment, Resources and Development Committee of Parliament into the effectiveness of environmental protection in South Australia was also held during the course of the review and made its final report in May 2000. A number of recommendations from the report have been incorporated in the Bill such as the introduction of civil penalties; enhanced community consultation in developing environment improvement programs and also in amending licence conditions; and the streamlining of the environment protection policy making process.

The Bill was released for public consultation in 2003 and has been amended and improved as a result of the comments received. The Bill has been amended following debate in the other place and an undertaking has been provided to consider further amendments to address concerns raised by several members during the debate.

Civil Penalties

Most significantly the Bill proposes the introduction of civil penalties into the Act in accordance with the Government's election commitment. South Australia will be the first of the Australian States or Territories to adopt this valuable tool for environment protection.

The Bill will empower the EPA to negotiate a civil penalty in respect of a contravention of the Act, or apply to the Environment, Resources and Development Court for an order that a person pay to the EPA an amount as a civil penalty. A person may elect not to enter into civil penalty negotiations and if the EPA seeks to apply to the Court for a civil penalty the person may elect to be prosecuted for the contravention rather than be heard in the civil jurisdiction of the Court. The civil penalties will only be applicable to less serious strict liability offences, leaving existing criminal provisions in the Act to deal with more serious offences.

By applying a balance of probability burden of proof and enabling the direct negotiation of penalties with a person in contravention of the Act civil penalties will aid a more effective and efficient environment protection enforcement system in this State.

The civil penalty system allows for the EPA to negotiate a penalty with an offender which has the advantage of allowing a contravention of the Act to be dealt with quickly and without Court costs. In the event that negotiations fail an application may be made to the Court to resolve the matter.

In particular, the immediacy of the punishment to the contravention will create an increased deterrent to polluters in South Australia. This system is consistent with community expectation for prompt punishment of offenders.

This system has been inspired by the successful use of civil penalties in the United States for over 25 years and promises a more efficient option for enforcement.

Offences

As well as civil penalties, amendments to several offences under the Act are being proposed to strengthen the power of the EPA and administering agencies, such as local councils, to protect the environment.

Of particular importance is a proposed change to the offence of environmental nuisance to make the offence one of strict liability. This amendment will bring the level of proof required for environmental nuisance in line with the hierarchy of environmental offences in the Act. Currently there are three elements of proof required to successfully prosecute the offence.

Firstly, the person must have caused an environmental nuisance, secondly, the person must have polluted the environment intentionally or recklessly and thirdly, the person, when undertaking the act, must have had the knowledge that an environmental nuisance will or might result from the activity. The latter two components have resulted in it being easier for the EPA to prosecute more serious breaches of the Act, such as serious or material environmental harm under sections 79(2) and 80(2) of the Act, than it is to prosecute for an environmental nuisance.

The Government has undertaken to consider an amendment to this clause so that the offence is a two-tiered offence including a strict liability offence and an offence retaining the mental element.

Additionally, the protection against self-incrimination for corporations is proposed to be limited for most purposes in the Act, such that information sought by and provided to the EPA from a corporation may be admissible in evidence in proceedings for an offence under the Act. However, evidence obtained from an accredited licence under the Act will remain protected. The Government also undertook to consider an amendment in the Bill whereby the protection would only be reduced for those companies who undertake a prescribed activity of environmental significance (not holding an accredited licence).

Ceased Activities of Environmental Significance

Another significant amendment will endorse the powers of the EPA to continue to control and supervise sites, where environmental concerns continue, even though the activities which require a licence are no longer being undertaken on that site.

The Act currently enables imposition of licensing obligations on activities of environmental significance as prescribed under the Act. However environmental harm may continue even though the prescribed activity has ceased. For example while the licence for a solid waste landfill ceases, the site may continue to pose ongoing potential or actual risk to the environment, including impacts associated with groundwater contamination from leachate and the uncontrolled release of methane gases. Clarifying the power under

the Act to continue to monitor and regulate closed sites previously subject to a prescribed activity is essential to ensuring the management of public health and other environmental impacts on and around problematic closed sites.

Accordingly, amendments to the Act will clarify that notwithstanding that a licensed activity has ceased, the EPA has the power to extend a licence. Also the EPA will be empowered to issue a post closure environment protection order in respect of activities that cease after commencement of the Bill. Environment protection orders are currently utilised by the EPA to require a person to comply with the standards imposed under the Act such as the general environmental duty. Under the proposed amendment if the licence holder ceases to be the occupier of the site, then the owner or, if applicable, any new owner of the site can be issued with an environment protection order requiring them to undertake specified actions.

For example, a post closure environment protection order may require monitoring of a closed site if an unacceptable environmental risk continues after the licensable activity has ceased.

A person issued with a post closure environment protection order may apply to the EPA for the order to be removed if they fulfill all of the requirements as stated.

A proposed new section 52A of the Act details the process for forming a closure and post-closure plan to clarify the possible contents of a post closure licence.

Environment Protection Policies

Consistent with the recommendations of the Environment, Resources and Development Committee Parliamentary inquiry, changes to the process of making environment protection polices are proposed to achieve a more efficient and effective process for developing such policies. Historically it has taken too long for these policies to be made. The Bill proposes changes to streamline community consultation requirements, while still ensuring that adequate opportunity for their input remains. Changes are also proposed to ensure that nationally determined environment protection measures are implemented in South Australia by the most appropriate legislative or administrative mechanism rather than being automatically adopted as environment protection policies. The experience has been that the national documents are often not framed in terms that are appropriate for automatic adoption.

Administering Agencies

Further amendment to the Act is proposed to clarify the role of local councils in administering the Act such that better service may be provided to the community. Local councils will be encouraged to adopt a greater role in the enforcement of the Act through becoming “administering agencies” for non-licensed activities. This proposal has been developed following an 18 month trial in 2001-2002 undertaken by the EPA with the Adelaide City Council, Adelaide Hills Council and City of Port Adelaide Enfield on sharing of environmental responsibilities.

To assist administrative agencies to recover the cost of administering the Act the Bill proposes a range of non-mandatory cost recovery tools. New administrative fees will provide an administering agency with a mechanism to recover the administrative costs of preparing and issuing orders in respect of a contravention of the Act. Proposed compliance fees will enable the recovery of some of the costs incurred when following up and verifying compliance with the requirements of an order. Finally investigation fees are proposed so that administrative agencies may recover the cost for the investigation of a contravention of the Act. Under the Schedule to the Bill, the Environment, Resources and Development Committee of the Parliament is required to review the success of this scheme after 2 years.

Miscellaneous

Furthermore the Bill proposes a variety of changes to improve the efficiency and administration of environmental authorisations.

The EPA will be able to issue industry with longer licences, while maintaining the ability to annually vary licence conditions that pertain to testing, monitoring and auditing.

In addition, the EPA will be provided with broader powers to specifically allow conditions of licence relating to training and instruction of employees and agents and requiring licensees to provide certificates of compliance. This will assist industry in minimising the risk of causing an offence under the Act.

Additionally, in response to the recommendations of the Environment, Resources and Development Committee Parliamentary inquiry, increased community consultation is proposed for the issuing of new environmental authorisations, relaxation of conditions required through authorisations, and in developing environment improvement programs that may be required as a condition of licence.

Finally, the Bill proposes a range of minor procedural changes to the operation of the EPA Board to increase the Board's efficiency and a range of technical amendments to the Act as listed in the explanation of clauses.

In addition to the issues already stated the Government has undertaken to consider issues raised in the House of Assembly debate including the following:

- The preferred model of corporate governance in respect of the Environment Protection Authority.
- Increasing the flexibility of clause 16 so that if an owner of a licensed activity is comfortable, and the local administering authority wants, administering agencies can administer licensed activities.
- The possible limitation of the delegation powers of administering agencies under the proposed new section 18C for delegations to a for profit entity.
- The powers of authorised officers relating to the seizure of a vehicle.
- Notification of a holder of a post closure environment protection order of their notification requirements if they cease to occupy or own the land.
- Advising of the costs that may be recovered from a person in the proposed new section 135 of the Act.
- Guidance to the Court as to the costs awarded in appeals.

I commend the Bill to the Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Environment Protection Act 1993*

4—Amendment of long title

This clause makes amendments of a statute law revision nature to the long title of the principal Act.

5—Amendment of section 3—Interpretation

This clause makes some consequential amendments to definitions in the principal Act, some amendments of a statute law revision nature and makes the following substantive changes:

- the definition of "environmental nuisance" is broadened
- the definition of "pollutant" is altered to allow regulations and policies to clarify what is, or isn’t, a pollutant
- the definition of "waste" is altered to make it clearer and to allow regulations and policies to clarify what is included in the term "waste".

6—Amendment of section 5—Environmental harm

The clause amends section 5 to allow regulations and policies to clarify what is, or isn’t, environmental harm.

7—Insertion of section 5A

The clause inserts a new section 5A in the principal Act requiring consultation with prescribed bodies before a regulation is made declaring something to be a pollutant or waste or to constitute environmental harm.

8—Amendment of section 7—Interaction with other Acts

This clause makes an amendment of a statute law revision nature.

9—Amendment of section 9—Territorial and extra-territorial application of Act

This clause is consequential to the introduction of civil penalties (see clause 58)

10—Amendment of section 10—Objects of Act

This clause is consequential to the introduction of the concept of "administering agencies" (see clause 17).

11—Substitution of heading to Part 3

This clause is consequential to the introduction of the concept of "administering agencies".

12—Amendment of section 14A—Chief Executive

This is consequential to clause 15.

13—Amendment of section 14B—Board of Authority

This clause deletes subsection (7), the subject matter of which is also covered in section 16(2).

14—Amendment of section 15—Terms and conditions of office

This clause increases the maximum term of an appointed member of the Board from 2 years to 3 years.

15—Amendment of section 16—Proceedings of Board

This clause provides for the appointment of a member of the board as the deputy presiding member (to preside in the absence of the Chief Executive).

16—Amendment of section 17—Board may establish committees and subcommittees

This clause clarifies that a committee or subcommittee established by the Board may consist of such persons as the Board thinks fit.

17—Insertion of Part 3 Division 1A

This clause inserts a new Division in Part 3 dealing with administering agencies as follows:

- Proposed section 18A identifies administering agencies as councils declared by the Minister by notice in Gazette and other public authorities prescribed by regulation. A declaration of a council as an administering agency can only be made at the request of the council and a declaration that a council will cease to be an administering agency may be made by the Minister after consultation with the council, and must be made if the council requests it.
- Proposed section 18B outlines the powers and functions of administering agencies under the principal Act.
- Proposed section 18C provides for delegations by administering agencies.
- Proposed section 18D provides for reports by administering agencies to the Authority.

18—Amendment of section 24—Environment Protection Fund

This clause ensures that a prescribed percentage of civil penalties will go into the Environment Protection Fund.

19—Amendment of section 25—General environmental duty

This provision is consequential to clause 76 and clarifies that breach of the general environmental duty is a "contravention" for the purposes of new section 135 of the principal Act.

20—Amendment of section 27—Nature and contents of environment protection policies

This clause clarifies and expands on the things that may be done by an environment protection policy and makes amendments that are consequential to other provisions contained in the measure (in particular, to clause 17 and clause 24).

21—Amendment of section 28—Normal procedure for making policies

This clause amends section 28 of the principal Act as follows:

- Proposed new subsection (3) provides for consultation with the Minister prior to the giving of public notice in relation to a proposed environment protection policy;
- Proposed changes to subsection (6) provide for the holding of public information sessions in relation to draft policies. Currently the Act requires a public hearing to be held, but that requirement can be dispensed with in appropriate cases. Under the amendments, there would be no equivalent power to dispense with a public information session.
- The proposed amendments would also ensure that the Authority's response to any submissions is also made available to the public.

22—Repeal of section 28A

This clause repeals section 28A which currently provides for national environment protection measures to automatically operate as environment protection policies under the Act.

23—Amendment of section 29—Simplified procedure for making certain policies

This clause is consequential to the repeal of section 28A and provides a simplified procedure for the making of environment protection policies that implement national environment protection measures.

24—Amendment of section 34—Offence to contravene mandatory provisions of policy

This clause increases the penalty in section 34(2) of the principal Act for a category A offence by a body corporate and introduces new categories of offences against mandatory provisions of an environment protection policy.

25—Amendment of section 36—Requirement for licence

This clause provides a new exemption power under which the Authority can exempt a person from the requirement to hold a licence under the Act if the Authority is satisfied that another person is principally responsible for the relevant activity and will be licensed in respect of the activity and that the activity can be properly regulated through that other licence.

26—Amendment of section 37—Exemptions

This clause makes a minor change to section 37 to ensure that the wording is broad enough to cover relevant provisions in any part of the Act or in any subordinate legislation.

27—Amendment of section 39—Notice and submissions in respect of applications for environmental authorisations

This clause amends section 39 to provide that, where an activity is to be carried on on land, notice of an application for a licence under the Act in respect of the activity is to be given to adjoining land owners or occupiers (other than in circumstances prescribed by regulation).

28—Amendment of section 43—Term and renewal of environmental authorisations

This clause gives the Authority power to require an applicant for a licence to undertake public consultation on the application and makes an amendment to clarify the scope of the Authority's power to renew a licence under subsection (6).

29—Amendment of section 45—Conditions

This clause allows the Authority, where a licence is granted in respect of a period of more than one year, to vary conditions of the licence at any time within 3 months of the anniversary of the date of the grant of the licence. Such a variation may, however, only impose conditions of a kind that can be imposed under section 52 of the Act.

30—Amendment of section 46—Notice and submissions in respect of proposed variations of conditions

This clause amends section 46 to provide that, where a licensed activity is carried on on land, notice of a proposed variation of licence conditions is to be given to adjoining land owners or occupiers (except where the proposed variation will not result in any relaxation of requirements and will not have an adverse effect on the adjacent land owner or occupier or in circumstances prescribed by regulation). The amendments also provide for a copy of any submissions received by the Authority in relation to a proposed variation to be provided to the holder of the licence, and for the holder of the licence to be given an opportunity to respond to the submissions.

31—Amendment of section 47—Criteria for grant and conditions of environmental authorisations

This clause amends section 47 to ensure that the Authority has regard to, not only public submissions made in relation to the grant of a licence or the variation of conditions of a licence, but also to any response to those submissions made by the applicant or licensee (as the case may be).

32—Amendment of section 48—Annual fees and returns

This clause amends section 48 to allow the Authority to require verification of information contained in an annual return.

33—Amendment of section 51—Conditions requiring financial assurance to secure compliance with Act

This clause amends section 51—

- to remove words that may be interpreted as limiting the types of security that the Authority can seek from a person required to lodge a financial assurance; and
- to ensure that, when deciding whether or not to require a financial assurance, the Authority can take into account the risk associated with activities formerly undertaken at the site.

34—Amendment of section 52—Conditions requiring tests, monitoring or audits

This clause amends section 52 to ensure that the Authority can impose a condition on a licence requiring testing or monitoring of the site relating to an activity formerly undertaken at the site.

35—Insertion of section 52A

This clause inserts a new provision allowing the Authority to impose conditions on an environmental authorisation requiring preparation of a plan for the cessation of the licensed activity, and for the management and monitoring of the land on which the activity was formerly carried out, and

requiring compliance with any such plan. Conditions can only be imposed if the Authority is satisfied that the conditions are reasonably required for the purpose of preventing or minimising environmental harm that may result from the activity and the regulations may further limit the circumstances in which such conditions may be imposed. If conditions requiring on going management and monitoring are imposed, the period for which that will be required must be specified and at the end of that period the Authority must notify the holder of the authorisation that compliance is no longer required (and the Authority is then prevented from issuing an order under propsoed section 93A in relation to the ceased activity).

36—Amendment of section 53—Conditions requiring preparation and publication of plan to deal with emergencies

This clause amends section 53 to enable the Authority to specify requirements of the Authority that the holder of a licence must comply with in preparing an emergency plan of action, and (consistently with the amendments to sections 51 and 52) to ensure that the wording of the provision includes reference to activities formerly undertaken at the site.

37—Amendment of section 54—Conditions requiring environment improvement program

This clause amends section 54 to enable the Authority to specify requirements of the Authority that the holder of a licence must comply with in preparing an environment improvement program and to enable the Authority to include, a requirement for public consultation in the development of a proposed environment improvement program.

38—Insertion of sections 54A and 54B

This clause inserts new sections in the principal Act that would allow the Authority to impose licence conditions requiring training of employees or supervision or requiring the licensee to provide the Authority with certificates of compliance.

39—Substitution of section 82

This clause substitutes a new offence of creating an environmental nuisance by polluting the environment in the principal Act. Unlike the current section 82 offence, the new offence does not require proof of intention or recklessness or proof that the pollution was done with knowledge that an environmental nuisance will or might result.

40—Amendment of section 83—Notification where serious or material environmental harm caused or threatened

This clause amends section 83 to remove the references to an "incident" (which might have suggested that the section was only dealing with harm caused or threatened by a one-off event, rather than harm that might be caused or threatened slowly over time).

41—Amendment of section 85—Appointment of authorised officers

This clause amends section 85 to remove the requirement for the Minister's approval of authorised officers appointed by the Authority and the requirement for consultation with the Authority prior to the appointment of an authorised officer by a council.

42—Amendment of section 86—Identification of authorised officers

This clause removes the requirement for the form of identification of an authorised officer to be approved by the Authority.

43—Amendment of section 87—Powers of authorised officers

This clause amends the powers of authorised officers, imposes a jurisdictional limit on the powers of authorised officers appointed by a council and provides for the making good of any damage caused by the exercise of powers under the section.

44—Amendment of section 90—Offence to hinder etc authorised officers

This clause amends section 90 to broaden the offence in subsection (1)(e) and to increase the monetary penalties for offences against the section.

45—Amendment of section 91—Self-incrimination

This clause limits the protection against self-incrimination in section 91(2) to natural persons.

46—Amendment of section 93—Environment protection orders

Section 93 is amended:

- to include references to administering agencies;
- to add to the list of requirements that can be imposed by an environment protection order;
- to allow environment protection policies to specify certain matters as to environment protection orders;
- to alter the wording (but not the amount) of the penalty for failure to comply with an environment protection order as regards orders issued in circumstances specified in, or to secure compliance with, environment protection policies;
- to insert a provision dealing with self incrimination.

47—Insertion of section 93A

This clause inserts a new section 93A which would allow the Authority to issue a new type of environment protection order for the purpose of preventing or minimising harm that may result after cessation of a prescribed activity of environmental significance. Note that the section is not retrospective in that such an order can only be issued in relation to an activity that has ceased after commencement of the section. The form of the order is essentially the same as for an ordinary environment protection order under section 93, but these orders can (in addition to the sorts of requirements that can ordinarily be imposed in an environment protection order) impose any requirement that could be imposed as a condition of an environmental authorisation. The regulations may impose restrictions on the issue of such orders and the orders are appealable in the same way as for ordinary environment protection orders.

48—Amendment of section 94—Registration of environment protection orders in relation to land

This clause amends section 94 to include references to administering agencies and to ensure that the wording is broad enough to capture environment protection orders issued under proposed section 93A.

49—Amendment of section 95—Action on non-compliance with environment protection order

Section 95 is amended to include references to administering agencies and to allow recovery of a prescribed fee in respect of registration or cancellation of registration of an order in respect of land under section 94.

50—Amendment of section 96—Information discovery orders

This clause amends section 96 to include references to administering agencies.

51—Amendment of section 97—Obtaining of information on non-compliance with order or condition of environmental authorisation

This clause amends section 97 to include references to administering agencies.

52—Amendment of section 98—Admissibility in evidence of information

This clause amends section 98 to limit the protection against self-incrimination afforded by section 98(2) to natural persons and bodies corporate acting in prescribed circumstances.

53—Amendment of section 99—Clean-up orders

This clause amends the clean-up orders provision to allow other administering agencies to issue such orders, to add to the list of requirements that may be imposed in a clean-up order, to make a minor change to subsection (6) (consequentially to the introduction of civil penalties) and to include, consistently with the other orders provisions in the Act, a privilege against self-incrimination for natural persons.

54—Amendment of section 101—Registration of clean-up orders or clean-up authorisations in relation to land

This clause makes a minor drafting amendment.

55—Amendment of section 103—Recovery of costs and expenses incurred by the Authority

This clause amends section 103 to allow the Authority to recover a prescribed amount in respect of the registration, or the cancellation of registration, of a clean-up order or clean-up authorisation.

56—Substitution of heading to Part 11

This clause is consequential to the introduction of civil penalties.

57—Amendment of section 104—Civil remedies

This clause amends section 104 to include a reference to administering agencies and to provide some guidance for the Court in determining whether or not to make a costs order in proceedings for a civil remedy.

58—Insertion of section 104A

This clause introduces civil penalties into the principal Act. The proposed provision would allow the Authority, where it is satisfied that a person has contravened the Act, to recover (by negotiation or in civil proceedings in the Environment, Resources and Development Court) a civil penalty in respect of the contravention instead of prosecuting the person for the relevant offence. Other features of the proposed scheme are:

- the Authority can only pursue a civil penalty if the relevant offence does not require proof of intent or some other state of mind and must, in deciding whether to use the provision or prosecute in the ordinary way, consider the seriousness of the contravention, the previous record of the offender and any other relevant factors;
- the Authority must serve a notice on the person (at least 21 days before any application to the court is made under the provision) advising the person that he or she may elect to be prosecuted in relation to the contravention, and if the person does so elect, civil proceedings cannot be commenced under the provision;
- civil penalties negotiated by the Authority are capped at $120 000 however the court can order, as a civil penalty in respect of a contravention, payment of an amount not exceeding the criminal penalty for the relevant offence;
- civil penalty proceedings are stayed if criminal proceedings are commenced in respect of the same contravention and can only be resumed if the person is not found to be guilty of the offence (note that the wording of subsection (1) would preclude the commencement of criminal proceedings in respect of the contravention if a civil penalty has already been recovered from the person in respect of the contravention, so this provision is only relevant where civil proceedings have not yet been finalised);
- the time limit for bringing civil penalty proceedings is three years or, with the authorisation of the Attorney-General, up to 10 years (which matches the time limit for commencement of summary offences under section 131 of the Act);
- the court can, in an application for a civil penalty, make an order for the payment of costs as the court thinks just and reasonable.

59—Amendment of section 105—Emergency authorisations

This clause would allow the recovery of a fee for the issue of an emergency authorisation and make amendments that are consequential to the introduction of civil penalties.

60—Amendment of section 106—Appeals to Court

Subclause (1) allows the holder of a licence to appeal against a decision of the Authority to renew the licence of its own initiative. Subclause (2) is consequential to the introduction of administering agencies.

61—Amendment of section 109—Public register

This clause makes some consequential amendments to the public register provision and allows the making of regulations providing for the removal of information from the register. Under the proposed consequential changes, the public register would include details of orders made by other administering agencies (as well as by the Authority), details of exemptions granted under section 36(2) (the new provision allowing the Authority to grant exemptions from the requirement to hold a licence in certain circumstances) and details of civil penalties recovered. The clause also makes a minor consequential amendment.

62—Amendment of section 111—Annual reports by Authority

This clause refers the annual report of the Authority to the Environment, Resources and Development Committee of the Parliament.

63—Amendment of section 112—State of environment reports

This clause requires the Minister to prepare (within a reasonable time) and table in the Parliament a response to a State of the Environment Report.

64—Amendment of section 116—Waiver or refund of fees and levies and payment by instalments

This clause amends section 116 to include references to administering agencies and to provide for waiver, refund or payment by instalment of a levy payable under the Act (currently the power only relates to fees payable under the Act).

65—Amendment of section 118—Service

This clause amends section 118 to include references to administering agencies and to update a reference to Commonwealth law.

66—Amendment of section 119—False or misleading information

This clause increases the penalty for providing false or misleading information (and in doing so distinguishes between offences by bodies corporate and offences by natural persons).

67—Substitution of sections 120 and 120A

This clause substitutes new versions of sections 120 and 120A in the principal Act. The new provisions cover essentially the same subject matter as the current sections but include references to administering agencies. Proposed new section 120A also differs from the current section 120A in creating the offence of making a "false or misleading" report to the Authority (where the current section 120A only refers to the making of a "false" report).

68—Amendment of section 122—Immunity from personal liability

Section 122 is amended to deal with other administering agencies.

69—Amendment of section 124—General defence

This clause makes amendments that are consequential to the introduction of civil penalties.

70—Substitution of section 125

This clause substitutes a new section 125 into the principal Act in order to make changes that are consequential to both the introduction of administering agencies and civil penalties.

71—Amendment of section 126—Proof of intention etc

This clause is consequential to the introduction of civil penalties.

72—Amendment of section 127—Imputation of conduct or state of mind of officer, employee etc

This clause is consequential to the introduction of civil penalties.

73—Amendment of section 128—Statement of officer evidence against body corporate

This clause is consequential to the introduction of civil penalties.

74—Substitution of sections 129 and 130

This clause substitutes a new version of section 129 in the principal Act (which is consequential to the introduction of civil penalties and to the changes made to certain self-incrimination provisions in the Act, which would limit the protection to natural persons) and a new version of section 130 (which is consequential to the introduction of administering agencies and to the introduction of civil penalties).

75—Amendment of section 133—Orders in respect of contraventions

This clause is consequential to the introduction of civil penalties.

76—Substitution of section 135

This clause would allow the Authority and other administering agencies, where a person has contravened the Act, to recover various fees and costs in respect of actions taken by the Authority or agency in response to the contravention (including the investigation of the contravention, the monitoring of compliance with an order made in respect of the contravention or the taking of samples, tests, examinations or analyses). Failure to pay a required amount is an offence (punishable by a Division 8 fine or a $500 expiation fee) as well as the amount being recoverable as a debt. The provision specifies some limitations, however, on recovery of fees and costs for investigation of a contravention of a condition of an environmental authorisation.

77—Amendment of section 136—Assessment of reasonable costs and expenses

This clause amends section 136 to include references to administering agencies.

78—Insertion of section 137A

This clause inserts a new section providing for joint and several liability for amounts recoverable by the Authority or another administering agency.

79—Amendment of section 138—Enforcement of charge on land

This clause amends section 138 to include references to administering agencies.

80—Amendment of section 139—Evidentiary provisions

Section 139 is amended to include references to administering agencies and to make subsection (4) consistent with the amended definition of "environmental nuisance".

81—Amendment of section 140—Regulations

This clause would allow implementation of a national environment protection measure through the making of regulations.

82—Amendment of Schedule 1—Prescribed activities of environmental significance

This clause updates two legislative references in Schedule 1 of the principal Act.

83—Repeal of Schedule 2

This clause makes a statute law revision amendment to the principal Act. Schedule 2 of the principal Act is no longer necessary and can be repealed.

Schedule 1—Transitional provisions

The Schedule contains transitional provisions. Clause 2 requires the Environment, Resources and Development Committee of the Parliament to, no less than 2 years after the commencement of the relevant section, conduct an inquiry into the role and functions of the new administering agencies. Clause 3 of the Schedule is consequential to the amendments to section 34 of the principal Act (see clause 24 of the measure) and to the inclusion of administering agencies in the principal Act. It would allow the Minister, by notice in the Gazette, to amend an environment protection policy to alter the designated category of an offence from "category C" to "category D" and to include references to an administering agency.

Clause 4 of the Schedule is consequential to clause 22 of the measure and would allow policies currently in operation by virtue of section 28A of the principal Act to continue after the repeal of that section but to be replaced by a policy made by a simplified procedure (provided that the replacement policy covers the same subject matter and the only substantive changes relate to enforcement of the policy) or to be revoked by a policy made by a simplified procedure if the Minister is satisfied that the relevant national environment protection measure can be implemented without a policy.

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

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (TYPES OF CLASSIFICATION) AMENDMENT BILL

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

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

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses incorporated in *Hansard* without my reading them.

Leave granted.

Our present law requires that both films and computer games must be classified before they go on sale. There is one set of categories and symbols for films and another for games. Research results published by the Office of Film and Literature Classification in March this year, however, suggest that whereas most people are familiar with the film classifications, many have only a superficial idea of the classifications that apply to computer games. Parents who took part in the study often reported that, although they took classification into account in choosing films for their children, they made little use of the classifications in choosing computer games. This was despite expressions of concern about what children are exposed to in computer games.

A consumer-warning system works best if it is easy for the public to recognise and apply. It therefore needs to be as simple as possible. Accordingly, censorship Ministers decided that it may assist the public, and parents in particular, if, instead of having two different sets of classifications, the familiar categories and symbols applicable to films were also applied to computer games.

Earlier this year, therefore, the Commonwealth amended the *Classification (Publications, Films and Computer Games) Act 1995* so that the same categories now apply to both films and games. Computer games classified in future will bear the same labels as films of the same classification. Parents are more likely to recognise and understand these labels, so they should be better able to select suitable games for their children.

It is important to point out two things, however. First, Ministers decided that there should not be an R category for computer games, as there is for films. Computer games are especially popular with children. Whereas a parent can, if in doubt, watch the film for himself, parents often lack the skill to examine a computer game in full. At the same time, parents are concerned about children being exposed to extremely violent or sexually-explicit material, such as might be found in an R film. In these circumstances, it has been decided that material higher than MA, if found in a computer game, will result in an RC classification, that is, the game will not be legal for sale.

Second, because computer games are interactive, with increasing levels of difficulty, rewards for certain results and a competitive element, their impact may be different from the impact of films, which are watched passively. It is important that this interactive aspect is weighed in the classification process. The classification guidelines provide for this, so it could be that the same content in a game might result in a higher classification than if that content were found in a film. Impact, which includes interactivity, will be taken into account. The adoption of a single system of labelling does not, therefore, connote a drop in classification standards for computer games.

As well as applying the same categories to films and games, the Commonwealth amendments slightly change the category titles to make clearer the distinction between advisory categorise and legally-restricted categories. The categories G, PG and M are not legally restricted. That is, even though an M classification means that the film is not recommended for anyone under 15, it is quite legal for such a person to see an M film. The M classification warns parents that the film may not be suitable for younger children, but it is left to parents to decide whether or not their children should see the film, and whether to watch it with them. The categories MA15+, R18+, X18+ and RC, on the other hand, are legally restricted. A child under 15 is not allowed into a cinema to see an MA15+ film unless accompanied by a parent or adult guardian. Likewise R films, as most people know, are legally restricted to adults only. Neither X nor RC films can be legally screened or sold in South Australia. To highlight this difference, under the Commonwealth amendments, advisory categories will be labelled with letters only: G, PG or M. The legally-restricted categories will be labelled with both letters and age descriptors: for example, MA15+ or R18+.

It is hoped that this will help parents distinguish, in particular, between M and MA, categories that are often confused. The Office of Film and Literature Classification's research showed that only 6% of the sample could correctly interpret the MA15+ symbol. There is a great difference between the content of these two categories. The M category contains material of moderate impact such that the film or game is not recommended for under-15s. About half of all cinema-release films are classified M. A film could, for instance, be classified M because it includes coarse language, even though it includes no violence, drug use or explicit sexual activity. The Australian film *The Dish*, a story about the 1969 moonshot, set at the satellite-tracking station at Parkes, is an example. The MA category, on the other hand, contains strong-impact material such that a person under 15 is not permitted by law to attend the film unless he has a parent or adult guardian present with him throughout. A film classified MA15+ may contain strong violence or confronting treatments of social problems. The New Zealand film *Once Were Warriors*, dealing with domestic violence and alcohol abuse in a Maori family, is an example. More recently, the film *Thirteen* was classified MA15+. That film, as Members may know, dealt in a confronting manner with the themes of peer pressure and intergenerational conflict. It depicted young teenagers engaging in drug use, self-mutilation, sexual activity and petty crime. Parents need to be aware of the difference between the two categories.

The Commonwealth amendments necessitate consequential amendments to State and Territory enforcement Acts. That is the purpose of this Bill. The Bill renames the film and computer game

categories to match the amended Commonwealth Act. This is necessary because, in general, items are classified by the Commonwealth authority, the Classification Board, and those classifications apply in South Australia by force of our Act. Unless the classifications match, enforcement will be problematic.

The transitional provisions under both the Commonwealth and State laws provide that material already classified will be treated as having been classified in the relevant new category. For instance, a computer game now classified G8+ will be treated as if it had always been classified PG. This is necessary to avoid creating an enforcement loophole. It is not intended, however, that retailers should have to relabel all the stock now lawfully on their shelves. The intention is that the old labels can remain. Thus, there will be no need to change the G8+ label. The Government understands that this will be achieved through the process of fixing the required markings by the national Director under the Commonwealth Act.

The Bill, in combination with the recent Commonwealth amendments, should make it easier for parents to identify suitable films and games for their children. In the case of games, the poorly-recognised separate classifications for games will be replaced with the familiar classifications for films, which nearly everyone recognises. In the case of both films and games, the new categories more clearly emphasise the difference between advisory categories and legally-restricted material. In this day and age, anything that helps parents to make informed choices about what their children see and play must be beneficial.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Classification (Publications, Films and Computer Games) Act 1995*

4—31

The clauses in this Part make amendments to the Act that are for the purpose only of changing certain of the types of classifications for films and computer games. The changes relate to the current classification types "MA", "R" and "X" for films and the current classification types "G (8+)", "M (15+)" and "MA (15+)" for computer games. The changes are shown in the following tables:

TABLE

Film classifications

Column 1 Item	Column 2 Former type of classification	Column 3 New type of classification
1	MA	MA 15+
2	R	R 18+
3	X	X 18+

TABLE

Computer game classifications

Column 1 Item	Column 2 Former type of classification	Column 3 New type of classification
1	G (8+)	PG
2	M (15+)	M
3	MA (15+)	MA 15+

A provision is also added to section 15 of the Act (which sets out all the classification types) to make it clear that the words "General", "Parental Guidance", "Mature", "Mature Accompanied", "Restricted" and "Classification Refused" are descriptive only and not part of the classification.

Part 3—Transitional provisions

32—Application of Act

This clause makes it clear that the amendments only operate for future actions and do not affect the prior interpretation of the Act.

33—Conversion of certain pre-commencement classifications to equivalent new classifications

This clause ensures that classifications assigned to films or computer games before the commencement of the measure are, on that commencement, to be taken to be the new classifications in accordance with the tables set out above.

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

BLUEY DAY

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement made on Bluey Day by the Deputy Premier and Minister for Police today.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement on the subject of financial management made by the Deputy Premier and Treasurer today.

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

In committee.

(Continued from 14 February. Page 1021.)

Clause 6.

The Hon. P. HOLLOWAY: I wonder before we begin today whether I could respond on behalf of my colleague the Minister for Aboriginal Affairs and Reconciliation in relation to a letter that the Hon. Mr Lawson wrote to my colleague as follows:

> Dear Minister,
>
> Re the Industrial Law Reform Enterprise and Economic Development Labour Market Relations Bill.
>
> Today in the committee stages of the above bill, you indicated that the Federal Court has made declarations concerning employment status under powers conferred on it by the Workplace Relations Act. I would be obliged if you would give the committee details of any decisions of the Federal Court in this regard, and also indicate the particular section of the legislation which confers the power to make declarations on that court.
>
> Kind regards.
>
> Yours sincerely,
>
> Robert Lawson

The response on behalf of my colleague is as follows:

> I refer to your letter of 14 February 2005 in which you state:
>
> > Today in the committee stages of the above bill, you indicated that the Federal Court has made declarations concerning employment status under powers conferred on it by the Workplace Relations Act.
>
> This assertion is incorrect. I refer you to the following passages of the debate recorded in *Hansard* at page 1017:
>
> > 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.
>
> Clearly, the reference to 'circumstances similar to those posited in this section' was a reference to dealing with the issue of employment status. My colleague's answer made it plain that the declarations made by the Federal Court have been about other matters.

That, I trust, adequately addresses the issue raised by the deputy leader. If not, I am sure he will raise it again.

The Hon. R.D. LAWSON: The minister's response clearly does not answer the issue which was raised in my correspondence and which has been raised by the committee. The government is suggesting that this little innocuous provision about declaratory orders is a provision that finds some comparable provision in the federal legislation, and that the Federal Court makes declarations in matters such as this. The reason the government has raised the question of the Federal Court's powers is to reassure some of the members of this chamber that this is just an innocuous little provision which is being used elsewhere and there is nothing to fear from it. We do not see it in that light and I believe that the

government by raising the matter of the Federal Court's power to make declarations and raising the spectre of that court, having made declarations, was really a mischievous diversion and that this provision has no relevant federal analog.

The Hon. NICK XENOPHON: Does the minister concede that the distinction between the Federal Court's declaratory powers and those which are being proposed in the bill is that, with respect to the Federal Court, parties must be nominated; that is, it must be as to specific parties, as distinct from what is proposed to a class? I indicate that, following the council rising yesterday, I had an opportunity to file the amendments, which of course I will speak to in due course, but members will now have an opportunity to consider whether they support this test clause in the context of both the—

The Hon. Ian Gilfillan: I hope the Hon. Terry Cameron will study it.

The Hon. NICK XENOPHON: I am sure he has and that he will, before there is any vote. In relation to this test clause and for the benefit of members, I have set out a number of alternatives that restrict the class of persons to whom such an order could apply. Going back to the original question, is it not the case that, under the Federal Court's declaratory powers provisions, specific parties must be nominated? That is the first question. The other is that, with respect to what the Hon. Mr Roberts said yesterday, there are already existing powers in the current act to deal with such matters, and this is simply expanding them. Will the minister expand on what his colleague told us yesterday?

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: I think it was section 111, but some reference was made to it yesterday or on Thursday last week. In regard to section 111(3), the minister, the Hon. Mr Roberts, said yesterday that, whilst at present other provisions of the act do 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. The Hon. Terry Roberts was accusing Mr Lawson of misleading on the issue of declaratory judgments, and I do not necessarily agree with that.

The Hon. P. HOLLOWAY: In relation to the question asked by the honourable member: yes, the question of specific parties is one distinction in the Federal Court; the other is the subject matter, as was mentioned by the deputy leader. In relation to the second part, former section 111(3) was referred to. The Hon. Terry Roberts made it clear that that section is no longer in the act.

The Hon. R.D. LAWSON: I should indicate to the committee that we have seen the amendments now foreshadowed by the Hon. Nick Xenophon. These are amendments to proposed section 4A and do not strictly arise for debate at this juncture. I can say in relation to the amendments foreshadowed that they make a bad clause a little less bad but, notwithstanding the minor improvement that the foreshadowed amendments make, we remain implacably opposed to the extension of this power to the court to make declarations as to employment status.

The committee divided on the amendment:

AYES (9)

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

NOES (10)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Reynolds, K.	Sneath, R. K.
Xenophon, N.	Zollo, C.

PAIR

Schaefer, C. V.	Roberts, T. G.

Majority of 1 for the noes.

Amendment thus negatived.

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

Page 6, lines 34 to 36—Delete subclause (5)

The government's bill defines 'enterprise agreement' as an enterprise agreement in terms of one employer only. The government's bill will enable an enterprise agreement to relate to one or more employers—in other words, the government is proposing multi-enterprise enterprise agreements. By this amendment, I seek to delete that extension from simply one employer to a number of employers.

We regard an enterprise agreement as essentially an agreement between one employer and the employees in that enterprise. It is foreign to the notion of enterprise agreements to return to what might be called the collectivist notions that apply to awards. An enterprise agreement is precisely what it says: it is an agreement fashioned for the benefit of a particular enterprise and the employees in that enterprise.

There are some who say that there ought to be multi-employer enterprise agreements, and the government has the seductive claim that this is just to enable a number of franchisees, which might be a number of small businesses, to have the same enterprise agreement. However, this amendment is sewing the seed for multi-enterprise enterprise agreements. It is designed, really, to undermine the whole notion of enterprise agreements and take away their initial purpose, and we strongly oppose that concept.

Of course, this amendment is just a test amendment, because this is the first occasion in this bill where the notion of multi-employer agreements arises. In the committee stage, I would be very happy to provide the committee with examples of the disadvantages which the economy suffers if one returns to this multi-enterprise system.

The Hon. P. HOLLOWAY: The government supports these multi-employer agreements. They will assist franchised businesses. They will allow businesses to spread the cost of developing, negotiating and certifying agreements. They will provide a cheap way for small businesses to participate in bargaining for the first time, which may well see them become more comfortable with the process and, potentially, enter their own enterprise agreements at a later time. It also provides small businesses with another way of accessing flexibilities that larger businesses have had access to for many years. To use the common phrase, we regard this as a no-brainer.

The Hon. NICK XENOPHON: I do not support the amendment of the Hon. Mr Lawson. I would have thought that, in terms of what is being proposed—and I understand that this is a test clause, and I do not have any amendments to this particular clause foreshadowed, proposed or thought of that—

An honourable member interjecting:

The Hon. NICK XENOPHON: No; we won't be going home—not on my account. I see it as giving flexibility to small businesses. It is not as though they will be roped into it. If a dozen franchisees want to get together and spread the

cost of an enterprise agreement, I do not see that as a bad thing. It is not compelling small businesses to go down this path: it gives them an opportunity to spread the cost of negotiating or preparing such an agreement amongst a number of businesses. For those reasons, I do not support the amendment.

The Hon. IAN GILFILLAN: The Democrats do not support the amendment and share the view that was expressed in the latter part of the Hon. Mr Xenophon's contribution. It appears to offer an opportunity—there is no coercion—but it just widens the scope of what can be a flexible arrangement. In fact, I am surprised that the opposition opposes it, because it appears to me that it offers some further territory in an area which they encourage, and that is people negotiating agreements freely and to the end that suits both parties.

The Hon. R.D. LAWSON: The reason for our opposing this notion is that the introduction of enterprise agreements with more than one employer would encourage a return to industry-wide bargaining—a form of collective bargaining—which the industrial relations system around the country has been getting away from. We are definitely committed to the notion of enterprise bargaining and enterprise agreements, but we believe they should be enterprise specific. This provision is the chink in that armour; it is something that the unions have been pressing for. They are not pressing for it for the purpose of making life easier for employers: they are pressing for it to making life easier for unions to enable them to engage in industry-wide bargaining with all that connotes.

The Hon. A.J. REDFORD: I have a question to the minister. In relation to this definition of enterprise agreement, and the change in definition, could the minister explain to me what the purpose is and what the object is? I ask that question in this context: quite clearly there are provisions in this legislation for collective bargaining and the establishment of awards. There are provisions for enterprise bargaining in relation to individual employers. I wonder why we need this halfway house.

The Hon. P. HOLLOWAY: I think we have already essentially answered that question. This provides a middle ground. It makes it easier for small and medium businesses to participate in enterprise bargaining, which will deliver results more tailored to their needs than awards. I really think that answers the question.

The Hon. A.J. REDFORD: Given that the minister's answer to that question was that it would be good for business, can the minister identify any business groups or businesses that have called for this change to the legislation?

The Hon. P. HOLLOWAY: I think the honourable member is well aware that this legislation as a whole has been criticised by business groups. That has been the position they have taken—to criticise it as a whole—so we do not have any cases of people supporting particular parts of the legislation. That is well known for exactly the same reasons—

The Hon. A.J. Redford: It was a very simple question. You're exposed for what you are.

The Hon. P. HOLLOWAY: Well, no; I think the converse is true. What we have seen exposed is what we heard from the honourable deputy leader's explanation that he thought this might make it easier for unions. That is the perspective from which he is coming with his opposition.

The Hon. A.J. REDFORD: The government has been exposed. Members opposite sit there and say—and it is almost Orwellian and a continuation of this minister's way of characterising a lot of things—that this is for business. This is great; it is going to make it easier for business. When the minister was asked whether any business supports this particular measure, he did two things: first, he said no, he cannot identify one single industry or business group that has called for this change; not one. Indeed, from what I can read, most of them are opposed to it, so they do not share the government's view that this is a great benefit to business. Secondly, the government sought to attack us because we raised that particular issue. At the end of the day, we have a perfectly good system available for multiple employers—it is called the award system. I do not know why we need this for multiple employers, particularly when multiple employers are not availing themselves, or not asking for it.

I point out to honourable members, the Australian Democrats and the Hon. Nick Xenophon, that the Employee Ombudsman, as it has been explained to me with respect to enterprise agreements, has no difficulty in negotiating for multiple groups of employers. The process is that one employer takes it along to the commission, and, if other employers want to pick it up, the process is simplified and the commission lets it go through. We are concerned that industrial pressure would be brought to bear on individual employers to engage collectively. At risk here, and what we have not seen for a number of years, are issues such as secondary boycotts and things of that nature. They are not necessarily illegal in the context of an industrial dispute in the state environment.

The Hon. Nick Xenophon interjecting:

The Hon. A.J. REDFORD: Well, they are not, particularly if they are not engaged in the state system. However, pressure could be brought to bear on employers who are forced and herded together. At the end of the day, what has driven this economy over the past decade? I do not know where members have been over the past decade since John Howard became Prime Minister and has been re-elected on a regular basis. Indeed, he was re-elected with an increased majority less than a few short months ago. Individual enterprises are treated as such, and not as industries, and that has created a great deal of competition within the individual enterprises and led, in no small part, to this extraordinarily buoyant economy that we all enjoy. That is my view.

The Hon. NICK XENOPHON: I will pick up on the Hon. Mr Redford's remarks in relation to secondary boycotts. Could the government respond to that? I think it was a legitimate point. As I understand the Hon. Mr Redford's remarks that pressure will be brought to bear, I do not necessarily subscribe to that view, but what protections are there if there were an attempt to use secondary boycott provisions to force people to be part of that? If the minister could just expand on that because I think it is a legitimate issue raised by the Hon. Mr Redford.

The Hon. P. HOLLOWAY: My understanding is that they are illegal. I do not have the exact information for the honourable member now. If he is really interested, we can follow that later, but I am not sure that it is really going to be all that relevant to the debate before us.

In relation to matters raised by the Hon. Angus Redford—he talked about awards. Simply put, the difference is that awards are determinations of the commission; agreements are by agreement. That is essentially the difference. They are agreements between employee and employer, and that is the difference.

The Hon. R.D. LAWSON: I will take up the point raised by my colleague, the Hon. Angus Redford. The minister was unable to advise the committee of any body of employers who supported this particular extension. Indeed, the contrary

is the case. All of those employer bodies that made submissions to the government opposed it. A typical comment came from the wine industry which said that there was no support within that industry—which is a major South Australian industry and one of the great developing industries of our state—for enterprise agreements that can be made other than with one employer.

The issue is pattern bargaining. Multi-enterprise agreements enable unions to use the collective power that they have to force enterprises, one after the other, to adopt exactly the same form of enterprise agreement. One employer is taken on and, because all the enterprise agreements are coming up at the same time in many industries, as they do, they force, by a ratchet effect, to get every enterprise to agree to the standard that might apply to some parts of the industry. They can force them, as has been shown in the Victorian building industry, where the pattern bargaining by building unions was highly successful in ensuring that every enterprise had to pay what one enterprise chose at the very beginning as a generous concession for industrial peace. Another enterprise which could not afford to pay the same conditions was forced by industrial and commercial pressure to apply the same. So, you do not have individual enterprise agreements fashioned to meet the requirements of a particular enterprise; you have one standard applying across the board; and we are opposed to it.

The Hon. NICK XENOPHON: Given that this has been raised, my understanding of the Victorian building unions is that there was a federal royal commission into their conduct and tactics because they were illegal. The outcome that the honourable member refers to was not as a result of multi-enterprise agreements but as a result of illegal conduct on the part—

Members interjecting:

The Hon. NICK XENOPHON: I guess we can have that debate on that clause as to whether it goes that far.

The Hon. R.K. SNEATH: I want to give a couple of examples of when I was with the union.

The Hon. R.D. Lucas: That was in the olden days.

The Hon. R.K. SNEATH: They might have been the olden days, but at the time these people wanted to have agreements the same as the others. For example, there are a huge number of country councils all over South Australia, and I did enterprise agreements at most of them. I remember some of the councils coming in and saying, 'This is what we want, the same as Loxton', or, 'We want the same as Cleve.' They had a copy of the agreement that had been done with the council next to them and they wanted the same.

An honourable member: Not a bad thing.

The Hon. R.K. SNEATH: Not a bad thing, no. But each council had to do an individual one, had to go through the time it took to do it, and had to bring the workers in on numerous occasions to vote on various clauses in the agreement. If six councils on the West Coast had said that they all wanted the same agreement, they could have got the LGA to negotiate that with whoever was representing the workers—whether it was the union, the Employee Ombudsman or whoever—and got the same agreement across the board, rather than wanting the same as the council next door but still having to do an individual agreement.

The Hon. T.G. CAMERON: Once again we have the arguments being outlined by the Hon. Robert Lawson. I believe that the example he gave in Victoria was correct: there was an attempt at pattern bargaining, and some pretty rough tactics were used to try to enforce that. I guess that is one end of the spectrum. The other end of the spectrum is the ability of employers to be able to join together to form a multi-enterprise agreement.

I think you have to weigh up the balance here. I accept that there may be some attempt to try to introduce pattern bargaining, and I do not have any doubt that some unions will try to use it, but that has to be balanced against some of the advantages that can flow out of a system of multi-bargaining. We have, for example, the franchise system with Pizza Hut, McDonalds, Kentucky Fried Chicken, etc. I understand that they are all required to do an enterprise agreement—as any franchisee in such a situation would be required to do—and I also understand that each one of those agreements is identical.

It would be interesting to hear from the Hon. Bob Sneath. I would have thought that, in most of the councils he is referring to, the industrial officer would slap an old agreement on the photocopier, copy it, and go all the way up to the council and go through it, and we would all be pleasantly surprised to find that that is exactly what the members want and that is what the employing council wants, too. Whilst there is some merit in the argument that this has the potential for abuse under a concept of pattern bargaining, I am not sure that that is what we would see here in South Australia: we have a pretty good industrial relations record.

By creating a situation where employers can band together to form one agreement for each of their little franchised operations (or what have you) that may use identical work procedures—under any semblance of work values, the work is identical—if one were to look at any of the criteria that the commission operates under, any commissioner will grant the same conditions. In fact, if you trotted up to the commission with half a dozen different enterprise agreements from McDonalds and there was any deviation in the wording of the enterprise agreement, in my opinion that would be more likely to incur the wrath of the commissioner than the obverse.

I have no doubt that if pattern bargaining did emerge here as a problem—and I do not expect that it would—it would be quickly jumped on, as it was elsewhere. In the interim I cannot see any reason why employers who run identical or like businesses cannot make life easier for everyone involved—the unions, the associations, the employees and themselves—by banding together to form an enterprise agreement. In fact, one could mount an argument that, by banding together as employers and seeking to negotiate with their collective strength, they will not be picked off and their bargaining positioning may well be maximised.

The Hon. G.E. GAGO: Further to the comments of the Hon. Terry Cameron and the Hon. Bob Sneath on the advantages in this type of pattern bargaining, I would like to very briefly mention my own experience. In the aged care sector, where there are 100-odd nursing homes, and also in the private hospital sector, where there are 50 or 60-odd private hospitals, the businesses are almost identical, and the work practices are virtually identical as well. Similarly, groups of employers coming together to draft a similar enterprise agreement can be in the interests of everyone, particularly at a time when there is a labour shortage—as there is at the moment in the nursing profession.

Instead of this scramble to try to attract nurses and potentially create instability in workplaces because of problems attracting an adequate number of the labour force, by grouping together and offering similar conditions it provides a level playing field that makes it easier for employers to

divide up and access the labour force available to them. It eliminates this mad scramble and one-upmanship here and there. It also can be in the interests of employees in terms of its providing equity across industries, with the same pay and conditions for the same work being done. That provides a certain sense of fairness and a greater sense of well-being among employers. I do not see this as necessarily being a disadvantage to employees or employers.

The Hon. A.J. REDFORD: I will not prolong the committee. In response to the Hon. Nick Xenophon's comment about the royal commission, this style of pattern bargaining has happened since the royal commission and does not pre-date it.

The Hon. Nick Xenophon interjecting:

The Hon. A.J. REDFORD: The building and car industries. We have seen it happen in relation to a campaign run by the Metal Workers Union in Victoria, which then sought to extend what had been gouged out of Ford in Victoria into South Australia. At one stage it put Mitsubishi at great risk, but there are a number of facts there that I would rather not be forced to put on the public record because of the precarious state Mitsubishi is in. Further, we have to be mindful, in terms of dealing with all this legislation, that our federal colleagues simply want a unitary federal system and we have to be cautious about what we do here.

The Hon. Nick Xenophon interjecting:

The Hon. A.J. REDFORD: I do, but if the states act unreasonably you will encourage the federal government, armed with a compliance centre, to undermine anything we might seek to achieve. We need to be cautious about what measures we take and cautious in the context of only taking steps if we can at least secure some business support. As the minister has said, there is nothing in terms of business support. I have made that point before and I am sorry if I have repeated myself.

The Hon. P. HOLLOWAY: With regard to the point about no business support, it is clear tactically that business organisations have made a decision, which is their right, in relation to this bill as a whole, but clearly there are parts of the bill which would have business support, for example, provisions about enterprise agreements and extending them from two to three years. I am sure that all businesses would support that, but clearly they have taken a tactical position and the Hon. Angus Redford's comments need to be put into perspective in relation to the attitude taken by business.

The Hon. A.J. REDFORD: If I understand the minister correctly, his perception of what business has done here is that it basically opposes the bill, but there are lot of little things in the bill they really love but they are not game to tell us. I find that proposition from the minister patently absurd.

The committee divided on the amendment:

AYES (8)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J.	Ridgway, D. W.
Stefani, J. F.	Stephens, T. J.

NOES (11)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Xenophon, N.
Zollo, C.	

PAIR

Schaefer, C. V.	Roberts, T. G.

Majority of 3 for the noes.

Amendment thus negatived.

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

Page 7, lines 5 to 29—Delete subclauses (7), (8) and (9)

This amendment seeks to delete three changes to the definition of industrial matter. The definition is an extensive one and appears in section 4(1) of the act, as follows:

> Industrial matter means a matter affecting the rights, privileges or duties of employers or employees—

and I emphasise the plural there—

> (including prospective employers or employees), or the work to be done in employment, including, for example—

and then there are listed a series of issues from (a) to (n) including wages, allowances, hours of employment, and questions as to what is right and fair, etc.

The definitional changes which are moved by the government's amendment are these. No longer will it simply be a matter affecting rights, etc. It will also be matters affecting or relating to. So, by inclusion of those words 'or relating to', the concept of industrial matters is expanded. Moreover, not only is the concept expanded by the addition of those words 'or relating to', it is also expanded by changing the plural 'employers or employees' to include 'rights or privileges or duties of an employer or an employee', and that is a subtle but significant change in the concept of industrial matters.

Likewise, by the government's bill the definition is changed in relation to apprentices. The current paragraph (d) of the definition of industrial matter relates to the relationship of employer and apprentice. They are the words, 'the relationship of employer and apprentice'. Now that definition is changed to include 'the relationship between an employer', that is one employer, 'and an apprentice', and any matter arising out of that. So there is this subtle change from what is now the collective to the singular, and it means that the legislation will now allow individuals to notify an industrial dispute with no need for any collective element at all. For example, an employee could feel that they had been harassed by a co-worker, that they had been given inappropriate duties, allocated a car park they did not like, or had an office provided for them which is something they did not particularly like. That employee could then take that grievance to the industrial commission on an individual basis.

This challenges the fabric of the existing system, where there are checks and balances between the pursuit of individual rights on the one hand and the collective rights on the other. In general terms, under the existing system—which is the correct system, we believe—the only individual rights able to be pursued are those specifically given statutory standing, for example, unfair dismissals, underpayment of wages and other claims about breach of industrial award or agreement. This change is opposed by the industry groups. It is something that has not been sought by any of them, and we would submit that no case has been made for the erosion of these checks and balances and this significant expansion of the definition of industrial matter. The second part of my amendment seeks to delete a new definition of 'outworkers' in relation to industrial matters, but I will confine my remarks initially just to that question of the expansion of the definition of industrial matters.

The Hon. P. HOLLOWAY: I indicate that the government obviously opposes this amendment. The government believes the clause in the bill has several important purposes. The first one is to enable the commission to address matters in awards to deal with the chain of contracts for outworkers,

and this is much like the recovery provisions later in the bill, which provisions we will discuss later. We believe that is important. The other purpose of the clause which the opposition is seeking to delete is to allow the commission to appropriately receive referrals from the Training Grievance Tribunal. That is why the clause is there, and we oppose the objectives that oppose the amendment.

The Hon. NICK XENOPHON: I will not support the amendments. My understanding of what is proposed by the government is that it does expand the definition of industrial matter. In relation to apprentices, I know there has been some controversy about the rights of apprentices in the context of the relationship between employer and apprentice. I would have thought that this would clarify that and give sufficient jurisdiction in cases where, as I understand it, there was a question mark as to whether the commission could intervene or have jurisdiction where there was a genuine dispute between the employer and the apprentice.

The Hon. R.D. LAWSON: I should have mentioned to the committee in my opening remarks that the particular significance of the definition of 'industrial matters' is that section 7 of the act gives the Industrial Relations Commission the jurisdiction to regulate industrial matters, and the jurisdiction of the commission is confined to industrial matters. Widening the definition in the manner posited to extend it to include the capacity to intervene and rule upon individual disputes between individual employers and individual workers is a considerable extension. I acknowledge, of course, that individuals do have particular rights, which are protected under the existing law—rights in relation to unfair dismissal, underpayment of wages and the enforcement of particular award conditions that might apply to them—but the capacity of an individual to create an industrial matter which invokes the jurisdiction of the Industrial Commission is a considerable extension, we would submit. It also gives rise to the capacity for further disputation and argument in the Industrial Relations Commission. It will create more disputation, and it is uncalled for. So, our opposition to subclauses (7) and (8) of this clause are based upon that proposition.

We have a different objection to subclause (9), which will insert in the definition of 'industrial matter' the following:

> any matter affecting or relating to the performance of work by outworkers, including—
>
> (i) the giving out of work which is to be performed (or is reasonably likely to be performed), directly or indirectly, by an outworker;
>
> (ii) the regulation of any person who gives out work which is to be performed (or is reasonably likely to be performed), directly or indirectly, by an outworker;
>
> (iii) the creation of 1 or more contracts (including a series of contracts) dealing with the performance of work by outworkers;
>
> (iv) the terms or conditions under which work is performed by outworkers;
>
> (v) the protection of outworkers in any other respect;

This is a considerable expansion of the jurisdiction of the Industrial Commission, and it is one that is not warranted. I remind the committee that there is already a definition of outworkers and provisions relating to outworkers in section 5 of the existing act; it is unnecessary to expand the jurisdiction of the Industrial Commission in the way in which this expanded definition seeks.

The Hon. R.K. SNEATH: I am sure that the Hon. Terry Cameron in his time as an industrial advocate would agree that some of the worst cases one would see concerned the treatment of individuals in some of the larger work forces, and I know they did not all relate to underpayment of wages or dismissals. This provision is paramount for the outworkers, particularly to protect apprentices. Apprentices have some of the worst treatment in workplaces you would ever see, where young apprentices cannot defend themselves. We read in the *Sunday Mail* not long ago about the increase in bullying in the workplace. This gives these people some protection as well, so it is a very important part of the bill.

The Hon. A.J. REDFORD: I have a question to the minister in relation to how this might work. If I understand the extension of the definition, this would expand the rights of individual workers to take complaints to the Industrial Commission in a very broad sense. So, an individual worker who might have a complaint of any description—it might even be a common law claim—could take that to the Industrial Commission or, indeed, to the Industrial Court, because it would relate to rights, privileges or duties. 'Rights' is a pretty broad term: it might include compensation. So, potentially, it would establish an alternative forum to our established courts. I might be wrong, but that is the way I read the explanation by the Hon. Robert Lawson. If that is the case, that may well be what the government intends but, if it is not, I will be interested to hear why that is not the case. That is the first part.

The second part is this: one might assume that a union might say, 'Let's not send your personal injuries matter to a legal practice. Let's slip this into the commission and see whether we can sort it out in the commission between co-workers, and that way we do not have to go to lawyers.'

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: The Hon. Bob Sneath is smiling: he has thought of another reason why this should be supported. I will be interested in the minister's response to that. I must say I have not thought through the issues carefully: it only just occurred to me.

The Hon. P. HOLLOWAY: The honourable member needs to read the provision in conjunction with clause 71 of the bill, which is an amendment of section 194, Applications to the Commission, which applies some restrictions in relation to access to the commission, namely, they have to establish that the claim arises out of a genuine industrial grievance and there is no other impartial grievance resolution process that is or has been reasonably available to the person.

The Hon. A.J. REDFORD: I am not sure that that entirely answers the question. The minister is referring to clause 71 of the bill which seeks to amend section 194 of the act. Again, I am speaking from ignorance and I have not looked at any of the common law or any of the decisions made by the commission or the court as to what is an industrial grievance. I assume that has been the subject of some decisions made by some of the industrial forums. If one looks at the common and plain meaning of 'grievance', it is a complaint. As long as it is genuine, it comes within (a), and (b) talks about if there is no other impartial process that is reasonably available. Why should you have to go to the District Court or Supreme Court and expose yourself to all those lawyers? I see the Hon. Bob Sneath again nodding in agreement at the prospect of that.

The Hon. Nick Xenophon interjecting:

The Hon. A.J. REDFORD: An industrial matter. That is the point. Disputes between individuals are generally for the mainstream courts. The Industrial Commission and the Industrial Court deal with disputes only in a collective fashion—that is, between groups of employees and an employer—with a couple of exceptions, one being unfair

dismissal and another being underpayment of wages. In respect of anything else, you have to go to the mainstream courts, and you have to go to a law firm or engage a lawyer. In the Industrial Commission, you do not have to engage a lawyer; you can get an industrial advocate. I am sure the Hon. Bob Sneath will tell me if I am wrong in making that assertion. That will enable workers to say, 'I am not going to go to a court if I can bring it within the broad definition of an industrial matter. I will go to the Industrial Commission.' That will set up a competitive jurisdiction within the system. I might be wrong, but that is how I see it based on my reading of the bill. I will be interested to hear if the minister has an answer to that.

The Hon. P. HOLLOWAY: This proposal simply seeks to allow individuals to have access to the appropriate dispute resolution bodies. It seems to be rather extraordinary that the Liberal Party is saying that individuals should not have access to the system and you can do it only if you are part of a collective organisation, that is, a union. So, the point here is that if the bill is passed in its present form it will enable individuals to have access to it, as was pointed out in debate in the other place by, I think, Dr Such. Perhaps he is the only true Liberal left.

The Hon. R.D. LAWSON: This clause will make it easier for the unions to do their work rather than going out and recruiting members. If they are recruiting members and making applications on behalf of members in workplaces, that is the traditional function of unions. They simply do not want to go out and secure membership and actually take up the cudgels. They are now happy to have individuals prosecuting these claims through the industrial courts. We are all in favour of individual rights, but we do not believe that our industrial relations system and the Industrial Commission is the appropriate place to air grievances of this kind.

This amendment to section 194 to which the minister refers is really a sop, because it provides that a natural person may bring an application as of right in relation to these matters but must establish to the satisfaction of the commission that there is a genuine industrial grievance, whatever that means, rather than just some personal claim. A genuine industrial grievance would best be taken up by an association representing those in the workplace. The idea of an individual having to go along to the commission and then having to satisfy the tribunal that they are raising a genuine industrial grievance raises an unnecessary complication. We are opposed to the extension of this jurisdiction. We do not believe the government has demonstrated any specific need for the extension.

The Hon. R.K. SNEATH: I just wondered what the Hon. Mr Lawson's opinion is on how an outworker on $8 to $10 an hour, or an apprentice (sometimes on less), affords a lawyer when he is not prepared to give them access to the Industrial Relations Commission.

The Hon. R.D. LAWSON: I would have thought that is the best selling point that the unions could have for—

The Hon. R.K. Sneath: Don't worry about the unions. Think about the apprentice.

The ACTING CHAIRMAN (The Hon. J.S.L. Dawkins): Order!

The Hon. R.D. LAWSON: Think about the union that ought be out there signing up the apprentice or the outworker to say, 'You'd be better off if you were to join us. We have services. We can provide support. We will supply you with advocates and lawyers to make this case, if it is an industrial case.' You would expect the unions to be doing this; however, the unions do not want to actually go out and get their fingers dirty signing up members. That is why they are losing members.

The Hon. R.K. SNEATH: How many outworkers are there in the union and how many apprentices? How many apprentices and outworkers will be attracted if the so-called scare tactics that you talk about are employed where unions run around to them all and say, 'Sign up with us.' It is just a scare tactic. I have asked a question that the honourable member has not answered. How do apprentices and outworkers on $10 or less an hour afford lawyers when you do not allow them access to the Industrial Relations Commission? How do they?

The Hon. R.D. LAWSON: This is yet another one of the clauses in this bill the only purpose of which is to ensure that the work that unions ought be undertaking—namely, signing up members—can be avoided.

The Hon. R.K. Sneath interjecting:

The ACTING CHAIRMAN: Order! I am having a great deal of difficulty hearing the honourable member. There are too many conversations.

The Hon. R.K. Sneath interjecting:

The ACTING CHAIRMAN: Members on my right will get the opportunity to get on their feet and reply. The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: One would have thought that the unions would have sufficient flexibility to fashion particular memberships that are attractive to apprentices and outworkers. You do not have to charge the same membership fee to all your members. If you are offering them services and benefits, they would be joining your unions in droves, not running in the other direction.

The Hon. P. HOLLOWAY: The mind boggles at the idea! Can you imagine a lady who is sewing, does not speak any English and is tucked away in suburbia somewhere? She does not speak a word of English and—

The Hon. Carmel Zollo interjecting:

The Hon. P. HOLLOWAY: Yes; she sews for a few dollars an hour.

The Hon. R.D. Lawson: You've given up on them, have you?

The Hon. P. HOLLOWAY: On the contrary; this clause is about deciding whether or not we are serious about looking after outworkers and apprentices. That is what this issue is all about; we either care about it or we do not. I think that is essentially the issue here. The other point is that there is a principle here that everyone deserves access to an independent dispute resolution, not just those who are members of the unions. It is really a rather strange debate we are having here; the Liberal Party is really saying that non-unionists do not deserve protection. We think they do. We think all Australian workers deserve protection against exploitation, and that is really the guts of this issue.

The Hon. A.J. REDFORD: If I can assure the honourable leader, we believe that non-unionists need protection. From what we have observed over the past 20 years, most of that protection they have needed is from unions themselves. However, we endorse that those people deserve to be treated with respect. They certainly do not, without reflecting on a previous vote, deserve to be hit with unreasonable bills for things such as bargaining fees. That is why we worked so hard to protect these people earlier in the debate, notwithstanding that we did not prevail.

The Hon. G.E. Gago: Here's your opportunity.

The Hon. A.J. REDFORD: No; we did not prevail. We tried to protect the non-unionists. I have not heard anything—

The Hon. G.E. Gago interjecting:

The ACTING CHAIRMAN: Order! The honourable Mr Redford has the call.

The Hon. A.J. REDFORD: I have not heard anything that would prevent a situation where, say, non-lawyers could use the industrial commission to advance matters which have formerly been advanced through the courts where only the legal profession is entitled to appear other than people in person. If I am incorrect in that assertion, I would be delighted if the government could correct me. On that basis, I can only assume that that is the case.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: No; I am asking the question in quite a genuine way. Can non-lawyers use the industrial commission in the guise of industrial representatives to take matters to the industrial commission which otherwise would have gone to courts and otherwise would have either had to have been taken to courts in person or through members of the legal profession?

The Hon. P. HOLLOWAY: At the moment there are a number of avenues and jurisdictions that might be available in relation to particular matters; for example, a manager might go to the industrial commission or to the Equal Opportunity Commission. Either of those commissions might determine the particular issue. One could think of the sort of issues where you might use either of those jurisdictions, so the point is that it is not an unusual situation where there are multiple jurisdictions available for resolution of certain matters.

The Hon. A.J. REDFORD: Has the Law Society been consulted about this in any way, shape or form? Has this been brought to its attention?

The Hon. P. HOLLOWAY: My advice is that the Law Society has been advised about the whole bill. It has certainly been very widely circulated, as I am sure every member in here would know.

The Hon. NICK XENOPHON: I have a question in relation to subclause (9), with respect to the matters affecting or relating to the performance of work by outworkers. I note that subparagraph (iv) refers to the terms or conditions under which work is performed by outworkers, and subparagraph (v) refers to the protection of outworkers in any other respect. Could the minister explain what work it is proposed clause 5 will do in terms of 'the protection of outworkers in any other respect'? Maybe I am missing something here, but I would have thought that subparagraph (iv) covered that. What additional matters would subparagraph (v) deal with?

The Hon. P. HOLLOWAY: My advice is that the clause 'protection of outworkers in any other respect' allows the commission discretion to deal with matters other than those set out in subparagraphs (i) to (v), where they are convinced that it is appropriate to protect outworkers. In other words, subparagraphs (i) to (iv) provide specific instances where the commission might deal with it. Clause 5 simply allows the commission discretion, should there be some other matter that falls outside those specific cases.

The Hon. NICK XENOPHON: Where it states 'the protection' in relation to subparagraph (v), how does that differ from other provisions of the legislation, or what is proposed to be amended in terms of the jurisdiction of the commission? In other words, is the protection clause something that the government says would apply in general terms to other categories or to workers generally? Or, is this a specific provision for outworkers and, if so, why is the government going down that path if that is occurring?

The Hon. P. HOLLOWAY: My advice is that the awards may only be about industrial matters but, when dealing with outworkers, there may be other issues. There are other provisions in the bill, but they do not deal with awards like this one does. In other words, this whole provision specifically relates to awards.

The Hon. NICK XENOPHON: The concept of the protection of outworkers is almost a motherhood statement. I am trying to ascertain whether subparagraph (iv), the terms and conditions clause, necessarily covers that. From a jurisdictional point of view and from the implications, I am trying to work out what it will mean having this extra subparagraph in there which refers to the protection of outworkers. It is a laudable concept, but how does that fit into the whole scheme of things in terms of other workers in the context of the statutory scheme, and what is being proposed by the government? I am trying to ascertain that. It is not being in any way mischievous; I am just trying to work out what it actually means, and what the implications will be for that. I am supportive of outworkers being given additional rights and remedies, but I am just trying to understand what the 'protection of outworkers in any other respect' actually means.

The Hon. P. HOLLOWAY: It enables the commission to deal with it. If it were made aware of some gross abuse, for example, it would empower the commission to deal with that particular matter. It is simply a—

The Hon. Nick Xenophon: Why would that be covered under 'terms and conditions'?

The Hon. P. HOLLOWAY: It may well relate to the chain of contracts. That is why it might bring it in. I suppose it is there as a safety net.

The Hon. A.J. REDFORD: In relation to outworkers, I know that my colleague the Hon. Michelle Lensink and, I suspect, the Hon. Nick Xenophon have been visited by certain women who have been involved in the outworking industry, and in that respect I refer to Ada Garcia who is a leader within the Filipino community. We have substantial numbers of Filipino women who have been involved as outworkers in the outworking industry, so to speak. Certainly, I have met them, although not in the formal sense that I suspect the Hon. Michelle Lensink and the Hon. Nick Xenophon have, but more in a social context, observing from some distance.

They raise the dilemma about employment and access to employment that migrant women have when they come to this country. It is a dilemma about which we have to be very careful when we consider how we legislate for them. I think that the hardest thing that would confront migrant women when they come from overseas is the capacity to get a job of any description. I know from my own personal experience that it is not easy and, even if you are well connected, it is not all that easy. I also know that, whilst we are not a racist society, and as we endeavour to get rid of our prejudices, it is much harder for those people to get a job than it is for Anglo-Saxon people who have been through school.

The outworking industry, or the industry supported by outworkers, I think, provides something quite valuable to our community, and that is what we would call a gateway into the realm of employment. I will give members an example: in my church there would be 10 or 11 Filipino women, or other women of Asian background who are not that well educated, who have sought employment.

Indeed, if I go back two or three years, the only employment they could secure was in the outworking industry. If you look at it from the outside, from my Anglo-Saxon perspective, you would say that these women were being underpaid, that it was not fair and that they were being exploited—some of them were being paid only $5, $6 or $7 an hour, which is a pittance—but in those three or four years those women have done two things. They have formed great friendships—almost tribal in terms of the way they have dealt with each other—but they have also managed to move on to other forms employment.

I can give as an example women who were involved in my church (which I will not name, for obvious reasons). All started in outworking—I think they were all making clothes on sewing machines for absolutely no money—but they would all get together and it created a social support group. Every single one of those women is now working in a factory and are on about $450 or $550 a week, which is big money compared to what they were earning. I think it gave them a discipline and a network that helped them move up through the system. Whatever we do in terms of this legislation we need to be very careful that we do not destroy the industries that give these women the opportunity to enter into the workplace in some way, shape or form. In some ways, I suppose this is a hybrid argument in relation to a youth wage. There was an argument in the 1980s and 1990s that there ought to be a youth wage so that our young people could get a job and at least enter into the work force.

In terms of this legislation, while some people will get their names in the paper and make themselves out to be great heroes for saving outworkers from being exploited by heinous employers, I am a little concerned about what the end result will be if these industries disappear. What will these women do to enter into the work force then? I do not hear any alternatives. It is all right for the Hon. Gail Gago, with her Anglo-Saxon education and background, to sit there and mutter under her breath, but at the end of the day these women find it extremely hard.

I urge members to be cautious about how we approach this whole issue of outworkers. I have misgivings about the way the clause is expressed and that is why I will be voting with the Hon. Robert Lawson.

The Hon. J. GAZZOLA: I would imagine (and I am sure the minister will correct me if I am wrong) that there may be examples where outworkers might be on a contract with a particular person to provide 20 widgets; however, the contractor may come along and say, 'Because you do not have the specific equipment or brand of equipment to produce these widgets we are going to give your allocation of work to another outworker, because they have.' Or someone may be peddling those sorts of products to an outworker and say, 'You can have the job provided you buy this type of equipment.' You can also imagine examples such as, 'Well, you might be able to get more work if you came out to the pub with me on Saturday night, and we see what happens.' Those things are not covered by terms and conditions of employment, but this type of clause may assist those outworkers in getting fair contracts of work.

The Hon. P. HOLLOWAY: To respond to the point made by the Hon. Angus Redford: these proposals do not prevent outworking, they provide access to a safety net for outworkers. Speaking with my other hat on, as Minister for Industry and Trade, I would have thought that cheap imports from China and the reduction in tariffs would probably be far more significant in relation to work in the traditional outworking areas such as textiles and so on. It is hard enough as it is keeping jobs in the factories because of those changes and because of cheap imports but, obviously, we could argue that the more we get those imports and the more we get that economic pressure the more pressure there will be to exploit our workers. I think that in itself is something we need to consider. They are just the broad economic factors at work here.

The Hon. Mr Redford seemed to be making the argument that, for their own good, it is okay to exploit outworkers because in the long run it is for their own good, but I am not sure that that argument really cuts too much ice with most people. We are not about preventing outworking—

Members interjecting:

The ACTING CHAIRMAN: Order! I cannot hear the minister.

The Hon. P. HOLLOWAY: I think it needs to be put in perspective. The particular clause we are dealing with (and I know there are other clauses in the bill which relate to different aspects of outworking) simply provides access to a safety net for outworkers.

The Hon. R.D. LAWSON: I was disturbed to hear the response of the minister to the question posed by the Hon. Nick Xenophon concerning the intended operation of subclause (4) of the definition of outworker, relating to the terms and conditions under which they are performed and the protection of outworkers in any other respect. The minister, when asked what sort of issues the government had in mind which would be covered by that, said things such as the chain of responsibility.

That is a disturbing concession. The chain of responsibility is not necessarily something that arises out of the particular contract of employment between the outworker and the outworker's employer. Chain of responsibility is a commercial term talking about the commercial arrangements—not the contractual arrangements—which exist between the outworker and the employer. Traditionally, the Industrial Relations Commission has jurisdiction over the contract of employment and the terms and conditions of employment: it does not supervise the commercial arrangements which exist for businesses. So, it is deeply concerning to find the minister making that concession, which I think actually gives the committee a true insight into the intention of this amendment.

It is not simply to provide relief to outworkers in connection with their terms and conditions of employment but to give to the Industrial Relations Commission a jurisdiction that it does not have. Once again this is the sheep in wolves' clothing, an amendment that has been dressed up and argued out on a certain basis, but then we get the minister actually letting the cat out of the bag as to what is the government's true intention in this regard.

The Hon. P. HOLLOWAY: If one looks at subclause (9), subparagraphs (ii) and (iii) really outline the government's purpose in this bill. It gives the Industrial Commission jurisdiction over matters that relate to the following:

> (ii) the regulation of any person who gives outwork, which is to be performed or is reasonably likely to be performed directly or indirectly by an outworker;
>
> (iii) the creation of one or more contracts, including a series of contracts dealing with the performance of work by outworkers.

Either you agree that outworkers should have access to the commission or you do not. Again it comes back to that simple point. We must be getting near the point where we should have a vote on it.

The Hon. T.G. CAMERON: I cannot agree with the Hon. Robert Lawson when he talks about a sheep in wolves' clothing. The best contribution I have heard on this debate so far came from the Hon. Angus Redford, who talks with some experience at a firsthand level of the difficulties of a migrant wife securing employment here in South Australia. I, too, am in a similar position and would endorse—

The Hon. R.K. Sneath interjecting:

The Hon. T.G. CAMERON: If you can say something helpful, Bob, then say it, otherwise why don't you just shut up?

The CHAIRMAN: Order! The Hon. Terry Cameron knows he cannot say that.

The Hon. T.G. CAMERON: I was saying that the Hon. Angus Redford's concern is not so much for the legal aspects of this resolution—we can leave it to the Hon. Robert Lawson to drive us into the ground with legal arguments. A point that the Hon. Angus Redford is making is that, sure, we have all heard of or know firsthand of cases of exploitation. It is happening in the garment and textile industries, but a lot of that employment involves a particular nationality—the Vietnamese, Filipinos, and a now a lot of Chinese women are doing it. You hear horrible stories of how much they are paid. Nobody would support people earning $2, $3, $4 or $5 an hour.

The decision we need to take on this touches upon what the Hon. Angus Redford talked about. I intend to support the government's position in relation to this bill. However, I do so with the full knowledge that once this bill is enacted working arrangements will change within the garment and textile outworking industry. As certain as the sun will come up tomorrow, the passage of this legislation will put hundreds of outworkers out of work. It is as simple as that. It is with a heavy heart that I vote for the legislation, knowing that I am voting to put people out of work.

One might be able to rationalise that decision away on the basis that they are only low paid workers anyway and that people should not be working for that kind of money. I have spent a lot of time in countries where people earn as little as $US1 a day. They are not outworkers but work in factories. I have seen up to 8 000 of them under the one roof earning $1 a day on sewing machines. They are not outworkers but are employed more often than not by the Chinese government or a subsidiary company. We all know that we cannot compete.

I was a little disappointed in the Hon. Paul Holloway. I did not pick up in any way whatsoever the line he attributed to the Hon. Angus Redford. I think he knows where he is coming from. I think I know where he is coming from and I will say it more bluntly than he did. The passage of this bill will deny the right and opportunity for hundreds of South Australian women, principally—95 per cent plus—migrants, who will find it very difficult, if not damn-well impossible, to obtain any other work, let alone other work at similar rates of pay, even if they are earning only $5, $6 or $7 an hour.

I hope the Hon. Paul Holloway does not attribute to me, in supporting the bill, that I am supporting people earning these horrible rates of pay. This is a very difficult decision, and I know enough about industrial law and how it will work out there in the real and practical world. I intend to support the government's position, but I do so knowing that over the next few months It mean the firing of a few hundred South Australian migrant women who are doing the only work they can get.

The committee divided on the amendment:

AYES (9)

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

NOES (10)

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

PAIR

Lensink, J. M. A.	Roberts, T. G.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. IAN GILFILLAN: I move:

Page 7, after line 36—Insert:

(ca) the Employee Ombudsman; and

The effect of this is that the peak entity could embrace the Employee Ombudsman. Paragraph (d) states:

any other body brought within the ambit of this definition by the regulations;

That indicates that the government has foreseen that other entities could be identified as a peak entity and, having been identified as a peak entity, would have the same significance as those listed, namely, the minister, what is now SA Unions, South Australian Employers Chamber—that wording is probably a bit out of date, too—or Business SA, and, if my amendment is successful, the Employee Ombudsman.

I think that those members who have had any dealings with the Employee Ombudsman would be fully appreciative of not only the role in this circumstance he fulfils but the potential for the position to be significant in the role of a peak entity, and I would expect that the opposition would have no difficulty including the Employee Ombudsman in this category. Opposition members have shown that they have great sympathy for the position of the Employee Ombudsman, and it is an area where industrial relations take place without the direct hands-on of SA Unions. So I am expecting vigorous support from the opposition for this amendment—not just token support—and I am prepared to be surprised to hear that the government sees the good sense of this amendment and that it will have unanimous support.

The Hon. P. HOLLOWAY: The government will support the amendment. We certainly do not see any problems in relation to it, so we are happy to support it.

The Hon. R.D. LAWSON: I indicate, too, that the Liberal opposition will support the inclusion of the Employee Ombudsman just as vigorously as the government; in fact, more vigorously than the government. We have a great deal of confidence and faith in the Employee Ombudsman and it is appropriate that he has that role with the other bodies nominated.

Amendment carried.

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

Page 8, line 5—Delete 'other than any part of such premises where an outworker works'

There is a new definition of 'workplace' inserted into this act, and it provides:

workplace means any place where an employee works and includes any place where such a person goes while at work but does not include any premises of an employer used for habitation by the employer and his or her household other than any part of such premises where an outworker works.

This amendment seeks to delete from the tail of that definition 'other than any part of such premises where an outworker works'. We believe that the definition ought finish with the exclusion of any place of habitation of the employer. In other words (and I apologise for reading it again, but it is important), we support a definition which provides:

> workplace means any place where an employee works and includes any place where such a person goes while at work but does not include any premises of an employer used for habitation by the employer and his or her household.

We believe the definition should stop there. The inclusion of the additional words 'other than any part of such premises where an outworker works' creates a complication and tends to undermine the important reinforcement of the fact that a workplace does not include the place of habitation of an employer or his household.

The Hon. P. HOLLOWAY: The government opposes this amendment. We included this definition because, like the previous debate we had, this is clearly all about outworkers. As the name suggests, outworkers are working outside the normal factories and, clearly, in dealing with this issue of outworkers, one would consider that an outworker should be able to access assistance in their workplace. That is why we believe the definition of 'outworker' as it stands in the bill is important, because it enables that assistance to be granted. Without that, as provided in the Hon. Rob Lawson's amendment, clearly that is weakened; that access to assistance could not be provided.

The Hon. NICK XENOPHON: I do not support the amendment, because I would have thought that, by definition, those parts of the premises where an outworker is working are not the parts that are being used for habitation by the employer and his or her household. So, if we are talking about situations where there are a number of outworkers in a portion of the premises, such as in a back shed (the worst of the worst cases the government may be concerned about), I would have thought it was reasonable for 'workplace' to include that as a definition. However, I ask the government how it sees the clause working from an interpretation point of view. If the outworkers are actually there, does that mean that it is a workplace or, if they are not present, does it mean it is not a workplace?

The Hon. P. HOLLOWAY: There is no time-based definition in there; the relevant part of the clause here is 'other than any part of such premises where an outworker works'. So, if an outworker works there, our belief is that there should be access to those premises. If you take that out, it appears to me that you are effectively creating a loophole. An unscrupulous employer could create a situation where he puts it out in his shed and therefore gets around the legislation.

The Hon. A.J. REDFORD: What is an example? I do not quite understand the clause.

The Hon. P. HOLLOWAY: For example, there could be 10 sewing machines in the employer's sitting room where people come to do their outwork, so there is, if you like, a mini factory in his house.

The Hon. IAN GILFILLAN: We oppose the amendment, partly on the basis of logic. If in fact a person is working consistently in an area, whether or not in part of such premises that are referred to, it is a workplace, and therefore in that definition it is reasonable for the text to stand as spelt out in the bill. We recognise that there is an argument that right of access may vary where the workplace is in fact conjointly a habitation, where people may be conducting their private lives as well as there being work, and I have addressed this by way of an amendment further on in the schedule of amendments that I will be dealing with later. For those members who would like to refer to it, it is amendment 11 standing in my name. I indicate that we do not intend to support this amendment.

The committee divided on the amendment:

AYES (7)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

NOES (10)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Reynolds, K.	Sneath, R. K.
Xenophon, N.	Zollo, C.

PAIR(S)

Lensink, J. M. A.	Roberts, T. G.
Ridgway, D. W.	Gazzola, J.

Majority of 3 for the noes.

Amendment thus negatived.

The Hon. R.D. LAWSON: My amendment No. 13 is consequential on an earlier amendment which I moved and which was not carried. It related to enterprise agreements. I have indicated to the committee our strong opposition to enterprise agreements comprising one or more employers: however, the committee has not agreed with that and therefore I will not move this amendment.

The committee divided on the clause as amended:

AYES (10)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Reynolds, K.	Sneath, R. K.
Xenophon, N.	Zollo, C.

NOES (7)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

PAIR(S)

Roberts, T. G.	Lensink, J. M. A.
Gazzola, J.	Ridgway, D. W.

Majority of 3 for the ayes.

Clause as amended thus passed.

[Sitting suspended from 5.53 to 7.45 p.m.]

Clause 7.

The Hon. NICK XENOPHON: I move:

Page 8, lines 18 to 20—

Delete subsection (1) and substitute:

(1) An application may be made to the Court under this section for a declaratory judgement as to whether—

(a) a person is an employee; or

(b) a class of persons who perform the same kind of work and who—

(i) work at the same workplace; or

(ii) work for the same person; or

(iii) work in a particular part of an industry,

are employees.

This seeks to narrow to a degree the scope of the applications that may be made for a declaration as to employment status. The current bill makes reference to an application that can be

made to the court under this section for a declaratory judgment as to whether a person is an employee or a class of persons are employees. I am seeking to confine it so that an application can be made as to whether there can be a declaratory judgment as to, first, whether a person is an employee or whether a class of persons who perform the same kind of work are employees. That is further limited by one of the three alternative matters which must be satisfied: that they work at the same workplace, work for the same person or work in a particular part of an industry.

I have reservations about the government's proposal with respect to subsection (1). I acknowledge that the approach of the government to allow for declarations goes beyond what is currently in the scope of the act, and it seeks to expand the role of the commission and the court in terms of dealing with such matters. I have reservations with respect to simply saying that a class of persons are employees as I consider that to be too broad. My initial view was that it would simply be confined to those who work at the same workplace or work for the same person but, on reflection, there would be circumstances in some industries—and I give this by way of an example, not criticism—like the security industry, where there could be instances where the nature of who the employer is and the location of the employment in terms of those who work as security personnel for nightclubs could vary on a regular basis.

There could be fairly fluid arrangements, and specifying those who work in a particular part of an industry would cover those situations for those employers or those employers who may be not doing the right thing. I understand that there is a significant divide amongst members in relation to whether we ought to have these declarations. My view is that under subsection (2)—and I refer to it in the context of this amendment—in determining such an application, the court must apply the common law, then the threshold issue as to whether there is a contract of services or a contract for services still needs to be determined by the court. We are still adhering to common law principles. It is simply attempting to give some certainty in those circumstances where it is unclear whether a person is an employee or a contractor. Essentially, I am seeking to confine to some degree the scope in respect of to whom declarations can be made to some extent because I considered that the government's proposal was simply too wide.

The Hon. R.D. LAWSON: I indicate to the committee, as I have before, that we are opposed to the extension of the jurisdiction of the workplace relations court to grant declarations. The Hon. Nick Xenophon's amendment seems to make a bad provision a little less bad, but it remains a bad provision notwithstanding that. I wonder whether the honourable member could indicate what he sees as the consequences of a declaration being made under this section. He mentions as an example the security industry. He is speaking in the context of a class of persons who perform work in a particular part of an industry. Is he talking about the geographical part of an industry, or is he talking about the part where particular tasks are assigned to individuals? What exactly does he see is the work his amended clause will do?

The Hon. NICK XENOPHON: I welcome the question. In terms of the particular part of an industry, for example, the security industry—I am not seeking to pick on that industry—if you are a security officer at Adelaide Airport checking bags or passengers, that would be quite different from the work that would be required for a different part of the industry, such as nightclubs, security officers at Westfield at Marion, or for those who might be working in security with respect to the conveyance of large amounts of money from one location to another. The intention was to ensure that it would not be all-encompassing and broad but that it would be confined to a particular part of an industry. Obviously, it would be something that is subject to interpretation in due course. I would have thought that it would, at least, confine the clause and be significantly narrower than what the government is proposing now—that it be a class of employees.

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Cameron refers to—

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: I think that the Hon. Mr Cameron begs to differ, and I respect that in terms of whether it is significantly narrower. If the drafting stated 'a part of an industry', that would not be as narrow as saying 'a particular part of an industry'. Whether or not it is significantly narrower is obviously a value judgment, and I take the Hon. Mr Cameron's point. I am seeking to reduce the scope of this section but still allow for a declaration to be made, taking into account, of course, that, in subsection (2), any application must be made under the common law.

The Hon. R.D. LAWSON: I thank the member for his explanation, but I cannot see how security guards who are, for example, handling baggage at the airport and security guards who are performing other tasks could come within the first line of this definition, which is:

(b) a class of persons who perform the same kind of work.

It seems that the three categories of security guards he has mentioned are not performing 'the same kind of work.' This rather loose definition, albeit a bit better than the one the government has proposed, is still productive of demarcation disputes, debates, contention and argument. It will not provide clarity; it will provide room for dispute. How can it be said that the three classes of security guards the member referred to perform the same kind of work?

The Hon. NICK XENOPHON: Before I respond to that, by way of a technical correction, these applications are not brought under common law; they will be considered taking into account common law principles. Obviously, their application is brought before the commission or the court, and they must be considered in subsection (2), pursuant to common law principles. In terms of the honourable member's question, first, in narrowing it down, the class of persons must be considered to be those who perform the same kind of work, and there are then further restrictions in terms of narrowing it down further. In terms of the example of the airport, the nightclub and the shopping centre security guards, I think the argument would clearly be that the sort of work, demands and responsibilities in those three jobs is sufficiently different that they would be different kinds of work.

In terms of subclause (1)(b)(iii), 'work in a particular part of an industry,' that would narrow it down even further, even if it is arguably the same kind of work. Again, using a security guard as an example, if we look at those who work in nightclubs there could be an argument about whether it is a live music venue or a non-live music venue, for instance. The intention was to narrow it down so that it was not seen as industry-wide. If you do not work at the same workplace or for the same person you must work for a specific segment or particular part of an industry. The intention is to narrow it to allow scope for those who do not think that such an

application should be brought for a declaration—to give some scope, not to expand it unduly.

The Hon. P. HOLLOWAY: Obviously, it is the government's preferred position that subsection (7) should pass in its original form, but it is also obvious that it will pass only if it has the support of the majority of members in this place, so we will not be opposing the first amendment moved by the Hon. Nick Xenophon. We will deal with the others as they come, but the government is prepared to accept the first amendment, even though it is not its preferred position, if that is necessary for this clause to pass.

The Hon. IAN GILFILLAN: Our attitude is that the Xenophon amendment is really a matter of semantics. I am not convinced that this sort of refinement in the petit trois, the minor detail or frills, is going to make much difference in the interpretation of it. The commission is the body that will make the determination of employers and employees and non-employers and non-employees. If we are going to give the power to the court to make a declarative judgment, as I believe we should, that is where it rests.

On behalf of the Democrats I was quite happy to support the provision as it was in its original state, but it looks like the government is prepared to be nice to the Hon. Nick Xenophon, partly for its own purposes to get the numbers. I will be nice to the Hon. Nick Xenophon because I like him. I think he really has wrestled with this matter, and I would like him to be able to sleep easier tonight feeling that he has done something constructive. So, on that basis the Democrats will support the Hon. Nick Xenophon's amendment.

The Hon. R.D. LAWSON: I am concerned that the Hon. Nick Xenophon has suggested to the committee that this jurisdiction is based solely on common law principles. Subsection (2) provides:

> In determining an application under this section, the court must apply the common law, and the terms of the definition of *contract of employment*.

The terms of the definition of 'contract of employment' in section 4 of the act include:

> (a) a contract recognised at common law.

But it goes further; it is not only contracts recognised at common law, because it extends that notion in (b), as follows:

> a contract under which a person. . . engages another. . . to drive a vehicle that is not registered in the employee's name. . . (even though the contract would not be recognised at common law as a contract of employment).

That is one extension. Then it goes on in (c), another contract in relation to the cleaning of premises, even though, as the section says, 'the contract would not be recognised at common law as a contract of employment', or in (d) for a contract under which an outworker might be employed, 'even though the contract would not be recognised as a common law contract of employment'.

With the greatest respect to the Hon. Nick Xenophon, he is misleading the committee when he says that this innocuous amendment only enables the court to apply the common law, because the common law is actually extended in the definition of 'contract of employment'. When you look at proposed section 4A(2) to which the Hon. Mr Xenophon referred, it says:

> In determining an application. . . the court must apply the common law, and the terms of the definition.

There is an extension there and, in my view, it is quite misleading to suggest that this is limited to common law contracts. It is not.

The Hon. NICK XENOPHON: I make it clear that there was absolutely no intention on my part to mislead the committee, or anyone else, in any way with respect to this, and I am grateful to the Hon. Mr Lawson for raising that. My interpretation of it is that the common law principles must be considered together with the definition of 'contract of employment.' Obviously, it needs to be considered in that context, but my understanding is that the common law principles are a foundation in terms of considering these matters. Again, I am grateful to the Hon. Mr Lawson for setting out what he has so that there is no ambiguity in terms of what we are considering.

The Hon. T.G. CAMERON: Under the amendment the Hon. Nick Xenophon has moved, where would he see an application being made to the court to declare a taxi driver—not his vehicle—to be an employee? Under his definition, does the Hon. Nick Xenophon think an application would deem a taxi driver an employee or would he still be left as a contractor or subcontractor?

The Hon. NICK XENOPHON: My intention with this amendment is to narrow the scope of what the government has proposed but still allow for declarations as to employment status to be made. Looking at the interpretation clause in section 4(b) at page 2 of the act, under the definition of 'contract of employment', it is headed 'exception' and states:

> (b) the contract is not a contract of employment if the vehicle is a taxi and the contract would not be recognised at common law as a contract of employment.

The Hon. T.G. Cameron: It would exclude taxi drivers.

The Hon. NICK XENOPHON: My understanding is that it would exclude taxi drivers. I would like to hear the learned opinion of either Mr Lawson or the minister. It is a legitimate question the Hon. Mr Cameron has raised and I would have thought that the exception in the interpretation clause of the act would deal with the matter raised by the Hon. Mr Cameron with respect to taxi drivers, but I am open to hearing what either the government or the opposition say about the matter raised by the Hon. Mr Cameron.

The Hon. P. HOLLOWAY: Under the definition in the Industrial Employee Relations Act 1994, 'contract of employment' means:

> (b) a contract under a person, the employer, engages another, the employee, to drive a vehicle that is not registered in the employee's name to provide a public passenger service even though the contract would not be recognised at common law as a contract of employment.

My advice is that that means that taxi drivers are employees only if they are employees at common law. Unless they are employees at common law—

The Hon. T.G. Cameron: So taxi drivers are excluded.

The Hon. P. HOLLOWAY: They are employees only if they are employees at common law, yes.

The Hon. NICK XENOPHON: The Hon. Mr Cameron has asked how they would be employees at common law. I would have thought that it would be an unusual situation in the taxi industry, but if a taxi operator was silly enough to say to an employee, 'We will pay you an hourly wage for your 40 hours a week, and it does not really matter how many fares you get because you will get the same wage', I guess that would be a contract of employment at common law. However, I do not know whether there are any such contracts in South Australia.

The Hon. T.G. CAMERON: Like the Hon. Nick Xenophon, I am not aware of any taxi owners or companies that engage their drivers on that basis. Reality would deem

that taxi drivers are excluded and will not be able to be categorised as employees. I raise the question because I heard some very fine speeches earlier today about how we would look after outworkers. From what some taxi drivers tell me they earn, there are many outworkers here in South Australia who are doing very well. A lot of the taxi drivers tell me they are spending 60 or 70 hours a week and averaging $6 or $7 an hour. One would have thought that, in supporting a clause like this, it would at least pick up some of the most disadvantaged people in the state, namely, taxi drivers. I just wonder who else will be excluded.

The Hon. R.D. LAWSON: I think the Hon. Mr Cameron has hit upon one of the very great deficiencies of this provision, namely, the highly selective and random nature by which it applies. One thing about the existing legislation this parliament has identified is that certain classes of workers for particular reasons are to be regarded as employees. That is why the definition of 'contract of employment' includes in (b), (c) and (d) specific people—for example, drivers (about whom Mr Cameron is concerned), those who clean premises and those who are outworkers under the existing definition. In the existing definition there is protection for outworkers as defined.

The Hon. T.G. Cameron: Two classes of employees.

The Hon. R.D. LAWSON: Indeed. As the Hon. Terry Cameron says, there are two classes of employees. This legislation rather randomly picks up such employees (and admittedly the Hon. Mr Xenophon is trying to define it rather more carefully than the government's bill), but it is still random and uncertain in its application. These things ought to be considered on a case by case basis rather than having woolly definitions like 'a class of persons who perform the same kind of work and who work in a particular part of an industry.'

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 9, lines 1 to 6—Delete subsection (7)

This relates to deleting subsection (7) of the government's bill which currently 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 another 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.

I have indicated previously my reservations about this subsection. It appears to be quite different from anything in any other jurisdiction in Australia, and I will stand corrected on that. That is my understanding. That in itself is not a reason not to support it, but I believe that it is something that, with the greatest respect to the government, is quite ill-considered. It proposes a number of major difficulties with respect to issues of natural justice, how the rules would be applied and how a respondent would be able to prepare their case.

It is quite imprecise in that it relies on rules of court, but we do not know what those rules of court would be. As I understand the mischief that the government is intending to deal with, it is cases where a person brings an application under this section for a declaration and, as a consequence of bringing that application, that person is, effectively, victimised. They lose their position, their contract or job, depending on how it is categorised. In the context of this amendment, I should say that it is linked, because it sets out what the alternative is, because my subsequent amendment relates to the issue of discrimination.

Section 223 of the current act sets out that there is an offence of discriminating against an employee for taking part in industrial proceedings. Also, when I discussed this clause with Business SA—and I am not suggesting that Business SA is endorsing my subsequent amendment—it raised the issue of the discrimination provisions in the current act. Looking at the discrimination provisions in section 223, they do not apply to someone who is not an employee.

So if you make an application for a declaration, and the application is heard and the determination of the commission or the court is that 'No, you are not an employee but you are an independent contractor' and then your contractual arrangements are severed or you in some way are discriminated against by virtue of your bringing that application, the provisions that protect an employee for taking part in proceedings do not apply. That is why this amendment is intended to substitute this clause with very strong anti-discrimination provisions that do go somewhat further than section 223, because it applies not only for compensation and fines but it also allows for providing a general deterrence if it is proved that an offence has been committed.

I believe that deals with the mischief that to some extent the government was attempting to deal with and that it removes the enormous uncertainty and problems that relate to issues of natural justice that the current subsection proposes in its current wording.

The Hon. P. HOLLOWAY: The government opposes the amendment. The Hon. Nick Xenophon seeks to delete subsection (7). We believe that the government's proposal provides genuine protection for workers. Everyone knows prevention is better than cure. As the minister has very eloquently put it, the government's approach is like putting a fence at the top of a cliff, whereas the Hon. Nick Xenophon's approach is more like having an ambulance at the bottom. Whereas we will support the clause in its original form—in other words, we will oppose the Hon. Nick Xenophon's amendment to delete this provision—if he is successful I guess we will have to go for the ambulance at the bottom. However, our preferred position is the fence at the top.

The Hon. NICK XENOPHON: I reject what the minister is saying, with the greatest of respect, that it is better to have a fence at the top of the cliff. I support that principle, particularly on issues of gambling policy. However, the trouble is that this is a fence that people cannot see. If an application is brought, the respondent could face a position where they simply do not know what is being alleged against them, and they cannot properly prepare their case in terms of the principles of natural justice. I believe that there are significant procedural difficulties with respect to this.

There is nothing like it anywhere else in any other jurisdiction, as I understand it, and I will stand corrected by the government on that. I believe it is fraught with enormous difficulty and, by substituting that with very strong anti-discrimination provisions, it would deal with the concerns. You would still be able to seek a declaration through peak bodies for those who work in a particular part of an industry, or for the same workplace, or for the same person doing the same sort of work.

Applications can still be brought, but I believe it is fraught with difficulty to bring an application to the respondent and say, 'We won't tell you who it is and we won't necessarily tell you what the case is, under rules of court which are yet

to be determined and which the parliament will have no opportunity to scrutinise appropriately.' This is an alternative proposal that I think is more workable than what is proposed by the government.

The Hon. R.K. SNEATH: I suppose it is easy for us to stand around here with our job security and good wages and conditions and say that we would be happy to go in and declare who we are. However, it would be interesting to see—and I do not think I would get any argument from some of the people in here who have worked for trade unions—the number of times people have said, 'I want you to get me my back pay or underpayment of wages, but I don't want you to tell the boss, because I'll get the sack.' That happens all the time with people who want job security and who fear for their jobs.

This clause protects those people. There are hundreds of them out there who every day are frightened to take up issues and have their name put to cases or have their name known by the boss, because they know they will be sacked. It stops people fighting for their rights, because people are scared. If we do not know that, we are out of touch with the work force. I will ask the Hon. Mr Cameron and the Hon. Gail Gago, who have worked for trade unions: how many times have they had people come to them and say, 'I want you to fix this up for me, but I don't want you to tell the boss who I am.'?

The Hon. T.G. Cameron: All the time.

The Hon. R.K. SNEATH: Thank you.

The Hon. G.E. GAGO: I have to rise to make a very brief comment on this clause. I agree with my colleague that there are many examples in the union movement of employees who have felt intimidated and unable to pursue their basic rights. I have said before in this place that out there in the work force it is not a level playing field: the power relationship between employees and employers is not equal. The system is biased towards putting power into the hands of the employers. As unionists we see this every single day of the week. There are lots of overt and subtle ways that employers can make the life of employees incredibly difficult, to the point of sacking, as well as failure to be promoted and limited access to staff development opportunities, and the list goes on and on. There are lots of subtle ways in which employers can make it difficult for employees.

Another aspect is that it is about employees having confidence in the law. The amendment before us is better than nothing, but I still have reservations about how confident employees will be that this clause will protect them against these overt and subtle discriminations, and I have grave doubts that it will in fact protect them. For instance, currently it is illegal to discriminate against employees on the basis of their sex. By law you are not allowed to discriminate against women, yet even today women earn significantly less than men, so there is still inherent discrimination within the system, and I fear that, even with this clause, inherent discrimination will still exist in the system and will work against employees.

The Hon. IAN GILFILLAN: I indicate that the Democrats are not particularly attracted to this amendment. Subsection (7) specifies that the responsibility is there for the court to make a determination. The principle of a court making a determination is on the facts, and the court needs to be assured that the facts are valid and have come from a bona fide source, so it is reasonable that in certain circumstances the court will demand that the relevant person be identified. But, in fact, at the end of the day the determination of the court will not depend on whether the name of the person is broadcast far and wide.

The determination of the court should stand on the facts that are presented to the court. There is a serious risk for a person who is involved as the relevant person if they are particularly sensitive to being identified, for reasons which I believe to be valid. Although the Hon. Nick Xenophon has attempted to be scrupulous in attempting to protect the person, those of us who have had experience in the real world know there are ways and means which do not comply with the neat detail of paragraphs and subclauses; it just does not work that way. It may well be that a relevant person sees a very real threat to their continued employment if they are identified as being the relevant person.

This is where it is most unfair if the opposition to this whole move is that, because the relevant person's identity is not known, the court will be distorted and lured into making a judgment which will completely corrupt the alleged employer-employee relationship, which will be disturbed by the fact that the relevant person's name is not published on the front page of *The Advertiser*. I am not sympathetic to the amendment moved by the Hon. Nick Xenophon. I think he has attempted to create a sort of bridge, but I assure him that the bridge will not get the opposition to support this clause, whatever he puts into it. The Democrats will oppose it.

The Hon. R.D. LAWSON: The Hon. Mr Gilfillan is jumping to conclusions about our position on this. We regard the removal of subsection (7) as an improvement. Subsection (7) is a highly offensive provision, especially in relation to a matter such as this where these applications are not necessarily brought on behalf of a class of people but can be brought on behalf of an individual—an individual is entitled to claim. Subsection (7), which the Hon. Nick Xenophon seeks to have removed, would enable an individual to make an application against an individual employer for a declaration in respect of himself and not be required to divulge his identity on the basis that he might suffer some intimidation.

The employer cannot seek anonymity in these situations. It is not a matter of the Hon. Ian Gilfillan suggesting that they have their name blasted all over *The Advertiser* or broadcast. This is disclosing the identity of the individual who is making the application, and it is a fundamental part of our judicial system that parties who come to court are entitled to know who they are facing, who their opponents are and the basis of it so that they can adduce appropriate evidence that might be necessary to answer a particular case.

It is true, as the Hon. Ian Gilfillan says, that we do have a fundamental objection to this whole notion of declarations as to employment status. We think this secrecy clause indicates what was behind the move of the government to introduce this whole clause. It is to enable applications to be made by organisations on behalf of a class of people to get declarations. For example, let us say a union or a disaffected subcontractor might make an application against a builder, saying that all of his subcontract carpenters who have been working with him for years are actually not subcontractors but are employees. That could have enormous ramifications for that particular builder, and it could have enormous ramifications for the building industry generally, because the application can apply to a particular workplace or people who are employed by the same company or people who work in a particular part of the industry, and the part of the industry might be ceiling fixers, for example.

This mechanism will provide the opportunity to completely bring down the system of subcontracts that we have

developed in a number of industries and upon which many industries rely for their efficiency. It is a most corrosive provision and we certainly oppose it. However, we think the Hon. Nick Xenophon's amendment makes a bad provision—a very bad provision—a little less bad.

The committee divided on the amendment:

AYES (7)

Lawson, R. D.	Lensink, J. M. A.
Redford, A. J.	Ridgway, D. W.
Schaefer, C. V.	Stephens, T. J.
Xenophon, N.	

NOES (8)

Cameron, T. G.	Evans, A. L.
Gazzola, J.	Gilfillan, I.
Holloway, P.	Reynolds, K.
Sneath, R. K.	Zollo, C.

PAIR(S)

Lucas, R. I.	Roberts, T. G.
Stefani, J. F.	Gago, G. E.
Dawkins, J. S. L.	Kanck, S. M.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. NICK XENOPHON: As my next amendment is dependent on the previous amendment being carried, I will not proceed with it.

The committee divided on the clause as amended:

AYES (10)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P.(teller)	Kanck, S. M.
Reynolds, K.	Sneath, R. K.
Xenophon, N.	Zollo, C.

NOES (9)

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

PAIR

Roberts, T. G.	Lucas, R. I.

Majority of 1 for the ayes.

Clause as amended thus passed.

There being a disturbance in the gallery:

The CHAIRMAN: I draw the attention of honourable members and people in the gallery to the fact that it is the responsibility of people in the gallery not to applaud, boo or do anything. They must remain silent during the proceedings of the council.

Clause 8.

The Hon. NICK XENOPHON: I move:

Page 9, after line 20—
Insert:

(2a) To avoid doubt, a person who is engaged by another person to clean the private residence of a third person is not an outworker under this section.

In its submission, Business SA has expressed concern that inserting the word 'clean' after 'process' could apply to domestic cleaners. The Business SA submission of 7 December 2004 makes reference to the following:

> This will be amended to encompass cleaning. A person will be an outworker if a body corporate of which they are an officer or employee, and for which the person personally performs all or a substantial part of the work undertaken by the body corporate is engaged, for the purposes of the trade or business of another (the employer), to clean and the work is carried out in or about a private residence. If a person, the employer, engages a company to carry out cleaning in a private residence, the employer may find that their contract with the company has, unknown to them, caused an employment relationship to arise—with all the concomitant obligations flowing from employment. It may be that the employer was aware that the cleaner was a one man operation or it may be that they were not. Whether they acted in good faith or had any knowledge as to the contractor's size, an employment relationship can arise.

Whilst I disagree with the views of Business SA in relation to this, I know that it is a concern that has been raised in the business community in that it could extend to domestic cleaning. For the sake of absolute clarity, at least for those who are concerned about this clause, I am proposing to insert new subsection (2a) that provides:

> To avoid doubt, a person who is engaged by another person to clean a private residence of a third person is not an outworker under this section.

The purpose of this amendment is to make it clear that that which is feared by Business SA is something that will not eventuate, even though I would have thought that, in its current form, from my perspective, the drafting was reasonably clear and did not encompass domestic cleaning situations. It is there for the sake of absolute clarity.

The Hon. P. HOLLOWAY: I indicate that the government believes that this amendment has not changed the intent of the bill and, therefore, we are happy to support it.

The Hon. R.D. LAWSON: I indicate that, whilst we do not have any particular problems with the amendment moved by the Hon. Nick Xenophon, it should surely not be necessary for clarifications of this kind if the true meaning of this provision is clear. I can indicate that we are opposed to clause 8 and to the regime that it seeks to introduce. In relation to outworkers, section 5 of the existing act provides:

> A person is an outworker if the person is engaged, for the purpose of trade or business of another (the employer) to work on, process or pack articles or materials, or to carry out clerical work.

So, a definition of outworkers appears already: 'work on, process or pack articles or materials'. The government's amendment seeks to insert after the word 'process' the word 'clean'. An outworker will now be a person who is engaged for the purpose of trade or business of another to work on, process, clean or pack articles or materials. We would like the minister to put on the record the precise reason for singling out this activity—namely, cleaning—to add to the definition. Where is the harm that is to be addressed by this amendment?

The Hon. P. HOLLOWAY: The government is aware that there is some outwork undertaken involving cleaning particular articles, or 'widgets' (if you want to call them that). The amendment is simply to cover what is, if not common outwork, outwork that is known to occur. As I indicated earlier, we are happy with the Hon. Nick Xenophon's amendment, which clearly states that that cleaning applies only to the packing of articles and materials but does not apply to cleaning homes.

The Hon. R.D. LAWSON: Can the minister indicate which firms or activities are engaged in the cleaning of articles or materials that are sought to be addressed by this amendment? What is the target of the government's amendment? Which disability organisation does it have in mind; which particular business?

The Hon. P. HOLLOWAY: We are not targeting any particular business at all. I am not aware of which companies do it but, obviously, the government is aware that there is some cleaning of articles that is undertaken as outwork. That is all we are seeking to deal with here: we are not targeting particular companies.

The Hon. R.D. LAWSON: The government says that it is aware that certain activities take place but does not identify where, who, how extensive, in what circumstances, or what the particular ills are that have been identified. What is the reason for this definition? If the government was honest with the committee it would identify the particular activity rather than saying, in a rather bland way, that it is aware of certain activities.

The Hon. P. HOLLOWAY: The definition, as it exists in the current bill, talks about work on process or pack articles and materials. Why should cleaning be considered much different in that context than packing? I cannot tell you any individual companies, but the government certainly knows that it takes place. It is in the original act that cleaning takes place in terms of outwork, and it is appropriate to bring it in. It is really no different in that sense than packing, which is already covered.

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 9, after line 29—Insert:

(4) A regulation made for the purposes of subsection (3) cannot come into operation until the time has passed during which the regulation may be disallowed by resolution of either House of Parliament.

Currently, the government's bill provides that other provisions of the act may apply to outworkers, as follows:

if (and only if)—

(a) a provision of an award or enterprise agreement relates to outworkers

That is the position in the current act, and I do not believe there is any controversy in relation to that. In paragraph (b), the bill also provides:

a regulation made for the purposes of this subsection extends the application of this act to, or in relation to, outworkers

Concern has been expressed to me that, while regulations may be disallowable, we do not have a situation with subordinate legislation in this state as there is, for instance, in the Senate where, if you disallow a regulation, it is disallowed for a certain period. This amendment seeks to provide a check and balance by tempering the provisions of 3(b) so that there is some appropriate scrutiny (if there is need for such scrutiny), by having the regulation subject to disallowance before it comes into operation. I think that finds a balance between the government seeking to extend the provisions of the act to apply to outworkers with a sufficient degree of scrutiny by either house of parliament.

The Hon. IAN GILFILLAN: The Hon. Nick Xenophon, wittingly or otherwise, is an eloquent spokesperson for the Legislative Review Committee. All regulations should comply with this proposed amendment. We have a farce in this parliamentary situation where a regulation can be disallowed and then reinstituted the next day or where, in many cases, through using section 10A(a)(ii), the regulation comes into effect before the Legislative Review Committee has had a chance to assess it.

It is a rather strange way in which a major reform is being dealt with—I will not say 'snuck in', because that is not the Hon. Nick Xenophon's intention; he does not behave in that way. This amendment is relevant not only to this but to a much wider canvas of regulation and on that basis, although it may not be outstandingly necessary in this case, because of the principle the Democrats have a lot of pleasure in supporting the amendment.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition will also support this amendment. We believe that it is appropriate in certain circumstances for parliament to have an opportunity to scrutinise regulations before they come into operation because we recognise that it is often extremely difficult in a practical sense to disallow regulations after they have come into operation. We have moved a number of amendments of this kind to various measures over the past couple of years, the principal one being in relation to recreational services, where codes of practice do not come into operation until the time for their disallowance has passed. However, notwithstanding our support I have to say once again that we do not support this clause in its entirety. However, we believe the amendment of the Hon. Nick Xenophon makes a bad clause a little less bad.

The Hon. P. HOLLOWAY: The government does not oppose the amendment.

Amendment carried.

The committee divided on the clause as amended:

AYES (10)

Cameron, T. G.	Evans, A. L.
Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Sneath, R. K.
Xenophon, N.	Zollo, C.

NOES (7)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	

PAIR(S)

Roberts, T. G.	Redford, A. J.
Reynolds, K.	Lucas, R. I.

Majority of 3 for the ayes.

Clause as amended thus passed.

Clauses 9 to 12 passed.

Clause 13.

The Hon. R.D. LAWSON: I indicate that the opposition will be opposing clauses 13 and 14. Clause 13 deals with the term of office of the president and deputy president of the Industrial Relations Commission. Presently those persons hold office for a term of six years and may be reappointed for one term. The clause seeks to make the term of the president or deputy president of the commission last until the holder attains the age of 65 years. This is a significant amendment, and the real sting in this amendment is in the transitional provisions which will provide that this extended term of office will apply to new appointees, but those who presently hold office under the legislation will continue in office only until the expiration of their six-year term.

We believe that is a most offensive and inappropriate provision. Of course we have not reached the transitional provision relating to that. That is further on near the very end of the bill. However, I indicate right at the beginning that we are opposed to changing the term of office. We believe that the term appointments have been satisfactory; that they have worked well; that they have provided for a turnover in the office; and they are of sufficient length to ensure the independence of both the president and the deputy president. We are concerned that the government is being highly selective in these amendments, choosing to have existing commissioners and deputy presidents retire, whilst the new ones, who might well be those who are already in office, are reappointed until the age of 65. We are strongly opposed to the clause.

The Hon. P. HOLLOWAY: The government supports this move obviously to restore tenure to the appointment of

members of the commission. I think the background to this is well known. When the 1994 legislation came in under the previous government, tenure was removed. Commissioners could be appointed for terms of six years which may be renewed for one further term of six years. It is not the government's intention that commissioners appointed under that system will have their appointments varied. However, we are proposing that, for all new appointments to the commission, tenure be restored. We believe that that is the appropriate way of ensuring that it deals with potential perceptions in terms of the independence of the commission.

Given that the bill was amended in 1994, I am not sure that the deputy leader of the opposition could sustain his proposition that the system has worked well, when we have yet to reach a stage where any member would have reached the end of that second year term of six years, but that is another matter. Obviously the government supports the clause.

The Hon. NICK XENOPHON: I support the principle of tenure for judicial appointments, but I do take the point made by the deputy leader of the opposition that, if you are going to have tenure, why not apply that tenure to existing appointments? As I understand it, the transitional provisional clause is something we will deal with down the track. Could the government assist me by indicating the rationale behind the current position? If you support the principle of tenure, why not have tenure? If that is the principle, why be selective in that those who are currently in office do not have the benefit of tenure?

The Hon. P. HOLLOWAY: The answer to that is that the government does not support retrospective changes. Perhaps the opposition can help me because it put up the 1994 bill. I assume that, when changes were made at that time, they were not made retrospective. Presumably, commissioners who had tenure did not have that tenure removed. This is just the reverse of the process. We do it with superannuation for the judiciary and other matters. If there are changes, we do not make that retrospective to members who are already in an existing scheme. So I do not accept that there is any inconsistency with that. When people are appointed under particular terms and conditions, we honour those terms and conditions.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I would be happy to hear whether that was the case originally. I am just making an assumption there in relation to what the original situation was, but, I think normally when legislation is changed in this area, it is my understanding that normal practice is that you do not make it retrospective. I would be interested to hear the opposition's view as to whether or not the original change was retrospective.

The Hon. T.G. CAMERON: I think the position is fairly straightforward. If you are going to extend tenure to the age of 65, you do it for the incumbents. I am a little bit suspicious that this is not some attempt to try to create a situation where John Lesses will not be reappointed for a further term. I would hope that that is not the case. The Hon. Gail Gago is jumping up and down. Maybe there is some truth in what I have said. Anyway, I clearly support the opposition's position on this one.

The Hon. NICK XENOPHON: I take issue with the government on the principle of retrospectivity. I would have thought that, if you support the principle of tenure, you should support the principle of tenure for existing appointees. If the government's position is that a member of the commission or a court should be there with tenure, I cannot understand the government's rationale that the current appointees will not have tenure, but we will give new appointees tenure. It is an issue that can be dealt with when we consider the transitional provisions. I am just trying to understand the government's position.

The Hon. P. HOLLOWAY: That is a transitional issue, and we can deal with it then. I make the point again that you could have used it in reverse. When the act was changed to remove tenure, I assume that was not done retrospectively, so the argument could be applied in reverse, if you are only applying it to new people but not existing members. Let's have this debate when we reach the relevant clause; here we are just talking about the principle of tenure. That is the issue we are facing here; we can deal with the transitional provisions appropriately when we come to that clause.

The Hon. R.D. LAWSON: The Hon. Nick Xenophon has put his finger right on the pulse. This government is saying it supports tenure and that people appointed to these positions should hold office until they are 65. If that is to be the position of the parliament, it ought to be the position for all of those holding office. If this government says it is in favour of tenure, it should extend that tenure.

Members interjecting:

The ACTING CHAIRMAN (Hon. J.S.L.Dawkins): Order!

The Hon. R.D. LAWSON: The position in 1994 was that we did not support tenure: we supported term appointments, and all those who were there had term appointments. That is exactly what happened. The Hon. Nick Xenophon has pointed to the complete anomaly in this.

Members interjecting:

The ACTING CHAIRMAN: Order! Members on my right will have the opportunity to respond if they wish. The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: I accept that this is a debate we have to have on the transitional provisions, rather than these provisions here. We oppose the abolition of term appointments and the introduction of appointments to the age of 65 in the current context, because it is in the context of a transitional provision which will operate in a way which discriminates against certain existing commissioners. I indicate that we will oppose these clauses but, even if we are unsuccessful, the opposition will again raise the transitional issue later in the debate. I also indicate that we regard clauses 13 and 14 as test clauses for clauses 16 and 17, both of which give rise to the same issue.

The Hon. IAN GILFILLAN: I indicate that the Democrats are supportive of the clauses as they are in the bill and have little sympathy for the argument put forward by the opposition to oppose them. I particularly have some concern that the age of 65 is taken as the arbitrary age. However, the basis upon which we hold our views is that, were the retrospectivity of this type of measure to apply to a reduction in the terms of officers of the Legislative Council from eight years to four, I do not know how many current Legislative Councillors who are enjoying the eight-year term would cheerfully say, 'Yes, yippee; we are going to go for the four.'

If you are going to look at this arbitrary, retrospective bouncing from tenure to term appointment, there needs to be some consistency and some expectation. The people who currently hold those positions hold them with the understanding that they are term appointments. They accepted that, so they have little grounds for a sudden wailing and gnashing of teeth, saying they deserve tenure; they accepted the appoint-

ment without tenure. I hope that the wisdom of parliament is that tenure is the better option for these positions and that future appointments will enjoy it. That is why the Democrats will support the government.

The Hon. P. HOLLOWAY: Again I remind the commitee that we are debating whether or not there should be tenure for members of the commission. The transitional question and retrospectivity and so on that have been introduced into the debate are other matters that we can decide elsewhere. At this stage we are simply voting on whether or not there should be tenure. The government believes there should be tenure, and that is why I ask members of the committee to support the measure in its original form, which will restore tenure.

The ACTING CHAIRMAN: There being no further contributions, I put the question that clause 13 stand part of the bill. Those in favour, say aye; those against, say no. The ayes have it.

An honourable member: Divide!

The ACTING CHAIRMAN: I rule that there is no division, because I did not hear any dissenting voice.

The Hon. IAN GILFILLAN: I heard only your voice saying no; I did not hear any other voices.

The ACTING CHAIRMAN: I rule that there is no division, because I did not hear any voices.

Clause passed.

Clause 14.

The committee divided on the clause:

AYES (9)

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

NOES (8)

Dawkins, J. S. L.	Evans, A. L.
Lawson, R. D. (teller)	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.
Stefani, J. F.	Stephens, T. J.

PAIR(S)

Roberts, T. G.	Redford, A. J.
Reynolds, K.	Schaefer, C. V.

Majority of 1 for the ayes.

Clause thus passed.

Clause 15 passed.

Clause 16.

The Hon. R.D. LAWSON: Clauses 16 and 17 deal with the subject of term appointments. I indicated in relation to clauses 13 and 14 that those clauses were test clauses for clauses 16 and 17. The division was lost on clause 14 and therefore I will not divide on those clauses, notwithstanding our strong opposition for the reasons already stated.

Clause passed.

Clauses 17 to 20 passed.

[Sitting suspended from 9.29 to 9.52 p.m.]

New clause 20A.

The Hon. P. HOLLOWAY: The Hon. Mr Cameron has indicated that he is not well. The next amendment, which is in his name, is accepted by the government. On behalf of the Hon. Mr Cameron, I move:

New clause, page 11, after line 27—

Insert new clause as follows:

20A—Amendment of section 58—Appointment and conditions of office of Employee Ombudsman

Section 58(1)—delete 'which may be renewed for one further term of 6 years' and substitute:

(which may be renewed from time to time)

The Hon. R.D. LAWSON: I note that the government supports the Hon. Mr Cameron's amendment relating to the appointment and conditions of the office of the Employee Ombudsman. Presently, section 58 of the act provides that the Employee Ombudsman is appointed by the governor for a term of six years, which may be renewed for a further term of six years. The Hon. Mr Cameron's amendment, supported by the government, will substitute the words 'which may be renewed for one further term of 6 six years' with the words 'which may be renewed from time to time'.

Given that the committee has already agreed to the government's amendments to abolish term appointments for deputy presidents, the president and commissioners, it is appropriate that the term of office of the Employee Ombudsman is similarly extended. However, it is interesting to note that, in speaking against our proposals in relation to term appointments, the minister said that it was inappropriate to extend the appointments of those who are already appointed because they were appointed on a certain basis, and to do anything else would be to act retrospectively. However, the government quickly jumps on the bandwagon and supports the Hon. Terry Cameron's amendment, which has precisely that effect.

Mr Collis was appointed on a particular basis—it was a term appointment. His appointment could be renewed for one term, but not beyond that. He took the appointment on that basis. Now, of course, the basis has been changed in his favour. We do not quarrel with that, but we do highlight the hypocrisy of the government's position in relation to term appointments.

The Hon. P. HOLLOWAY: The Hon. Terry Cameron's amendment seeks to allow that appointment to be renewed from time to time. When that term expires is really up to the person who holds that position. It is up to the government of the day as to whether or not it wishes to extend the term; it is not limited to just one term. We do not accept the proposition put by the Hon. Mr Lawson. In any case, as I indicated earlier, we will be dealing with transitional provisions later in the bill.

The Hon. NICK XENOPHON: For reasons that are entirely consistent with my previous support for the government's position, I can indicate that I support the Hon. Terry Cameron's amendment that will give the opportunity to appoint the Employee Ombudsman for more than the current terms that are in the legislation. There is a difference between the Employee Ombudsman and his role and that of a judicial officer. Nevertheless, notwithstanding that, I still think that this is a sensible amendment, and it gives greater flexibility in terms of the Employee Ombudsman being appointed for a period longer than is currently allowed for in the act.

The Hon. IAN GILFILLAN: As I understand it—and perhaps the minister will clarify this—the Hon. Terry Cameron's amendment does not vary the fact that the appointment is for six years. As I understand it, if it is the wish of the appointing panel or authority, the Employee Ombudsman can have his term renewed for another six years and, if need be, another term of six years after that. It is not a matter of changing the term; it still remains at six years.

The Hon. P. HOLLOWAY: I must say that the Hon. Ian Gilfillan has put it more eloquently than I did earlier but, yes, he is quite correct.

The Hon. R.D. LAWSON: With great respect to the Hon. Ian Gilfillan, the appointment was made on the basis of a six-year term with one opportunity to have that term extended for another six years. The maximum allowed under the existing legislation is 12 years. The Hon. Terry Cameron's amendment will extend that indefinitely, albeit in lots of six years, but it will be extended considerably from the appointment that Mr Collis initially took up.

New clause inserted.

Clause 21 passed.

Clause 22.

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

Page 11, lines 35 to 37, page 12, lines 1 to 6—Delete subclause (1)

My amendment is to delete the provision which the bill inserts. Section 65 of the act currently provides, under the heading 'General functions of the inspectors':

> The functions of the inspectors are—
>
> (b) to encourage compliance and, if appropriate, take action to enforce compliance.

A provision which is precise and which describes the functions appropriately. The government now seeks to extend the functions of the inspectorate by:

> (b) to conduct audits and systematic inspections to monitor compliance with this Act and enterprise agreements and awards; and
>
> (c) to conduct promotional campaigns to improve the awareness of employers and people within the work force of their rights and obligations under this Act, and under enterprise agreements and awards; and
>
> (d) to do anything else that may be appropriate to encourage compliance and, if appropriate, take action to enforce compliance.

This is yet another of those provisions whereby this government seeks to transfer these functions from the union movement—the traditional provider of services of this kind, onerous as they might be—and to place them onto the publicly funded inspectorate. It is really to relieve the unions of work they do, and have the inspectors do the work that unions have traditionally done and ought do. It is very convenient for the union movement to handball these responsibilities to the inspectorate. We think it is inappropriate. No justification has been given for increasing these functions.

We also object to the fact that it has not been demonstrated that the inspectorate is competent to conduct audits or monitor compliance with enterprise agreements and the like. It has not been established that the inspectorate is competent or appropriately trained to conduct promotional campaigns, improving awareness, etc. We also oppose the very general nature of paragraph (d), which enables inspectors 'to do anything else that may be appropriate to encourage compliance and, if appropriate, to take action to enforce compliance.' These are very general powers and there has been no demonstration by the government of the need to confer these powers, no assurance that the inspectorate is trained to do it, no assurance that this will not simply be a mechanism for an over-enthusiastic inspectorate to behave in a way that is not controlled by the legislation at all. This gives extraordinary discretions to inspectors, and so we are opposed to this clause.

The Hon. NICK XENOPHON: With respect to new paragraph (b), which refers to conducting audits and systematic inspections to monitor compliance, how does the government propose that should operate? For instance, will there be conduct manuals; what protocols will be in place; how will those audits take place; and what system will be in place with respect to those audits?

Further, with the proposed paragraph (c) in terms of conducting 'promotional campaigns to improve the awareness of employers and people within the work force of their rights', how will that operate? Will it be part of a broader publicity campaign? Will it be inspectors going into workplaces, for instance, to say that these are the matters that ought to be complied with under the act? Will the inspectors have the power to require people to listen to them, for instance? I am not quite sure how it is anticipated that would work. What does the government say regarding the scope under proposed paragraph (d) 'to do anything else that may be appropriate to encourage compliance and, if appropriate, take action to enforce compliance'? Can the government give instances of how that will operate? In what circumstances will that paragraph do its work?

The Hon. P. HOLLOWAY: First, I will deal with the comments made by the Hon. Robert Lawson when he said that this was really to shift the work that should be done by unions. I think it is nonsense to suggest that unions have the sort of powers that the inspectors would—

The Hon. R.K. Sneath interjecting:

The Hon. P. HOLLOWAY: Exactly, as my colleague says, the honourable member is opposed to even getting it let alone having the sort of powers an inspector would have to ensure that the law is in force. That is probably all that one needs to say in relation to his arguments. The Hon. Nick Xenophon raised a number of questions and I will try to deal with them. First, I can inform him that there are conduct manuals for inspectors.

The Hon. Nick Xenophon: Are they on the web?

The Hon. P. HOLLOWAY: We could provide the honourable member with one if he wishes. I do not know that they are on the web, but we can show him if he cares to contact the minister's office. I am advised that some audits may be unannounced, but some would be preceded by a publicity campaign to raise awareness in relation to these issues. The other question the honourable member asked was for some examples, particularly in relation to paragraph (d). Something covered by that provision would be to hold conferences between employers and employees to try to resolve disputes about wages. That would be an example of something else that may be appropriate to encourage compliance, so conferences between employers and employees would be an example of that.

The Hon. NICK XENOPHON: In terms of what the Hon. Mr Holloway has just put, he spoke of inspectors facilitating conferences between employers and employees in relation to compliance: would the inspectors have the power to say that that conference would be a compulsory conference and that the parties would be required to attend? I am trying to work out the scope of the powers.

The Hon. P. HOLLOWAY: The intention would be voluntary. I am not sure whether powers exist somewhere that would make it compulsory, but to answer the thrust of the honourable member's question, the intention would be that inspectors would have that power if it were seen fit to do so. You would ask the question: even if you did have the powers why would you enforce it in a situation like that? If the situation deteriorated to that extent, presumably you would be resolving it in other ways.

The Hon. R.K. SNEATH: It amazes me that opposition members suggest that unions do this when they have argued earlier in the bill the right of entry of unions. How do unions get entry into workplaces where there are no members for a start and, if the opposition wants the unions to do this, is it prepared to pay the unions a service fee? They have already said no. It is suggesting that the unions do this with no service fee and no right of entry into places where there are no union members. Does the opposition just want those people who have no right of representation not to get any representation and not to have any inspectors or inspections? The Employee Ombudsman's Office, which looks after workers with no representation by unions—

The Hon. R.D. Lawson: Who wrote that for you?

The Hon. R.K. SNEATH: I will look at you while I am speaking on this because I know something about it, unlike you. I know that you are about 25 feet from your advice, but I do not need any on industrial relations. If unions were allowed on to the work site and there were still some non-union members on the work site, the opposition argues that there is no service fee for them. The Employee Ombudsman's Office, with a staff of three or four, would need the service of inspectors to investigate those complaints that come to them. Because of the size of its staff it does not have the resources to go out and investigate every complaint or to audit workplaces where non-union members have complaints.

It amazes me that the opposition is not interested in those employees who have no union coverage or are not union members, whereas in other instances they certainly are interested in them. They are interested in no entry and no service fee for unions, yet the Hon. Mr Lawson stands up and says that unions should do this, obviously for nothing, for non-unionists. He is not interested in helping the Employee Ombudsman's Office with inspectors. It is very confusing to me that he does not want any unbiased representation or unbiased inspection of any workplace where there are non-unionists or even unionists.

The Hon. R.D. LAWSON: The Hon. Bob Sneath completely misunderstands the nature of the opposition. When he is talking about the right of entry of union officials on to work sites, it has nothing to do with that aspect—it is another topic altogether. This provision will give to the inspectorate the power and responsibility to conduct promotional campaigns to improve the awareness of people in the work force of their rights and obligations under the act or any award. It is to improve the awareness of people within the work force of their rights. He says that is not part of the traditional function of unions. I would have thought that, if he was an effective union organiser, he would have seen it as his job to ensure that people in the work force were aware of their rights and obligations under awards, for example. This has nothing to do with rights of entry but is about what the inspectorate will now be asked to do. They are not doing it now because their terms are limited. It is to take over a function traditionally occupied by unions and is the appropriate role for unions.

The minister indicated in response to a question from the Hon. Nick Xenophon that conduct manuals were prepared for the use of inspectors. He kindly offered to make available to that member the opportunity to peruse those manuals and I seek his confirmation that that invitation is open to the opposition as well. I would also ask the minister to indicate how many inspectors are presently appointed under this act and who are performing the functions now described in section 65. How many inspectors is it contemplated will be necessary to carry out these expanded functions?

The Hon. P. HOLLOWAY: In relation to that question, I am advised that there are approximately 20 inspectors at present, and the government has already indicated that it was its intention to appoint a similar number in the next financial year.

The Hon. Nick Xenophon: The manual is fairly recent?

The Hon. P. HOLLOWAY: They are amended from time to time, but I could not tell you the date of the last amendment. We will provide one of those. The final point I wish to make is in relation to some comments I made earlier. I confirm to the Hon. Nick Xenophon that parliamentary counsel advises that inspectors do not have powers to force people to go to conferences. There would not be much point anyway if they did not wish to go. It may be an option to improve knowledge about industrial matters, so if it is appropriate it is just one more weapon in their armory to try to improve the industrial climate.

The Hon. R.D. LAWSON: What is the justification for including a power as wide as that contained in paragraph (d) to do anything else that may be appropriate to encourage compliance, and can the minister point to any other legislation where inspectors are given similarly wide powers?

The Hon. P. HOLLOWAY: I think I answered that question in response to the Hon. Nick Xenophon, where I mentioned, as an example of something that could be covered, conferences between employers and employees to try to resolve disputes about wages. That would be an example of the course of action that might be taken in relation to similar provisions. We will have to get that information from parliamentary counsel.

The Hon. R.D. LAWSON: Is the minister suggesting that an inspector does not already have that ability?

The Hon. P. HOLLOWAY: We can get that information, but we are not aware of any off the top of our head. We can answer that during the course of the debate. I think the honourable member will agree that it is not really crucial to the passage of this clause.

The Hon. R.D. LAWSON: Can the minister dispute that the inspectors already have those powers and can exercise them under the wide powers they already have? Is there any advice or evidence that the inspectors are unable to engage in that form of activity because of some limitation in their power?

The Hon. P. HOLLOWAY: Inspectors may currently investigate formal complaints of noncompliance with the act, enterprise agreements and awards. They can also encourage compliance and if necessary take action to enforce this. However, the problem is—and this is what we are seeing to address in the bill—that inspectors can only deal with a formal complaint, even in situations where other persons are similarly affected due to noncompliance with the act. Inspectors cannot respond to confidential complaints, and proactive work is restricted to basic awareness-raising visits and the provision of advice. So, essentially, that is what this clause seeks to address.

The Hon. R.D. LAWSON: Can the minister indicate to the committee where the limitation on the capacity of inspectors to investigate anonymous complaints arises and, if so, how is this provision directed to ameliorate that situation?

The Hon. P. HOLLOWAY: Section 65 of the act, in respect of the general functions of inspectors, provides:

The functions of the inspectors are—

(a) to investigate complaints of non-compliance with the act, enterprise agreements and awards, and;

(b) to encourage compliance and, if appropriate, take action to enforce compliance.

The government's amendments seek to remedy what we see as the limitations of that section, particularly paragraph (b). That is essentially what we are removing from the current act. Of course, it also addresses the limitation on the need to investigate complaints.

The Hon. R.D. LAWSON: Paragraph (a), which provides that the functions of the inspectors are 'to investigate complaints', will remain. That is fairly clearly limited not to anonymous complaints but to actual complaints of non-compliance. Where does the authority for investigating anonymous complaints derive?

The Hon. P. HOLLOWAY: Through new paragraphs (b) and (d), which provide:

(b) to conduct audits and systematic inspections to monitor compliance with this act and enterprise agreements and awards. . .

(d) to do anything else that may be appropriate to encourage compliance and, if appropriate, take action to enforce compliance.

So, my advice is that an audit could be in response to a confidential complaint. That is where (b) would come in.

The Hon. NICK XENOPHON: Notwithstanding that there are currently conduct manuals that have been amended from time to time and place to place, will the government indicate what is being proposed for further amendments to those conduct manuals, given the proposed additional powers for inspectors or, perhaps putting it another way, the additional roles and responsibilities of inspectors? As I understand the complaint, Business SA says that this extends powers and that (I think I can sum up its position fairly) there is a fear that it could be used capriciously in some cases or in an unfettered way.

I do not necessarily subscribe to that view, but what assurances does the government give that these powers will be exercised according to protocols so that there is an element of reasonableness in the way they are exercised? I understand that there will be cases where, if they are dealing with a rogue employer who might be uncooperative, the inspectors may need to act decisively to use their powers to the full extent with respect to conducting audits and inspections, but what does the government say to those businesses which are doing their best to do the right thing and which are concerned that individual inspectors could use these powers in a way that verges on the capricious?

The Hon. P. HOLLOWAY: We are not aware of any deficiencies in the current guidelines that would allow that to happen. One would expect that the current guidelines covered that sort of capricious behaviour. Obviously, these can all be reviewed by the department if necessary and, if there is an approach from any of the relevant parties in relation to that, they can be looked at. Indeed, the current guidelines are reviewed from time to time anyway, to ensure they are meeting the needs of the stakeholders. I think that would cover the situation mentioned by the honourable member.

The Hon. IAN GILFILLAN: I believe the wording in the bill is pretty much an ambit claim for the action of inspectors. I would be a little less concerned if I thought that, for once in the lifetime of the parliaments of this state, a government would actually fund the resources for inspectors to do everything they are expected to do in legislation, because my experience is that they come up to 20 to 22 per cent at best. Where will the limited resources of the limited number of inspectors be directed? I think it should be a comfort—it certainly is to us—that the legislation we are working on will to some degree be under surveillance and that compliance will be encouraged, at times perhaps with vigour, by an inspectorate rather than one side of what unfortunately becomes in this place a confrontation of employer versus employee.

I have an email which I would like to share with the committee. Its relevance is mainly that it expresses the concern of the South Australian Farmers Federation representative with whom I have had discussions, Chas Cini, Mediation and Employment Relations Services. This email was sent to me on 11 February and states:

Hello Ian

Thank you for your letter of 8 February 2005. I referred a SAFF member to your office regarding the right of entry by inspectors and unions. An inspector recently entered the farmer's property and sought access to the farmer's shed. However, the shed stores personal items only and the farmer was told by the inspector to give him entry which the farmer denied. This was one instance where an area on the farm was not a 'workplace' and if there are problems with the current legislation we are concerned that the proposed legislation will go even further. In this instance the farmer said that he had felt harassed by the inspector. We thought that giving you a specific example may help explain some of our members' concerns.

I understand these concerns and have sympathy with them. There is a fear, whether or not the problem eventuates. This is one example where an individual was certainly distressed by the interface between himself and the inspector.

Looking at the actual wording, I regard this as somewhat sloppier drafting of legislation than I have been led to expect from the doyen of draftspeople who put this draft legislation together. For example, I am looking at subclause (2), which I am not sure is within the embrace of this amendment, but we seem to be ranging a little way. This provides that the powers of inspectors under this act extend to acting in relation to persons who are no longer engaged in the performance of work. Sooner or later I should think the government will be asked to explain where that will go.

My point is this: although I am not happy with the wording, I am happy that the legislation is attempting to put the responsibility of inspection and, where appropriate, enforcement into the hands of an independent body appointed by the government (by governments, actually; if one looks at who are inspectors, as one of them is the Employee Ombudsman) and persons appointed by the minister, who may be a Labor or Liberal minister, and persons appointed under the commonwealth act who are under an arrangement between the minister and the minister responsible for administering the commonwealth act authorised to exercise the powers of an inspector under this act.

So, inspectors are not some sort of wild mob that are mustered to go and be the heavy hitters for the union movement, and I do not have that same concern that in the operation the inspectors themselves will necessarily be a damaging aspect of industrial relations; but I do want to make it quite clear that we are not satisfied that the actual wording in this clause is as good as it could be, and it may well be that a subsequent amendment to the legislation will have to tighten this up.

The Hon. R.D. LAWSON: Can the minister indicate the cost to the government of the existing 20 inspectors and what will be the cost of an additional 20?

The Hon. P. HOLLOWAY: My advice is that the cost of the 20 inspectors is something in the order of $1 million.

That is the best information we have available to us here. We will check it and if that is not right we will correct it tomorrow. It would be roughly of that order.

The Hon. R.D. LAWSON: Has an estimate been made of the likely cost to business of complying with the new requirements to be audited by the inspectorate?

The Hon. P. HOLLOWAY: If business is complying with the law, there should be no additional cost. It would only be a problem for those who are not complying.

The Hon. R.D. LAWSON: With the greatest respect to the minister, an audit necessarily costs money. It is not something that is already being done: it is a special task which is being undertaken. Surely, the government concedes that if an audit is undertaken there will be a cost, but does the minister concede—and it must be the case—that the businesses being audited will necessarily have to pay staff time and suffer inconvenience by reason of that audit, irrespective of whether or not they are complying with the requirements?

The Hon. P. HOLLOWAY: Obviously, if there are serious abuses that are uncovered by an initial audit, there will be increasing costs involved, but the scale of that will obviously depend on the initial cost. One could imagine that, whereas there might be some random sampling or random audits, clearly the comprehensive and therefore more costly audit, if the system is working correctly, will take place where abuses are uncovered. Unquestionably, there will be some costs involved if there is an extensive audit.

The government does not run away from that, but the point of this exercise, if it is working correctly, is that the cost will be borne by those who are not complying and are abusing the law. We have had cases that have been brought up by honourable members in relation to the hospitality industry, for example, where there are allegedly serious abuses under way. I think it needs to be pointed out that those abuses in industries such as that could well cost legitimate employers who are abiding by the law—they are being undercut by people who are not complying with conditions. So, it does work both ways.

The Hon. IAN GILFILLAN: I know that the minister has wrestled with the word 'audit', but paragraph (b) states, 'to conduct audits and systematic inspections'. The minister might like to address the question: what is the significance of the word 'systematic'? Does that mean on a regular basis or by a regular formula? If so, what is the regular formula and how frequently will those systematic inspections take place?

Where we have inspectors in paragraph (d) who are 'to do anything else that may be appropriate to encourage compliance', who is the arbiter as to what is appropriate as far as encouraging compliance is concerned? Is it purely the inspector, or is the inspector answerable to somebody or some entity? The only way an inspector can incur a penalty is by using foul language. Is there any mechanism whereby an inspector who has had an encounter with someone may be taken to task for some other offence under this act such as behaving in an inappropriate manner or taking inappropriate action? What are the mechanisms which keep inspectors behaving appropriately?

The Hon. P. HOLLOWAY: As the inspectors are public sector employees, their behaviour is governed by the Public Sector Management Act. We have talked before about guidelines in relation to behaviour and obviously their superiors within the department and so on will provide some accountability for their actions. Further than that, of course, ultimately there are the courts as well that can be the final arbiter.

The Hon. IAN GILFILLAN: What does 'systematic' mean?

The Hon. P. HOLLOWAY: How that might work is that an inspector would look closely at a particular industry—the hospitality industry, for example, which has been mentioned—and give it a month's notice, say, that that was to occur. Once that was complete, the same thing might occur with another industry. I think that is what we mean by 'systematic inspections'. I am certainly the last person to claim any expertise in this area, but members of parliament have often drawn attention to some of the problems in the hospitality industry. I am sure there are others, but that is certainly one that comes to mind.

The Hon. IAN GILFILLAN: I refer to the question of responsibility or some sort of compliance with behavioural standards by the inspector. I ask the minister: to whom would the supposed victim of offensive behaviour complain? Who would hear the complaint?

The Hon. P. HOLLOWAY: There are a number of options: it might be the Executive Director of Workplace Services, the minister or the Ombudsman. There are probably others, but they would be the most likely sources. In relation to the answer I gave earlier to a question of the Hon. Ian Gilfillan about inspectors taking action, obviously that could also be based on the analysis of complaints made. That would be an objective way in which the inspectorate might undertake its work. I also draw the honourable member's attention to new subclause (3), as follows:

> (3) An inspector, or a person assisting an inspector, who—
> (a) addresses offensive language to any other person; or
> (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,
> is guilty of an offence.

I should have mentioned that that is also a restraint on the behaviour of inspectors.

The Hon. R.D. LAWSON: I am indebted to the minister for drawing attention to that new subsection, which was inserted as a result of an amendment moved by the Hon. Graham Gunn in another place. However, I refer to the point made earlier, and the questions the Hon. Ian Gilfillan asks, about the extent of this audit and systematic inspection. Our objection to this provision, and the objection of many in the community, is that, with the best and most capable will in the world, an inspector who is undertaking an audit, or a systematic inspection, cannot do other than interrupt whatever work is being conducted at a business when this audit is being undertaken. It will necessarily cause disruption, and it can do so in the absence of any complaint—either an actual or an anonymous complaint made by somebody in the workplace.

The inspectors can come in, willy-nilly, go on a fishing expedition and insist upon an audit. One might say that it is unlikely that a well-trained inspector would do that, but we know from experience across the whole gamut of portfolios that inspectors can be officious and interfering and can act unreasonably. I think it is worth putting on the record the concerns expressed by one of the industry associations, namely, the South Australian Wine Industry Association. In relation to this provision, it states:

> The functions and powers for inspectors are expanded beyond the investigation of complaints. This is not supported, and there is no basis of need demonstrating why these functions are necessary. Audits and systematic inspections by Workplace Services Inspectors to monitor compliance with the act, awards and enterprise agreements, will require employers to deal with another layer of audits and inspection timetables. This will require employers and their representatives to deal with these processes.

We are also concerned that the experience of audit and inspection programs is largely driven by the approach of the individual inspector towards an employer or an industry. The success or otherwise of these programs relies heavily on the particular inspector 'approach and style'.

We note that current legislation requires inspectors to respond to complaints. We also note that the current act has been in place since 1994. We consider this practice is appropriate going forward.

We also point out the wine industry has needed to respond on at least three occasions to incorrect award advice being given to persons inquiring from Workplace Services officers. We raise this situation to ensure that inspectors receive appropriate education and training to carry out less tasks as finally determined by the bill.

I think that is a sober and sensible response to the concerns expressed.

The Hon. NICK XENOPHON: I am not sure whether that was a pun—a 'sober' assessment from the wine industry. However, in relation to the functions of inspectors, the government has said that it will provide conduct manuals on request, and I appreciate that. Will the government indicate that, given that there are extended powers, responsibilities and functions of inspectors, there will be a need to amend those conduct manuals? If that is the case—and I cannot imagine that it would not be, because there are proposed additional roles and functions of inspectors in the way they go about their work—will there be any consultation with peak bodies?

Will any amended manuals be subject to scrutiny, if not publication, on the request of members of parliament or, indeed, peak bodies, so that at least the ground rules as to how these powers are operating can be quite transparent? For example, where reference is made to conducting audits and systematic inspections, I do not have a problem with that concept, but, presumably, any conduct manual would have reference to the frequency of such systematic inspections or audits.

Presumably, if a business went through an audit and systematic inspection process, and the inspector had a bee in his or her bonnet about that particular business for whatever reason, that that business would be subjected to that every month. I am not suggesting that that would happen; but will there be amendments to the new conduct manuals? With respect to that, will there be consultation with peak bodies, both unions and employer groups? Will those amended conduct manuals be disclosed to those parties who have a legitimate interest in seeing them, so that there is a transparent process?

The Hon. P. HOLLOWAY: My advice is that, yes, Workplace Services will consult with the peak bodies in relation to these matters and, yes, it will make them available to those groups.

The Hon. R.D. LAWSON: I indicate that that is very reassuring of the minister, but there is absolutely no requirement that his assurances will be met. There is no program delivered by the government for the benefit of the committee.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: Well, we would have expected that, for something like this, the government would have said, 'This is the program of training we're going to undertake. These are the modules. We are going to expect these new inspectors with these new powers to have these particular qualifications. The manual that we have has been developed to address the sort of concerns that the Hon. Nick Xenophon and others are raising.' But to simply say, 'Oh, yeah; we are going to fix it all when we've got these new inspectors,' is simply an unsatisfactory assurance given by the minister, no doubt, with the best of intent. It is unsatisfactory to legislate on that basis, to vastly expand the powers of the inspectors, and to expect the parliament to rely on the goodwill and good intentions of a minister at 10:45 at night.

The Hon. P. HOLLOWAY: There is absolutely no reason why any government would want to have a system of deliberately causing confrontation with industry. I can say that, in my capacity as Minister for Industry and Trade, rather than the minister handling this bill, it would not make sense to do that. We expect that fairness will operate within the workplace. Obviously, this is all about ensuring we have the capacity to do that. There is no purpose in doing the sort of things suggested by the honourable member.

The Hon. NICK XENOPHON: Further to this line of questioning, can the minister give an undertaking that, first, the conduct manuals will, of necessity, be amended to reflect the new powers inspectors will have, and will there be consultation with the peak bodies before these new powers are exercised by inspectors in terms of process? I think it will reassure me that the process will be fair, given that there will be a difference in the inspectors' powers and responsibilities under this act.

The Hon. P. HOLLOWAY: On behalf of the minister's office, I am happy to give the honourable member an undertaking that we will review these things. The guidelines have been around a long time, but one would hope that, in general, they cover the sorts of issues that have been brought up here tonight. Clearly, given that there is some extension of powers, other issues may come up and, as I indicated earlier, Workplace Services would be happy to talk to the appropriate people about them; why wouldn't they?

The committee divided on the amendment:

AYES (6)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Redford, A. J.
Schaefer, C. V.	Stephens, T. J.

NOES (9)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Reynolds, K. J.
Sneath, R. K.	Xenophon, N.
Zollo, C.	

PAIR(S)

Stefani, J. F.	Roberts, T. G.
Ridgway, D. W.	Cameron, T. G.
Lucas, R. I.	Kanck, S. M.

Majority of 3 for the noes.

Amendment thus negatived.

The Hon. P. HOLLOWAY: I would like to indicate that the additional costs for the inspectors totals $2.28 million.

Progress reported; committee to sit again.

PODIATRY PRACTICE BILL

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

ACTS INTERPRETATION (GENDER BALANCE) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to improve gender balance on boards, committees and other bodies created under legislation.

While women make up 51 per cent of the State's population and 45 per cent of the State's paid workforce, they currently comprise only 32 per cent of the membership of government boards and committees. The Government is determined to address this imbalance and has made a commitment in the State strategic plan to increase the number of women on all State Government boards and committees to an average of 50 per cent by June 2006.

This Bill is one step in that process, providing for gender specific requirements for nominations to statutory boards and committees.

It amends the *Acts Interpretation Act 1915* so that legislation will be taken to require bodies such as community, industry and professional organisations nominating persons for appointment as members of statutory bodies to nominate at least one man and one woman, and as far as practicable, to nominate equal numbers of men and women.

This will give Ministers greater flexibility in their efforts to achieve equal gender representation when selecting persons for appointment to boards and committees.

Merit based selection processes will still apply, but the government will be given the opportunity to select from a wider and more diverse range of qualified candidates. The government is asking community, industry and professional bodies to look to the many qualified women as potential candidates to represent their interests in government board and committee roles.

The Council for Women will work with government agencies to identify strategies to address any imbalances in specific portfolios and to develop strategies to increase the quality, quantity and diversity of the pool of qualified potential board members, and therefore the quality of boardroom decision-making. It is well documented that the worst decision-making in boardrooms comes from 'group-think' where there is no dissenting voice or alternative opinion.

The under-representation by women in public life is not limited to government boards and committees but is evident across all areas of leadership and decision-making. By introducing this Bill the Government is taking a lead in addressing existing inequalities for women.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Acts Interpretation Act 1915*

4—Insertion of section 36A

36A—Gender balance in nomination of persons for appointment to statutory bodies

An Act may require a non-government entity to nominate a panel of persons from which the Governor or a Minister is to select a person for appointment to a body. New section 36A requires that the panel be comprised, as far as practicable, of equal numbers of women and men and at least include 1 woman and 1 man.

An Act may require a non-government entity to nominate a person for appointment by the Governor or a Minister to a body but not require the nomination of a panel of persons. New section 36A requires the entity to nominate a panel of persons comprised of not less than twice the number of members to be appointed on the nomination of the entity plus one, and to ensure that the panel, as far as practicable, is comprised of equal numbers of women and men and at least includes 1 woman and 1 man. The Governor or Minister is to select the person for appointment from the panel so nominated

The new provision is subject to any contrary provision in an Act. There are some Acts that currently require nomination of a panel of a different number of persons and there are some Acts that require the panel to be comprised of specified numbers of women and men. For example, the Conservation Council of South Australia Incorporated must nominate a panel of 2 women and 2 men from which the Minister is to select a person for appointment to the South Australian National Parks and Wildlife Council. Provisions of this nature are not affected by the amendment.

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

ADJOURNMENT

At 11 p.m. the council adjourned until Wednesday 16 February at 2.15 p.m.