HOUSE OF ASSEMBLY

Monday 22 November 2004

The SPEAKER (Hon. I.P. Lewis) took the chair at 2 p.m. and read prayers.

HAINES, Mrs J., DEATH

The Hon. M.D. RANN (Premier): I move:

That this house expresses its deep regret at the death of Janine Haines, a former senator for South Australia and federal leader of the Australian Democrats, and places on record its appreciation of her outstanding service to the state and to the nation, particularly in the field of politics.

Like many fellow members, I was both saddened and shocked to hear of the death on Saturday of Janine Haines at the age of only 59. Janine was an intelligent, determined, witty and generous woman. At the height of her career she was one of the most popular and respected women in the country. And, of course, as a senator for a decade, she not only helped foster generations of female Democrat senators but also fostered female representation in parliaments across the nation.

Janine Haines was born Janine Carter in the Barossa Valley town of Tanunda on 8 May 1945. She went to Brighton High School and then Adelaide University. She completed a Bachelor of Arts and then a Diploma of Teaching at Adelaide Teachers College. From 1967, she spent a decade teaching maths and English in high schools. Her interest in politics reportedly began in 1974, when she attended a meeting of the South Australian Liberal Movement.

It is appropriate that the house honours her today because, in a sense, this is where Janine began her career. In December 1977, this parliament chose her to fill a casual vacancy in the Senate following the resignation of Steele Hall. As a result, she became the first ever Democrat Senator. Her initial term in the Senate was a very short one, lasting until only June 1978. But she won re-election at the 1980 election, and then spent the best part of a decade representing the state in Canberra.

Janine Haines' maiden speech vividly reminds us of her no-nonsense style of speaking, her compassion and the wide range of issues that she was to pursue throughout her political career. She was pleased to be joining what she called the 'small but effective' group of women in the Senate. She told the Senate:

However, it is not my intention to restrict myself to so-called women's issues or to put only the woman's point of view. . . whatever that is.

She then proceeded to passionately argue for genuine federal government action to address the plight of the Aboriginal people.

The new Senator did, of course, talk about the status of women, especially in the Public Service. Being typically ahead of her time, she railed against the availability of pornography, which degraded women and diminished their dignity. She told the Senate:

The rights of Aborigines and women will never be assured if the government and other bodies continue to blinker themselves. . . continue to look at a problem from the wrong end of a telescope so that individuals disappear into the middle distance and injustices and anomalies are treated by talking rather than doing.

Finally, in that maiden speech she talked about schools. Specifically, she urged governments to spend money on the basics, such as teachers and classrooms, rather than 'tape recorders, video machines and rock gardens'. When she reentered the Senate in 1981, she proved herself to be extremely hardworking. She sat on a number of Senate committees, including those concerning social welfare, private hospitals and nursing homes, the National Crime Authority and the ill-fated Australia Card. In 1985, Janine became Deputy Leader of the Australian Democrats. The following year, on the resignation of the Democrats' founder and leader, Don Chipp, she became the first woman leader of a national political party.

Throughout her career Janine demonstrated a terrific feistiness and resilience. A newspaper profile of her in 1986 showed that these qualities were complemented by a great sense of humour. That profile tells a story of a pretty luckless visit to the Upper Spencer Gulf: driving on a dirt road near Port Augusta, she was almost hit by a yellow panel van; at a hotel in Whyalla, she had a glass of beer accidentally spilt over her dress; later, she had planned television and radio interviews cancelled; her car ran into mechanical problems; and, on the way back to Adelaide, she was booked for speeding and given a $75 fine. In the evening, over a glass of white wine, she was still quite able to laugh about the day's events. She said, 'I believe, if this is bad, that it can only get better.' She told the reporter that what kept her going was her pig-headedness.

The popularity of the Democrats steadily grew in the 1980s, as did their numbers in the Senate. The party very much owed its success and high standing to Janine Haines. In 1989, Senator Haines decided to take the biggest political gamble of her career. After mulling over the future of her career and her party, she met with party members one night in a hall in Gilles Street. Soon after, she emerged to tell waiting television cameras that she would indeed contest the seat of Kingston at the upcoming federal election. Of course, it was a big throw of the dice and a big gamble that benefited her party and its representation in the Senate, but not herself personally. I understand that she made the promise that, if she was not elected to the House of Representatives in the seat of Kingston, she would not subsequently fill any vacancy in the Senate nor, indeed, the vacancy that she left. Janine polled a pretty respectable 26 per cent in Kingston, but it was not enough.

Typical of her style, Janine Haines did not sit back and relax after leaving parliament. She threw herself into all manner of things, including public speaking and a radio program in Melbourne. One journalist interviewing her in 1990 said:

The word 'restless' barely begins to describe the woman both physically and intellectually. Holding a conversation with Janine Haines is like trying to catch a runaway balloon, except that she never runs out of air.

In 1992, Janine Haines published a book called *Suffrage to sufferance: a hundred years of women in politics.* Besides writing about the low level of representation by women in parliament, she also complained about the stereotyping of women MPs. She wrote:

The question I was most frequently asked in the years I was a senator was, 'How does the family cope?' This was closely followed by inquiries about whether I employed a housekeeper and whether I spent the weekends cooking and freezing casseroles so that the family would have something to eat while I was in Canberra. The answer to both questions was no.

Her book profiled a number of women parliamentarians around the world—both their successes and the problems they faced. She wrote:

> Their stories are a reminder that social justice is not just an academic exercise but a vital element in the lives of real people.

Janine Haines remained active in the community throughout the 1990s. In June 2001, she was made a member of the Order of Australia for services to the Australia parliament and politics and to the community.

Following a long illness, Janine is survived by her devoted husband, Ian, her daughters, Bronwyn and Melanie, and three grandchildren. On behalf of this side of the house and all members of parliament, I pass on our condolences and best wishes to her family.

Janine Haines was a thoughtful and compassionate woman—a woman who led with strength and grace and who, in doing so, was greatly respected and admired by people right across the political spectrum. She was a fine South Australian, and may she rest in peace.

The Hon. R.G. KERIN (Leader of the Opposition): On behalf of the Liberal Party, I rise to second the Premier's condolence motion and express our regret at the passing of the Hon. Janine Haines, former senator for South Australia. I wish to place on record our appreciation of her distinguished public service. Mr Speaker, I ask that you convey to Mrs Haines' family—her husband, two children and three grandchildren—our deepest sympathies and appreciation for the contribution she made to the nation following her election as a member of the Australian Senate.

Mrs Haines was born in Tanunda and was brought up by her mother, a school teacher, and her father, who worked for the Commonwealth Public Service after constant moves with the police force. She spent her school years in single sex classrooms where she was encouraged to excel in mathematics and science, fields that traditionally have been dominated by boys. She later attended the University of Adelaide, graduating in the early 1970s as a qualified teacher. She went on to become a senior maths and English high school teacher before embarking on her career in politics.

Janine Haines was elected to the Senate in 1977 following the resignation of former senator Steele Hall, a former SA premier. She took on the leadership of the Democrats from party founder Don Chipp in 1986, becoming the first woman to lead an Australian political party. She was a no-nonsense lady who fought strongly for female leadership and equality in the business sector throughout this country. During her parliamentary term she continually pushed for social and economic justice and was a vocal advocate for conservation of the environment. She was a trailblazer of the time, and the Democrats achieved their highest level of support during her reign as leader.

Mrs Haines resigned from the Senate position during the 1990 election as the Democrats attempted to achieve representation in the House of Representatives, with Mrs Haines running for the seat of Kingston. Although the Democrats were able to nearly double the party's vote nationally, Mrs Haines and the party were unable to win their first seat in the lower house. She retired from politics after this loss. Her service was recognised in 2001 with the Order of Australia Medal in the 2001 Queen's Birthday honours list.

I am sure all members present will join me in paying respect to the late Mrs Janine Haines, acknowledging the worthy contribution that she made to our nation and expressing sympathy to her family and friends.

Ms BREUER (Giles): I want briefly to add my condolences to the family of Janine Haines. It is important that we pay tribute to women like Janine Haines, who was a trailblazer for us women here in the house today and for so many other women who are in politics. More interesting is the fact that, when one looks at the young age at which Janine has died and thinks back to when she went into parliament, one realises that she was a very young woman to go into parliament. That was a double achievement for her, because women of my generation, as she was, found it very difficult to take big steps like this. We were not raised to think in the way that many of our young women are today. For women like her to take a huge step such as that was a great achievement. Janine certainly has been a trailblazer for women. I think we as women here need to acknowledge that—as do so many other women in Australia who now have opportunities that we had to work very hard to get.

The connection that the Premier made with Whyalla is interesting. I also have a connection there with Janine Haines through a very dear friend of mine of whom she was a niece. He spoke very highly of her as an outstanding family person as well. It is wonderful if we can be in politics and can still have that family connection and input, and be thought of as a great family person as well as an achiever in our field. My condolences also go to the family and I thank Janine Haines for the contribution she made to our lives.

Mr BRINDAL (Unley): I worked with Janine Haines on a number of occasions, just following her defeat in the election for Kingston, when I was elected as the new member for Hayward. Janine was active all of her life in the Brighton area, and it was on issues of community import down there that I first came into contact with her. As the Premier and leader have said, Janine scored 26 per cent of the vote in Kingston. I would say quite confidently that any member of this house who could achieve 26 per cent of the personal vote (because her appeal in Kingston was a personal appeal) would not be doing terribly badly.

It was a very poor opponent who tried to underrate Janine Haines because, although not doubting her gender, especially since at that time there were many fewer women in the chambers of the Australian parliament, she had an integrity that is not always evident in those with whom I have dealt over the past 15 years. She had a fearsome intellect and a strength of conviction which made everyone aware that, no matter her gender, she was a fearsome person to be dealt with. She was a wonderful politician and she was a politician of integrity. She kept her promise. She said to the people in 1989 that she would run for Kingston and, if she did not win the seat of Kingston, she would leave politics; and she did exactly that. That stands in stark contrast to some who have come after her and who say one thing one day and two days after the election do an entirely different thing.

Janine Haines was a person of great integrity and dignity. She has done much to forward the interests of the Democrats. In fact, had it not been for her promise, the Democrats may have fared a lot better in these last decades than they did. But she honoured her promise that kept her from politics, and the Democrats and the political process in Australia is probably poorer for the result. Like other members of this house, I extend to her family my condolences, and I would hope that

her greatest legacy is that it may not be said, 'We shall not see her like again.'

The Hon. S.W. KEY (Minister for Employment, Training and Further Education): My mother and I met Janine Haines after she addressed a meeting of the Women's Electoral Lobby. This must have been in the mid 1970s. At that stage I was quite young, but I remember listening to her and being impressed with not only the argument that she put but also the way in which she put it. I guess that in all the years I knew her that was one of the things that always impressed me; that is, her ability to communicate forcefully.

South Australia, as members in this chamber would know, was the second democracy in the world to give women suffrage and the first in the world to give women the right to sit in parliament. I know that Janine was very proud of this heritage. As a South Australian in federal parliament, she was a woman who made a number of political firsts, particularly when she became the first woman to lead a political party in 1986. It is interesting to note that throughout 1985 and 1986 Senator Janine Haines survived four leadership ballots within the Australian Democrats in order to become the deputy leader and then the leader.

We have heard already about the campaign that she ran in the seat of Kingston, and we know that her vote was very much connected to her as a woman and as a good politician. I believe that Janine contributed significantly to the Australian psyche about women in politics and also helped our understanding of the need for women not only to think about running for parliament but also do it.

Janine was very straightforward on a range of issues, and she also had a very strong view about a number of social issues. She campaigned and argued against irradiated food and human rights. She moved the motion that formed one of the longest running Senate select committees, namely, the select committee on private hospitals and nursing homes.

Janine was also a great writer. I remember reading one of her pieces of work on the Women's Temperance Union and the contribution in South Australia by the Women's Temperance Union on women's suffrage in this state. Her book on women and politics is still being used as a textbook in both the secondary and higher education areas. In 1992 she helped establish the Australian Privacy Charter Council which aimed at preventing potential privacy abuses in the new electronic data and surveillance world. The work of the Australian Privacy Charter Council raised the profile of this important issue and influenced laws and policies over the next decade.

Janine remained active on a number of social issues when she left parliament. One area which I do not think has been discussed is that she was the patron of the Gay and Lesbian Immigration Task Force of South Australia, which provides support and assistance to same sex couples where one partner is not an Australian citizen or permanent resident, and she campaigned for equality in immigration laws and procedures.

As has been mentioned, she was awarded an Order of Australia in June 2001 for service to the Australian parliament and politics, particularly as a parliamentary leader of the Australian Democrats and the community. I also pay my respects to Janine as a political leader and someone who ensured that the stereotypes about women, particularly women in politics, were challenged. I saw her as a great leader and woman role model. I express my condolences to her family and friends.

Mr KOUTSANTONIS (West Torrens): I had the good fortune of meeting Janine Haines on a number of occasions because she was a constituent of mine in the suburb of Netley for a while. I remember when I first ran for office as a councillor in the local Plympton ward in the City of West Torrens that my campaign manager at the time was the member for Playford. I went through the electoral roll which was provided to me by the council and chose people whom I should doorknock immediately. On the list we saw Ms Haines' name and I went and knocked on her door. She invited me in and asked me a number of questions about my views and told me she was not voting for me despite having met me personally (which has not been my experience since). I can report to the house, given the campaign skills of the members for Spence and Playford, that I lost resoundingly. I came third.

An honourable member interjecting:

Mr KOUTSANTONIS: Yes, I came last, that is right. Ms Haines wrote to me afterwards to wish me better luck next time and give me a few tips. I can assure the house that I visited her again as the member for Peake because I lived around the corner from her in Netley, and she congratulated me and said that my technique had improved greatly.

Janine will be sadly missed. She was a very strong supporter of the local community in Netley while she was there and regularly attended neighbourhood watch meetings. She was a good local activist. I extend my deepest condolences to her family.

Mrs HALL (Morialta): Like many members, I knew Janine Haines quite well over a number of years, and I do not wish to repeat much of what has already been said. However, I endorse the remarks that have been made so articulately by a number of speakers. I believe that she was an inspiration to women in politics, and it goes without saying that that was across the political spectrum. It has already been mentioned that she had a very quit wit, and certainly 'feisty' is a word one could always use to describe Janine.

I recall on a number of occasions in the early days of my association with Janine that she held very strong views on the quota system for women in parliament. Some may find it surprising to know that she strongly felt it was the wrong approach to get women into parliament. However, I liked some of her retorts when she was asked about what she would do with the children, etc., and she said, 'I have always held the view that women are different from men and, whilst I would never presume to say "we are definitely better," it is a philosophy to which I subscribe.'

I think that if anyone has not read her book, *Suffrage to Sufferance*, you get that very distinct drift when you read it and, as the minister has already said, it is used as a text book, and I know that many young women who are interested in politics have used it very much as a reference book. I think it said something about the integrity of her as an individual when she contested the seat of Kingston, I think in 1989, that she very strongly gave the commitment publicly that if she was unsuccessful in that attempt that would be the end of her political career. I know that she was under great pressure following that loss but she absolutely stuck to her word and the commitment that she had given very publicly. I, too, would like to convey my condolences to Ian and the family, and I know she will be a sad loss.

The Hon. J.D. HILL (Minister for Environment and Conservation): I would like add my condolences to those

given by members in the house to the family of Janine Haines and add a couple of footnotes to the comments that have been made. The first is that Janine was the chair of the Southern Hospice Foundation between 1990 and 1993, (a body that I am a member of, and I was chair for a period of years sometime after her) and I know that she gave very good service to that organisation and she will be sadly missed by those associated with it. She was also the chair of the board of directors of the Anti-Cancer Foundation between 1992 and 1995.

Also, members have referred to the campaign for Kingston. I recall that campaign very well. It was a very tough campaign and the Labor candidate, Gordon Bilney, prevailed in the end, after a very tough fight. He was very grateful to Janine because I think it helped increase his profile. In the caucus meeting after the election he was appointed to the ministry and, as a result, he had a bigger office given to him in his electorate. An extra room associated with his electorate office was given to him for ministerial purposes, and he had a plaque placed on the wall of that room called the Janine Haines Memorial Room, in honour of Janine's contribution to his achievements.

The SPEAKER: The chair shares the views expressed by honourable members and I, personally, can relate a couple of things that matter to me. First, I understood that, unlike most other Democrat supporters, Janine was a very decisive person and a very good driver. She is very dissimilar from most Democrat supporters in that respect in that they are quiet in traffic and tend to drive in the centre lane. You only have to look at election time as to where the Democrats' posters are in the back window of motor cars; if there are three lanes on the road, the Democrats are all in the middle. They drive by ritual rather than by reason or observation. Janine, on the other hand, was always able, as in politics, to find a way past, be it to the left or to the right, and she took it regardless of what might have been behind her noting what was happening. On one occasion I remarked upon that, the only occasion upon which I was, perhaps, fortunate to be in the same car as she was driving when we were going somewhere—it was nearly Christmas time—from the University of Adelaide. I cannot recall exactly, other than that I was compelled to remark upon it and she said, 'Yes; if you are leading you need to find the way, and if you are in control you need to be certain that you will get where you are going.'

She was able to meet deadlines and, in the second context, can I then relate that she served the University of Adelaide's Governing Council very well during the time that she was a member of it, and it was in that context that I had connection to her. She was very thorough in her work, very dignified in her approach to the remarks that she made, unafraid of anybody that had an alternative view, and willing to listen, however, to whomever it was that might be able to provide useful information. By chance, anybody who provided information that she knew to be incorrect she was quick to remind them of the fact where they were mistaken and, in the process, ensure that the outcome of the debate was not influenced by misinformation. Altogether then, an outstanding person, and clearly someone with that personality capable of doing what she did during the course of her sadly short life.

The chair, on behalf of all honourable members, will convey the condolences of the house to the family and provide a copy of the remarks made in the *Hansard* in the process of doing so. I invite all honourable members to join with me in standing in their places in silence to mark our respect for her service.

Motion carried by members standing in their places in silence.

RIVERLAND SURGERY AND BIRTHING SERVICES

A petition signed by 6 574 residents of South Australia, requesting the house to urge the government to ensure that surgery and birthing services continue at the Loxton, Renmark and Waikerie Hospitals, was presented by the Hon. L. Stevens.

Petition received.

QUESTIONS ON NOTICE

The SPEAKER: I direct that the written answers to the following questions on the *Notice Paper*, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 4, 9, 27, 33, 38, 45, 52, 59, 85, 86, 89, 98 and 189.

ONE MILLION TREES PROGRAM

4. **The Hon. I.F. EVANS:** What was the department's stage one contribution towards the Million Trees Program and what will the contribution be for stage two?

The Hon. P.L. WHITE: A contribution of $3.05 million was approved from the Planning and Development Fund payable over a five-year time frame (2002-03-2006-07) towards the implementation of the one million trees program.

To date $950 000 of that contribution has been paid.

The three million trees program will follow on at the end of the one million trees program from 2007-08, or sooner, if the one million trees plantings are completed ahead of schedule.

As this is several years from starting, I have not yet determined if there will be any contribution from my Department towards the next stage.

MT LOFTY RANGES, VEGETATION

9. **The Hon. I.F. EVANS:** What are the details of any incentive package that encourages remnant vegetation in the Mt Lofty Ranges?

The Hon. J.D. HILL: I am advised that the Native Vegetation Act 1991 provides for the conservation of significant native vegetation through the establishment of Heritage Agreements with private landowners. Those agreements waive the payment of rates and taxes associated with those areas protected under the agreement and allow me, in my capacity as Minister for Environment and Conservation, to fund the erection of stock proof fencing around these blocks. In addition, the Native Vegetation Council supports landowners with the ongoing management of those blocks of native vegetation protected under a Heritage Agreement through the provision of grants allocated from the Native Vegetation Fund. Those grants are made following a twice yearly call for management assistance. I am forwarding further information regarding Heritage Agreements to you

I have been advised that there are currently 168 Heritage Agreements in the Mt Lofty Ranges covering an area of 3 158 hectares.

The Mount Lofty Ranges Catchment Centre, through the Natural Heritage Trust, the National Action Plan for Salinity and Water Quality and the Envirofund also have programs to encourage landholders in the Mount Lofty Ranges to fence off and manage their native vegetation. There are two programs that focus on areas of biodiversity significance within the Mount Lofty Ranges and Greater Adelaide Interim NRM Group's Investment Strategy. This years expenditure on these activities include Bush for Life ($145 000) and Protection and Management of remnant vegetation program ($150 000). Other programs focus on revegetation of degraded areas in combination with threat abatement of existing native vegetation. These include Riparian Protection ($920 000) and contributions to the Urban Forests Biodiversity Program ($177 000 for capacity

building with a primary focus on revegetation and $323 000 to implement onground works focusing on revegetation).

PLANT BIODIVERSITY CENTRE

27. **The Hon. I.F. EVANS:** Why is a lecture theatre being proposed in the western end of the Plant Biodiversity Centre and how much will it cost?

The Hon. J.D. HILL: I have been advised:

When Tram Barn A was converted to accommodate office and herbarium space, to create what is now known as the Plant Biodiversity Centre, the western portion was never fully developed. Subsequently, the Board of the Botanic Gardens and State Herbarium identified a need for itself, and a number of aligned horticultural and floricultural societies, for a publicly accessible space for the conduct of lectures, displays and horticultural demonstrations. These activities traditionally involve the use of water and soil and are unable to be accommodated in existing facilities at the Botanic Gardens. Consequently, a decision was made to furnish the undeveloped western portion of Tram Barn A to provide a multipurpose lecture, display and demonstration space specifically suitable for horticultural, floricultural and botanical activities by the Botanic Gardens of Adelaide and allied societies and organisations. The estimated cost is $740 000.

CATCHMENT MANAGEMENT SUBSIDY SCHEME

33. **The Hon. I.F. EVANS:** Will the $120 million of Storm Water and associated works identified in the final report of the Catchment Management Subsidy Scheme be funded in full, or in part, by the Natural Resource Management Levy and if so, what level of Levy funding is expected in each year of the Budget and Forward Estimates?

The Hon. J.D. HILL: I am advised:

The Natural Resources Management levy could contribute towards stormwater planning, investigations, land acquisition needs and as an incentive for stormwater use. This could only occur where such a matter has been identified as a priority in the relevant regional natural resources management plan. Following the release of the final 'Report of the Catchment Management Subsidy Scheme Review, 2002' the State Government doubled its contribution to the Catchment Management Subsidy Scheme to $4 million per annum, commencing in 2003-04. Local government matches these funds. Funds are also provided from the Commonwealth's Regional Flood Mitigation Program and Natural Disaster Mitigation Program.

ROADS, SHOULDER SEALING PROGRAM

38. **Mr BROKENSHIRE:** Has the shoulder sealing program been extended by one year and is the $6.8 million allocation additional to what was previously allocated?

The Hon. P.L. WHITE: Yes. This is clearly indicated in the 2004-05 Budget Statement, Budget Paper 3, Chapter 2: Expenditure, page 2.32.

VEHICLE INSPECTORS, NUMBERS

45. **Mr BROKENSHIRE:** Will the number staff undertaking vehicle Identification inspections be increased in 2004-05?

The Hon. P.L. WHITE: Yes.

POLICE BUDGET

52. **Mr BROKENSHIRE:** What is the total amount of the Police Budget for 2004-05?

The Hon. K.O. FOLEY: The total amount of the Police budget in 20040-05 for ordinary operating expenditure is $433.5 million and $13.8 million for investing activities.

POLICE, EVENT MANAGEMENT

59. **Mr BROKENSHIRE:** What are the details of the estimated $350 000 overspend on Event Management in 2003-04 and why has an additional $447 000 been allocated in 2004-05?

The Hon. K.O. FOLEY: The $350 000 additional spend in 2003-04 reflects the methodology used by SAPOL to allocate resources across programs/sub programs. SAPOL allocates Southern Operations Service and Northern Operations Service costs based on the outcomes of work activity surveys from a representative sample of four major Local Service Areas conducted in February/March 2004 and surveys completed by Service Areas.

The additional $447 000 allocated in 2004-05 includes CPI, superannuation and wage increases, higher depreciation costs as well as the phasing in of additional police resources.

SA WATER

85. **The Hon. D.C. KOTZ:** How much of the $186 million total project costs for SA Water identified in the 2004-05 Budget's Capital Investment Statement were expended in each year up to and including 2003-04, what other projects are planned for the 2004-05 and what is the cost of each project?

The Hon. M.J. WRIGHT: Budget Paper 5, page 9 provides a summary of the major investment proposed by SA Water. The total project costs amount to $185.8 million. Expenditure by financial year to 30 June 2004 for these investments amounts to $122.5 million as follows:

Pre 1999-2000	$ 0.7m
1999-2000	$ 0.7m
2000-01	$ 1.3m
2001-02	$ 7.6m
2002-03	$ 30.4m
2003-04	$ 81.8m
Total	$122.5m

Total capital investment for 2004-05 of $130.3 million, referenced on page 43 of Budget Paper 5 includes major new works and works in progress and in total comprises some 549 projects. The number of projects is too numerous to provide details on each. However, an outline of these projects has been provided in response to a separate question asked on this subject (Question On Notice 89). Therein 9 major projects comprise a total of $39.6 million and the remaining $90.6 million relates to 540 projects for which an outline is given.

86. **The Hon. D.C. KOTZ:**

1. How much funding has been allocated to the delivery of reticulated water supply in 2004-05 and which projects will be funded?

2. Are all projects expected to be completed in 2004-05 and will any Commonwealth funding apply and if so, what are the specific program details?

The Hon. M.J. WRIGHT:

1. In 2004-05, SA Water has allocated $77.0 million to assets related to water supply for some 330 projects, covering extensions and connections requested by customers, replacing/maintaining water related assets (pumps, treatment plants, dams etc), and upgrading/constructing new water related assets.

These projects are all funded internally from within SA Water's 2004-05 approved capital investment budget.

2. It is expected that approximately 210 of the 330 projects totalling $44.3 million will be completed in 2004-05, with the remainder being completed in future years.

It is not expected that these projects will receive Commonwealth funding as they are all funded internally from within SA Water's capital investment budget.

89. **The Hon. D.C. KOTZ:** What are the details of all projects and programs listed under 'Other projects/programs' for 2004-05, including project costs, funds already spent and completion dates of each project or program?

The Hon. M.J. WRIGHT: For 2004-05, SA Water's total Capital investment budget is $130.2 million. Major Projects (generally those requiring Cabinet approval) are detailed in the Budget Paper No. 5 and amount to $39.6 million. The remaining $90.6 million relates to 540 projects with the majority being in the following major program groupings.

For the group of projects in each program the table identifies the funds budgeted for 2004-05, funds spent on these projects in previous years and projected totals for these projects. The programs are generally ongoing and as such do not have a completion date. Due to the actual level and variability of the detail associated with such a large number of component projects (540) it is practical to provide the following summary of the information.

Portfolio	Program Description	Amount Budgeted 2004-05 $m	Funds Spent to June 2004	Total of Project Cost
Environment	Environment Improvement programs (at 11 Wastewater Treatment plants)	3.1	76.2	80.4
	Adelaide Hills backlog sewerage	1.4	1.0	3.0
Improve Business	Supervisory Control and Data Acquisition (SCADA) extensions System, equipment improvements Mini-hydro schemes Major Plant Master plan models	3.1 1.9 1.0 3.1 3.0	3.1 2.6 0 Annual Provision 3.5	7.7 6.6 1.0 12.2
IT	Compromising numerous projects including assets, customer and water	8.1	1	42.3
Maintain Business	Replace & extend Cathodic Protection systems	1.5	0.1	2.2
	Dams/Headworks rehabilitation	1.3	1.1	3.7
	Mech & ele plant rehabilitation	6.1	2.6	14.9
	Water & waterwaste mains rehabilitation	5.7	11.6	37.5
	Structures rehabilitation	7.5	2.6	11.6
Safety	Dam safety improvement program	4.2	20.2	48.8
	OHS improvements	2.5	1.9	9.1
	Security improvement	4.0	1.9	18.2
System Growth	Extensions and connections (new services)	10.3	Annual provision	
	Mawson Lakes recycling	0.9	0.2	1.1
	Minor system upgrades (>20 projects)	6.4	0.6	41.0
Water	Country Water Quality Improvement	5.1	3.1	9.8

Of the budgeted $90.6 million allocated to other than major projects, $38.8 million is associated with projects that have already commenced.

Of the 540 projects, 310 are programmed to be completed in 2004-05 with 230 carrying over into future years.

CATCHMENT MANAGEMENT BRANCH

98. **Dr McFETRIDGE:** How will the $255 000 savings in the Catchment Water Management Branch be achieved over the next two years?

The Hon. J.D. HILL: I am advised that:

The Catchment Management Branch in the Department of Water, Land and Biodiversity Conservation has provided departmental support to the eight catchment water management boards around the State.

In 2003-04 the Catchment Management Branch was reduced in size to provide resources to assist in the development of legislation for the new natural resources management framework. In early 2004 to support the establishment of this framework the department undertook a reorganisation of the Natural Resources Management Support Division, in which the Catchment Management Branch is located. As a result of this reorganisation, the work of the Catchment Management Branch has been integrated within the Division.

The catchment water management boards will continue to receive a comparable level of support from the department during the transition to the new natural resources management framework.

INSURANCE, STAMP DUTY

189. **Mr HAMILTON-SMITH:** What plans are there to review the amount of stamp duty charged on insurance premiums?

The Hon. K.O. FOLEY: Taxation levels and settings, in general, are subject to review along with expenditure decisions during the budget process.

PAPERS TABLED

The SPEAKER: I lay on the table the annual reports 2003-04 for the Regional Council of Goyder and the District Council of Tumby Bay.

TRAIN DERAILMENT

The Hon. P.L. WHITE (Minister for Transport): At approximately 10.10 a.m. yesterday (Sunday 21 November) a freight train operated by Pacific National travelling from Sydney to Perth derailed in the vicinity of the Glenalta level crossing on the main road between Belair and Blackwood, blocking the crossing to traffic and closing both the interstate standard gauge mainline operated by Australian Rail Track Corporation (ARTC) and the broad gauge passenger line operated by TransAdelaide. Fortunately, there were no casualties. The administrating authority under the Rail Safety Act 1996 ('the Regulator') was immediately notified of the event. The Regulator in turn, as the incident occurred on the interstate mainline, notified the Australian Transport Safety Bureau (ATSB). The Regulator and the ATSB attended at the scene.

An immediate independent investigation was begun under the leadership of the ATSB in accordance with its powers contained in the commonwealth Transport Safety Investigation Act 2003. The ATSB has appointed a lead investigator, who arrived from Queensland in the late afternoon yesterday. As the ATSB has determined that it will conduct an investigation under the Transport Safety Investigation Act, it will be responsible for associated costs.

Under the Rail Safety Act 1996, the regulator will also require that a further investigation be conducted by the rail organisations involved, namely, Pacific National, ARTC and Transfield Services (which is the ARTC contracted track maintainer). The companies will be required to provide a report within eight weeks. TransAdelaide made immediate provisions to ensure that commuters using the services were disrupted minimally. Buses are transferring passengers from Blackwood to Glenalta, Pinera and Belair.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Environment and Conservation (Hon. J.D. Hill)—

Botanic Gardens and State Herbarium, Board of the—
Report 2003-04.

HOME SERVICE DIRECT

The Hon. M.J. WRIGHT (Minister for Administrative Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.J. WRIGHT: I rise today to provide the house with information about the South Australian Water Corporation's relationship with Home Service Direct. SA Water has entered into an arrangement with Home Service Direct Pty Ltd that authorises Home Service Direct to use SA Water's name, logo and trademark in connection with the promotion of its emergency home plumbing service. The scheme involves home owners who choose to participate paying an annual subscription fee that entitles them to repair services in relation to water supply problems during the subscription year. Participation in the scheme is entirely voluntary. SA Water customers are not obliged to participate.

The arrangement between SA Water and Home Service Direct provides for use by Home Service Direct of customer information derived from the billing and connection details of householders connected to the water and sewage systems. In October 2004, Home Service Direct commenced its product marketing campaign for its emergency plumbing service. I am advised that the marketing information was distributed to households using a limited portion of the customer database for a particular area, and included only names and addresses and no other customer information. The limited database was provided to Home Service Direct under the terms of the arrangement between SA Water and Home Service Direct. The arrangement and protocols regulated the use of the information by Home Service Direct.

I am advised that, under the arrangements for the provision of customer information, the copy of the limited database provided to Home Service Direct and used for the initial marketing campaign has now been destroyed by Home Service Direct. I am further advised that written confirmation of the destruction of this information has been provided by Home Service Direct. I have been informed that SA Water's auditor, Ernst & Young, has attended the Sydney offices of Home Service Direct and has confirmed that Home Service Direct has complied with its contractual obligations by destroying its copy of the information.

The relationship between SA Water and Home Service Direct has raised a number of issues, including SA Water's capacity to enter into such arrangements; whether the arrangement required a tender process; compliance with the government's privacy principles; and consultation with the plumbing industry. I have received advice from the Chief Executive of SA Water in relation to each of these issues, and I can advise the following. Legal advice provided to SA Water by the Crown Solicitor's Office confirms that SA Water has the statutory authority to enter into these arrangements with Home Service Direct. The Crown Solicitor's Office has also considered the issue of whether there is any conflict of interest in SA Water's entering into the arrangement with Home Service Direct, given SA Water's role as a plumbing regulator.

The Crown Solicitor's Office has reviewed the arrangement between SA Water and Home Service Direct and has not identified any provisions that give Home Service Direct any regulatory advantage over other operators. I am advised that the Crown Solicitor's Office concludes that, in the absence of a regulatory advantage, there is no conflict of interest in SA Water's entering into this arrangement.

In relation to the issue of whether the arrangement should have been subject to a competitive tender, the Crown Solicitor's Office examined the State Supply Act, the nature of the arrangement and the proposed product offered by Home Service Direct. I am advised that the Crown Solicitor's Office concluded that this was not a situation where a competitive tender was required. The disclosure of customer information to Home Service Direct by SA Water in the manner described earlier in the statement was subjected to careful scrutiny by the Crown Solicitor. In section 4(10), the privacy principles provide:

> An agency should not disclose personal information about some other person to a third person unless the person has expressly or impliedly consented to the disclosure.

In the opinion of the Crown Solicitor's Office, the provision of personal information to SA Water by its customers involves the person impliedly consenting to its being given to third parties involved in the billing cycle. The Crown Solicitor's Office further states:

> I find it difficult to conclude there has been any implied consent to the use of this information for the purpose of forwarding marketing materials, even though the services being marketed relate to the services being provided by SA Water.

The Crown Solicitor's Office concluded that the disclosure to Home Service Direct in the manner described is in breach of the relevant privacy principle. However, I am advised that the Crown Solicitor's Office says that, if SA Water is to undertake the task of distributing letters to its customers by way of its outsourced service provider in the normal course of billing, it concludes that there would be implied consent to the use of that third party and disclosure of information to that third party.

As a result of this advice, I have directed SA Water to cease immediately the disclosure of customer information to Home Service Direct. I have also asked SA Water to negotiate a variation to the arrangement with Home Service Direct to ensure that there is no disclosure of customer information contrary to the privacy principles. Any new arrangements must pass the scrutiny of the Crown Solicitor. I have made it clear to SA Water, and its board, that the breach of the privacy principle is regarded by the government as a serious matter. I have made it plain that any future breaches will not be tolerated and may result in sanctions against the individuals responsible. Having said that, I am satisfied that in the present case the protocols between SA Water and Home Service Direct mean that no customer information provided by SA Water has been retained by any third party.

The Crown Solicitor's Office made a number of observations concerning the privacy principles. In particular, comment is made on the deficiency of the privacy principles, which were first published in July 1992, in relation to the modern public sector. Specifically, the Crown Solicitor's Office found that the disclosure principle of itself is deficient in that it does not recognise the widespread practice of government agencies outsourcing functions previously carried on directly within the agency concerned. The Crown Solicitor's Office believes that, as a result of this outsourcing,

there must, of necessity, be a disclosure to a third party, even though the disclosure is for a purpose directly related to the purpose for which the information is collected. I have referred this matter to the Privacy Committee for advice on what changes may be required to make the principles more relevant to today's public sector.

Finally, in relation to consultation with the plumbing industry, I am advised that work is continuing to resolve outstanding issues. Mr Speaker, as I have indicated, the government takes this breach very seriously. It should not have happened. SA Water has recognised its mistake, and I have sought assurances from it that in the future all appropriate processes are put in place to protect its customers' privacy.

NUCLEAR WASTE

The Hon. K.A. MAYWALD (Minister for the River Murray): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.A. MAYWALD: As members of the house are aware, the Victorian government has proposed to locate a long-term containment facility for industrial waste near Nowingi, approximately 40 kilometres south of Mildura.

On 9 November 2004, the Leader of the Opposition asked me a supplementary question regarding the Nowingi waste management facility. In response to that question I stated that inquiries had been made through the Department of Water, Land and Biodiversity Conservation to their Victorian counterparts seeking that the environment impact assessment be forwarded to them as soon as it is complete.

I have since been advised that, while officers did not formally request the Victorian agency to provide DWLBC with a copy of the environmental effects statement when complete, it was and is DWLBC's intention to formally request a copy of the statement as soon as it is released and to conduct an appropriate review of the information contained within the statement and its conclusions.

Since this matter was last discussed in this house, government officers have had ongoing contact with their Victorian counterparts to seek an update on the progress of the EES. I am now advised that the release of the EES has been delayed and will not be released for public comment until next year, possibly in March or April.

As members will be aware, I am acutely aware of the importance of the River Murray to the sustainable future of South Australia. When the EES is available, DWLBC will undertake a comprehensive analysis and advise me of its findings. The government will then consider this information and determine its position on this matter.

QUESTION TIME

STATE TRANSPORT PLAN

Mr BROKENSHIRE (Mawson): My question is to the Minister for Transport. Will the minister advise the house why the government has not yet released a state transport plan? The state government's draft transport plan was released in April 2003, and the then minister said it would be completed by late 2003. In the last couple of months, many industry representatives have contacted the Liberal opposition expressing concern about the delay in the release of the plan.

The Hon. P.L. WHITE (Minister for Transport): I am a little surprised at this question. I am surprised that the member claims that he has been approached by others. As I have been saying publicly for months now, it was the government's intention, following the release of the South Australian strategic plan and following the reshuffle by which I became minister of the transport portfolios and the urban development portfolios, to bring several pieces of work together. It was clearly stated several times that the plan would be released after that work was done. That work is in its final stages of being done. The honourable member knows that, or should know it, because it has been stated many times.

The fact that there has been work on not only a draft transport plan but also a draft transport and land use plan, which will be of much more use to not only the development industry but also local government and the community in general, was known many months ago and announced many months ago. The fact that this government is doing work on such a strategy is important, because we have not had one for decades and decades in this state. It is not something to be taken lightly.

The government has consulted widely not only on the transport side of things—my colleague the former Labor government minister made a very good start on that work—which involved many discussions right around the state but also on land use. We will come forward with a comprehensive plan that incorporates not only transport but also land use.

As the honourable member knows, it has been stated publicly, since we have had those two changed conditions of the South Australian strategic plan and the bringing together of those portfolios, that there are added opportunities to bring forward a strategy that will serve very well the public of South Australia, the development industry and local government bodies into the future.

Mr BROKENSHIRE: I have a supplementary question. Will the minister categorically confirm that the Labor government will not be releasing a state transport plan?

The Hon. P.L. WHITE: I have just stated that we will produce a transport and land use plan.

Mr Brokenshire interjecting:

The Hon. P.L. WHITE: The honourable member is complaining because this state government not only delivers but also delivers more than was promised.

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson will stop practising milking.

HOSPITALS, WUDINNA

Ms BREUER (Giles): My question is to the Minister for Health. Who will undertake the review of services at the Wudinna Hospital; what are the terms of reference; is the review independent; and can the public make submissions?

The Hon. L. STEVENS (Minister for Health): I am very pleased to be able to answer this question and correct statements made to the media on 18 November by the member for Flinders about this issue. This review has been established to consider disputation in the community about clinical services at Wudinna. As minister, I want to be sure that Wudinna has the best and safest services possible. The review will be undertaken on 27 and 28 November 2004 by a general practitioner from the Riverland, who also lectures at the Flinders University Rural Clinical School, and the Director of Nursing from Mount Barker. Both are independ-

ent of the Mid West Health Service. Access to expert advice for the review is also being arranged by the Department of Health should any person wishing to give evidence seek protection under the Whistleblowers Protection Act.

I am pleased to note that the shadow minister said during a radio interview on 12 November 2004 that he had 'a great deal of confidence in the doctor appointed to the team to undertake the review'. The review is not a whitewash being undertaken by the Mid West Health Board, as claimed by the member for Flinders. While it has been commissioned by the board, the review will operate independently, with terms of reference agreed to by the Ombudsman to advise on:

- whether the medical and nursing care currently being provided at Wudinna Hospital and associated documentation meets contemporary standards;
- identify areas of care which require improvements and/or change;
- whether appropriate systems are in place for the management of: patient incidents, staff incidents, and complaints;
- whether appropriate and timely actions have been taken in response to complaints received from Dr du Toit; and
- whether communication between Dr du Toit and senior nursing management is conducive to the continuum of patient care.

The results of the review will be forwarded to the Mid West Health Board, the Eyre region and the Department of Health, which will oversight implementation of the recommendations. If issues arise during the review that are not covered by the terms of reference, the review team will refer them to the appropriate regional authority or the Department of Health, and if issues require further investigation this will be undertaken by the appropriate authority.

Arrangements are being made for the public to be invited to make written submissions and, should there be a need to interview members of the public or to follow up specific allegations, this will occur. The public is not being specifically excluded, as was claimed by the member for Flinders in her media release. The media statement issued by the member for Flinders on 18 November 2004 posed the question: 'Is the Minister for Health (Lea Stevens) conspiring to protect possible corruption, intimidation and unprofessional conduct?' That proposition is totally untrue, and I invite the member for Flinders to publicly withdraw the suggestion that I have engaged in a conspiracy. Conspiracy is a criminal activity and this is a very serious claim for the member for Flinders to publish.

LOWER MURRAY RECLAIMED IRRIGATION AREA PROJECT

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for Environment and Conservation. Has construction started on the $30 million Lower Murray reclaimed irrigation area project, and what is the schedule for its completion? There have been considerable delays to the Lower Murray reclaimed irrigation area project and increasing anxiety that the $30 million project will be further delayed.

The Hon. K.A. MAYWALD (Minister for the River Murray): As this project falls within my portfolio responsibilities as the Minister for the River Murray, I will answer that question. The Lower Murray reclaimed irrigation area has been working through the process of rehabilitation for a number of years now. The project comprises 27 separate irrigation areas, of which nine (approximately 70 per cent of the area) are government owned. The area itself has until 26 November to take up the government's offer in respect of the rehabilitation, and rehabilitation is scheduled to commence in January next year. Water use efficiency targets have been specified in the water allocation plan, and we are looking to have it metered by 30 June 2007. The EPA requires compliance with certain water quality targets and, in particular, that there is no discharge of surface run-off to the river by 30 June 2008.

The NAP is equally funded by the commonwealth and the states, with a total of $22 million being allocated for the program: 83 per cent is being paid for by government and 17 per cent by farmers, with a cap up to $3 765 per hectare. In the last two financial years NAP has approved $2.9 million for concept plans for rehabilitation, meter trials, reuse trials, restructuring assistance, farm business planning and capacity building through support for the Lower Murray irrigation. In recent times we have tweaked the proposal that has been put forward to the farmers.

The works are due to commence next year following the funding offer closing on 26 November, and we hope to have commenced work in certain areas as early as the New Year. The program itself, as I said, is due to be completed by 2008, and there are ongoing negotiations with the irrigators to assist them through to the final sign-off. We are looking to get irrigators signed up by 26 November.

The Hon. R.G. KERIN: I have a supplementary question to the Minister for the River Murray. In the light of the minister's answer, is she concerned that there will now be further delays to this project given that the project has not yet been put before the Public Works Committee as is required by law? Section 16A of the Parliamentary Committees Act 1991 states that any taxpayer-funded project that exceeds expenditure of $4 million must be referred to the Public Works Committee. The act also states that no money can be applied to the construction of a project until a report of the committee has been presented to this house, and the minister has just told us that it is due to start in the New Year.

The Hon. K.A. MAYWALD: There are certainly things that the irrigators are able to do with their own component of the funding that is put forward as part of the package—the funding that they will be putting up themselves—and they can commence once they get sign-off. The irrigator sign-off is due on 26 November and the normal course of action will be adhered to in respect of the Public Works Committee.

JETSTAR FLIGHTS INTO ADELAIDE

Ms CICCARELLO (Norwood): My question is to the Minister for Tourism. When is Adelaide likely to be able to get a third major domestic airline to introduce flights into Adelaide?

Members interjecting:

The SPEAKER: Order! In calling the Minister for Tourism, I draw attention to the federal Constitution wherein matters of policy relating to civil aviation are in the domain of the commonwealth government. However, the minister may have some information relevant to the collaborative work which the state may have done.

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): Thank you for your advice on that matter, sir. I will comment mainly on the capacity of domestic airline routes to increase economic development and tourism opportunities in our state rather than the control of those flights by the

federal government. The flights that have been announced today by Jetstar will come into Adelaide on 1 February. It is particularly important because, as you, sir, know, Jetstar's routes have gone along the east coast and offer extreme opportunity for us because it is a low fair route with special fares beginning to three destinations. We had hoped to get one route save to Melbourne Avalon, but we have been particularly fortunate that they have given us flights from Hobart, the Gold Coast, and Melbourne Avalon. It is particularly important that those flights will be daily, going to three destinations, which will bring six flights in and out every day and over one week 42 additional flights either to or from Adelaide. Initially those flights will be using Boeing 717-200 aircraft, with a 125 single class capacity, but eventually from 2006 they will be A320 airbuses, which will increase the number of seats available.

The flights going to Melbourne will be additional to those already provided by Qantas on the Melbourne sector and will increase the seat capacity on that route by 875 seats each way. The destination being Avalon is particularly useful because that is a very intense residential area with growth in the population. It opens up our market, which will be particularly useful for Geelong during the football season.

The Hobart flights will be a new direct sector for the Qantas group and will also be in competition with other airlines, which will be helpful. The daily flights to the Gold Coast will result in an increase in capacity of 500 seats each way weekly. Combining Jetstar's announcement with the recent announcement of Virgin's direct flights to Hobart, and new services to Brisbane, domestic seat capacity in and out of Adelaide will have increased from approximately 95 000 seats in December 2002 to 122 500 in February 2005. That is a 29 per cent increase in the two years that we have been in government, on top of the increased international flights which are at 39 per cent since we came to government, a stellar increase in both inbound international and all domestic flights. I am sure that these extra flights will be filled because we have unmet demand, and the local tourism industry will be boosted by this extraordinary show of confidence and support from major airlines which know we have the capacity to fill their seats and I think are giving us a vote of confidence in the economy and capacity of South Australia.

BIO INNOVATION SA

The Hon. R.G. KERIN (Leader of the Opposition): Can the Minister for Transport advise the house why the $9 million Bio Innovation SA project located at Thebarton did not go to the Public Works Committee? Section 16A of the Parliamentary Committees Act 1991 states that any taxpayer funded project that exceeds $4 million must be referred to the Public Works Committee. The act also states that no money can be spent on the project until the report of the committee has been presented to the house.

The Hon. P.L. WHITE (Minister for Transport): I am not sure about the history of this project in relation to the Public Works Committee. I will check that and come back to the house.

MUNDULLA YELLOWS

Mrs GERAGHTY (Torrens): My question is to the Minister for Environment and Conservation. What progress has been achieved to find the cause of Mundulla Yellows syndrome, which attacks plants and is particularly severe amongst trees in the South-East?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for Torrens for her question. I understand that she was the first member to raise this issue in the house some years ago, so I acknowledge her strong interest in it. As members might know, Mundulla Yellows is a syndrome that begins in the crown of trees and shrubs—

An honourable member interjecting:

The Hon. J.D. HILL: If you beat the member for Torrens, I apologise on her behalf as well as my own. Mundulla Yellows is a syndrome that begins in the crown of trees and shrubs before spreading across the plant, ultimately causing death.

The Hon. K.O. Foley: Of the tree?

The Hon. J.D. HILL: Of the tree, yes. It is particularly acute in the South-East where, as the member said, a large number of trees suffer symptoms of the syndrome. It has also been observed in New South Wales, Victoria, Tasmania and Western Australia. Although the syndrome was first identified near Mundulla in the early 1970s, the cause has remained a mystery.

In 2002, the government entered into a joint funding arrangement with the federal government to investigate the cause of Mundulla Yellows. Following a nationwide tender process, a project team of expert scientists and leading researchers was formed. Two years later, I can report that this research project has been successfully completed on time and on budget.

The findings of this research represent a breakthrough in our knowledge of this serious syndrome. The research suggests that Mundulla Yellows may be caused by abiotic factors. Previously, biotic causes (for example, fungi, bacteria, phytoplasmas and nematodes) were thought to be possible causes, but these have now been excluded by the research team. This was the view of another research team, which thought Mundulla Yellows was actually a virus. Based on the latest research we now know that this is unlikely.

The research also found that insects, seeds or grafting experiments do not transmit the syndrome. The research has helped to find out what does not cause the syndrome. However, the major breakthrough in the research was finding that nutrients contribute to Mundulla Yellows and that the syndrome is associated with a complex interaction of soil properties.

The research focused on two sites in Victoria and South Australia where the syndrome affected wide arrays of plant species. It identified an additional 31 plant species affected by the syndrome. At a cost of $780 000 over three years, this landmark research project will help all of Australia to combat Mundulla Yellows in the future. The exact nature of the cause will now be investigated in a new research program to be undertaken by the same research team. This is a real breakthrough in the research in just two years. I commend the research work to the house, and I refer members to the details of the findings on the environment department's web site. We now have a good understanding of what causes this syndrome and how to cure it.

ROADS, LINCOLN HIGHWAY

The Hon. R.G. KERIN (Leader of the Opposition): My question is again to the Minister for Transport. Will the minister advise the house why the $7.9 million project to

widen narrow sections of the Lincoln Highway did not go to the Public Works Committee? Section 16A of the Parliamentary Committees Act 1991 states that any taxpayer funded project that exceeds $4 million must be referred to the Public Works Committee. The act also states that no money can be spent on the project until the report of the committee has been presented to the house. According to an update that I have received today, work commenced on this project over a month ago.

The Hon. P.L. WHITE (Minister for Transport): I will check with my chief executive about that matter. I could be corrected on this, but my understanding is that this is probably a long-range project and that it may be updated in regular reports to the committee. There are a lot of projects—

Members interjecting:

The Hon. P.L. WHITE: I will check on that. I may be wrong about it, because that is the nature of a lot of the projects within my portfolio. But I understand that, certainly, it is a requirement of the committee that projects go before it. I will check with the Chief Executive with respect to the history of that particular expenditure.

CHILD ABUSE

Ms RANKINE (Wright): My question is to the Minister for Families and Communities. What is the latest status of the Children in State Care Commission of Inquiry?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I thank the honourable member for her important question. The current status is that the Commission of Inquiry Act was proclaimed last week, on Thursday 18 November. Honourable members may have noticed that an advertisement seeking submissions to the inquiry was placed in local and national papers over the weekend, and the commission is ready to take calls and receive submissions in anticipation of Justice Mullighan's being appointed on 6 December 2004. Indeed, I have been advised that many people have already contacted the commission's phone inquiry number seeking more information about how to make their submissions.

Those wishing to participate in the inquiry have been invited to provide information to the commission either verbally or in writing. The commission will have staff available to speak with people and answer any queries they may have in relation to the making of submissions. Those wishing to tell their stories have been assured that their information will be dealt with in the strictest of confidence.

In addition, I have been advised that the commission will send letters to various support organisations and community groups to ensure widespread communication of the fact of the inquiry and to urge them to pass on the information to individuals, groups and organisations that may be interested in participating in the inquiry. I am pleased to say that appointments to the commission of inquiry and the process have been finalised. All have been carefully scrutinised, and protocols will be put in place to ensure that people appointed have no formal relationship with the Department for Families and Communities or its predecessors.

In the spirit of bipartisanship, a seminar has been organised for parliamentarians to attend and meet with Justice Mullighan, who will discuss the inquiry with those in attendance and answer questions that the attendees may have in relation to the inquiry.

SEXUAL ABUSE

Mr HANNA (Mitchell): Why did the Attorney-General recommend against submission of the detailed 26-page report prepared by the Department of Human Services to the Legislative Review Committee inquiry into sexual assault matters?

The Hon. M.J. ATKINSON (Attorney-General): I do not have a recollection of that matter, but I will take the question on notice and obtain an answer.

RESTORATIVE JUSTICE PROJECTS

Mr KOUTSANTONIS (West Torrens): Can the Attorney-General inform the house whether there are any new restorative justice projects within South Australia's justice system?

The Hon. M.J. ATKINSON (Attorney-General): I am pleased to report to the house that in July this year the Courts Administration Authority began an adult restorative justice conferencing pilot program within the Magistrates Court. Restorative justice works only if the offender accepts his guilt and the basic facts of the offence. For this reason, cases are eligible for the pilot program only if the defendant has pleaded guilty and if both the victim and the defendant have made an informed and voluntary choice to participate.

There are some crimes and offenders for which this program is not appropriate. Cases of domestic violence and those within the jurisdiction of the Mental Impairment Court, for example, are ineligible for the pilot program. The preparation process for parties involved in the pilot program is thorough and includes an introductory letter and a pamphlet, a follow-up telephone call and an appointment to assess the capacity of all parties to participate in the process. Either party can choose to withdraw from the process at any time. An independent therapeutic specialist is employed to assess the offender's capacity to participate and the level of risk for revictimisation before the conference begins. The Victim Support Service is also available to help.

To date, there have been 16 referrals and six conferences; six matters are pending; two were unable to proceed; and in two cases the victims chose not to continue. Offenders referred to the pilot program include those who have pleaded guilty to offences such as property damage, common assault, illegal use of a motor vehicle, larceny, theft, unlawful possession, indecent behaviour and serious criminal trespass. I commend the adult restorative justice conferencing pilot program to the house.

SEXUAL ABUSE

Mr HANNA (Mitchell): My question is to the Minister for Families and Communities. Why did the minister recommend against the submission of the Department of Human Service's detailed 26-page report to the Legislative Review Committee inquiry into sexual assault matters? In March this year, the Legislative Review Committee called for submissions to the inquiry I initiated into sexual assault matters. By May this year, the Department of Human Services had prepared a detailed 26-page submission to the inquiry. In June this year, after taking advice from the Attorney-General and the Minister for Families and Communities, the minister directed that the submission should not be forwarded to the inquiry.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I have no recollection of this, but I will—

Members interjecting:

The Hon. J.W. WEATHERILL: There is one small problem in the narrative: I was not the Minister for Families and Communities until some time in March. However, I will certainly look into the matter and bring back an answer to the house.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE

Ms BEDFORD (Florey): My question is to the Minister for Industrial Relations. How is the government improving the workplace occupational health and safety of its employees?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I thank the member for Florey for her question. I know that she has a great passion for this topic. The government is determined to set a best practice example in safety performance. It has implemented a new and comprehensive strategy: the Public Sector Workplace Safety Management Strategy. This builds upon the efforts and progress already made and will significantly improve the occupational health, safety and injury management performance of the South Australian public sector.

The proposed vision is of a South Australian public sector where safety is a core value, where safety performance is best practice, where every employee feels safe at work and where safety culture is part of our state's sustainable competitive advantage. I am advised that the strategy presents an opportunity for the South Australian public sector to embrace and aspire to a zero harm vision for the workplace and, together with a 100 per cent return-to-work vision, it complements the socially inclusive concept of a safe community—one in which it is safe to live, learn and work. The strategy also includes:

- ministerial safety check lists that will facilitate regular dialogue between ministers and their chief executives on safety performance and that will also be a feature of chief executive performance agreements;
- a comprehensive implementation plan that contains over 40 actions to be implemented by chief executives and the adoption of approved targets for improvement in performance; and
- the Premier's commitment statement, which is a commitment between the government, as employer, and its employees to develop safe workplaces across the public sector.

The government firmly believes that the measures contained in this strategy will lead to improved outcomes across the public sector. Under the new strategy targets, I am advised that, when compared with last year's results, the current analysis of the first quarter shows:

- an average reduction of 2.5 per cent across the South Australian public sector in new claims;
- an average reduction in the lost time injury frequency rate of 14 per cent; and
- an average reduction across the South Australian public sector in the average days lost per claim of 14 per cent.

GAWLER LAND

The Hon. M.R. BUCKBY (Light): My question is to the Minister for Education and Children's Services. Can the minister explain why the government is purchasing land owned by the Gawler and Barossa Jockey Club and adjacent to the Gawler High School, when the Gawler council had decided that the land would remain in its current recreational use as open space?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Light for his question. He has had discussions with me in the past about the future of the school in question and the capacity for the local land to be used in a variety of commercial and industrial means. As he knows, there has been considerable opposition to such plans from the school community, which has been addressed at length by both the local council, DECS central office and the school community itself. Any action taken with that school is in order to get the best outcome for the community.

The precise details of any land ownership I do not think have currently been concluded, but certainly what the outcome should be from this effort is to guarantee that the school has good accessibility, safe parking and drop-off capacity, is not disadvantaged by heavy traffic and, for many reasons, is not hemmed in by industrial development. I am supporting the school in any way that we can, with the help of the council, to make sure there is a good outcome of the community. But I will certainly discuss the matter with him as soon as the material is available.

The Hon. M.R. BUCKBY: My question is to the Minister for Education and Children's Services. Can the minister advise the house who made the first approach to the government regarding the purchase of land currently owned by the Gawler and Barossa Jockey Club; and at what price will DECS purchase the land?

The Hon. J.D. LOMAX-SMITH: I first became aware of a complex range of issues to do with the school—including access parking, transport, traffic, land use and planning issues—when I was approached by the school community, in particular by senior students, parents and staff, in a delegation at a community cabinet earlier this year. When we met, there was a very strong view about the development potential in the region, but any matter of land purchase or sale would be commercial in confidence. I am not sure that I either have the correct information or am able to give it to the member for Light. However, I am happy to look into what material is available and what stage the discussions are at, because I would not want to mislead the member by giving him more information than—

An honourable member interjecting:

The Hon. J.D. LOMAX-SMITH: I would like to be precise and give the member accurate information. There has been a series of complex negotiations, the nature of which has changed over time, but the outcome is quite clear: the efforts are aimed at producing the best educational outcomes and the best educational environment for the children in the member for Light's constituency.

The Hon. M.R. BUCKBY: Supplementary, to the Minister for Education: can the minister advise the house why the Gawler High School governing council was not consulted on the proposed purchase of land by DECS, which is currently owned by the Gawler and Barossa Jockey Club?

The Hon. J.D. LOMAX-SMITH: Again, I thank the member for Light for his question. I am not sure of the accuracy of the question. I will look into if, and who and when everybody was consulted. I am not in a position to know which discussions were had at which stage. What I do know is there have been extensive negotiations, extensive consultation.

Members interjecting:

The Hon. J.D. LOMAX-SMITH: The discussions were actually instituted by the school.

NATIONAL TRAINING AWARDS

Ms THOMPSON (Reynell): My question is to the Minister for Employment, Training and Further Education. What successes did South Australian employers and training organisations achieve at the National Training Awards?

The Hon. S.W. KEY (Minister for Employment, Training and Further Education): South Australia should feel very proud because we again starred at the Australian National Training Awards, winning three of the top awards. We won the National Apprentice of the Year, the National Employer of the Year and also the Small Training Provider of the Year. These awards were announced at the national ceremony in Melbourne on Thursday. I believe that the awards reflect the outstanding success of the TAFE system in South Australia and show the opportunities our young people gain through a vocational education. This is the second year in a row we have won the three national awards, including Apprentice of the Year.

South Australia's TAFE system has also been a national leader, with as many as 96 per cent of our graduates winning employment or enrolling in higher education study within six months of graduating. This is the best rate recorded across the nation. TAFE SA stands out in the national system, which is regarded as a world leader.

Mr Speaker, you will be particularly interested to note that the most prestigious award—Apprentice of the Year—was won by Brad Donaldson, a mechanical engineering apprentice employed by Engineering Employers SA at Clipsal at Strathalbyn and trained by Regency Institute of TAFE. The Employer of the Year award was won by ACI Glass Packaging SA for outstanding commitment and achievements in the provision of nationally recognised training for employees. Over the past two years the company has embraced skills development for its 274 employees. Integrated systems provide training and a career pathway from the factory floor to management, as well as opportunities to obtain national qualifications.

I am sure that the member for Chaffey will be delighted to hear that the Small Training Provider of the Year is headquartered in Berri. River Murray Training (RMT) specialises in training for wine and rural industries in its region. Responding to the challenges of a low population density and huge distances, this training provider has developed increasingly innovative and flexible programs and an impressive network of interstate and international connections. RMT's sophisticated strategic planning and quality assurance have paid off, and it is currently working with a client in California, developing new products and services for the global market. These and other South Australian finalists who fell just short of winning top awards are maintaining South Australia's reputation for quality training.

SEXUAL ABUSE

Mr HANNA (Mitchell): Why did the Minister for Health direct officers of the department not to submit the department's detailed 26-page report to the Legislative Review Committee inquiring into sexual assault matters?

The Hon. L. STEVENS (Minister for Health): I need to take the question on notice and get back to the honourable member with the information.

MAY LONG WEEKEND

Mr MEIER (Goyder): My question is to the Premier. In light of what is listed on today's daily program—or should I say what is not listed—when will the Premier introduce legislation, as promised in his press release of 26 October 2004, to seek to change the date of the Adelaide Cup long weekend from May to March as from 2006? Australia's largest Cornish festival, the Kernewek Lowender, held in Kadina, Moonta and Wallaroo, and attracting some 80 000 people biennially on the May long weekend, will have its death knell sounded if the May long weekend were to be shifted to March.

In addition, in March 2008, as a result of Easter occurring from 21 to 24 March, the following events would occur within a two to three week period, if the Adelaide Cup long weekend were to shift to March: the Adelaide Cup, Magic Millions, Oakbank racing carnival, Port Lincoln Cup, Clipsal 500, Adelaide Festival of Arts, WOMADelaide, Come Out Youth Arts Festival, Kapunda Celtic Festival, Clare races, Barossa Vintage Festival, and several others. But the Kernewek Lowender and three or four other regional festivals are likely to disappear.

The Hon. M.D. RANN (Premier): As members know, this comes about following negotiations with a number of parties, including—

Members interjecting:

The Hon. M.D. RANN: I can understand—

The Hon. P.F. Conlon: The Liberals are opposed to it.

The Hon. M.D. RANN: They are opposed to it. I believe this may not need legislation and may be able to be dealt with by regulation.

Members interjecting:

The Hon. M.D. RANN: I have just been advised by the minister across the chamber that, in fact, it may be dealt with by regulation or legislation. But, given that we are talking about March 2006, I must say it has a compelling ring about it, because we can then assist the racing industry and, indeed, the Adelaide Festival of Arts. I can assure members opposite that the 2006 Adelaide Festival of Arts is going to be a doozey. There is absolutely no need at this moment for the opposition to fret about the need to try to rapidly pass legislation in the middle of the night when we are dealing with grave issues such as poker machines and industrial relations. There is absolutely no hurry, so the opposition can cogitate and deliberate and consult sine die.

PLAYFORD CAPITAL

Mr O'BRIEN (Napier): My question is to the Minister for Science and Information Economy. Can the minister inform the house of the recent performance of the state government's ICT incubator, Playford Capital?

The Hon. P.L. WHITE (Minister for Science and Information Economy): I am pleased to inform the house

that the state government's information and communications technology incubator, Playford Capital, has committed $5.4 million to promising local companies and helped to leverage over $30 million in private and public coinvestment over recent years.

This is an excellent result, reflecting the success of Playford's strategy to attract coinvestment and, as members would be aware, a review of Playford's performance by Allen Consulting last year resulted in the organisation's being ranked as one of the top three business incubators in the federal government's ICT incubators program. In fact, last year (2003-04), Playford continued to achieve outstanding coinvestment performance, with its companies raising over $6.7 million from private investors and a further $2.4 million from public sources—that is $9.1 million, in total, of coinvestment. That represents a 6½ times multiplier on the state government's contribution to Playford's operating costs, which I might say were 18 per cent below budget that year.

More importantly, Playford's portfolio companies employed over 180 people in 2003-04 and reported annual sales revenue of $13.7 million, including nearly $6.3 million in exports, up 91 per cent on the previous year. So that is a very good outcome for Playford. It is further boosted by encouraging signs in the investment market, with the latest industry figures showing that private equity investors committed a total of $34.7 million to local companies in the June quarter of this year, and that is up from $16.6 million in the previous quarter.

So, there are some very good and pleasing business results in this area in South Australia, and I congratulate Playford on a successful year and look forward to informing the house in the future of its continued success as it sets out to invest $7.4 million in South Australian companies over the next four years.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): Can the Minister for Administrative Services confirm to the house that last year cabinet approved the arrangement between SA Water and Home Service Direct? On radio 5AA on Thursday 4 November, in answer to the question from Leon Byner, 'Did cabinet approve this last year?', the minister replied, 'Yes.'

The Hon. M.J. WRIGHT (Minister for Administrative Services): And yes is the answer—so why are you asking the question?

SCHOOLS, STURT STREET COMMUNITY

Ms CHAPMAN (Bragg): My question is to the Minister for Education and Children's Services. When will the Sturt Street Community School be completed, how much is being spent this year, and what is the amount required to finish this project?

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): The question was quite precise about the money that was spent this year, and whilst it has been to Public Works Committee I cannot actually break down the annual amount, so I will have to get back to her with that amount precisely.

SHINE SA SHARE PROGRAM

Ms CHAPMAN (Bragg): My question is to the Minister for Education and Children's Services. Will the minister confirm if schools other than the 15 trial schools are delivering the SHine SA SHARE program, Teach It Like It Is? In a document entitled 'Risk Assessment of Signed Consent for the SHARE project', prepared by SHine SA, the discussion at the SHARE Steering Committee meeting on 20 October 2004, it is stated:

> A school not involved in the SHARE project has sent 13 teachers for teacher training at SHine SA and is delivering a curriculum using the same activities as the SHARE schools but does not have to get signed parental consent.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I think the questions that the member is asking are very similar, if not identical, to those that she has on notice.

SHARE, SEX EDUCATION TRIAL

Ms CHAPMAN (Bragg): Why are year seven students at Seaford 6-12 School involved in the SHARE sex education trial contrary to all assurances that—

Mr HANNA: On a point of order, sir, that question is identical to one which is already on the Notice Paper. Is it not, therefore, out of order?

The SPEAKER: The question is out of order.

ABORIGINAL HOUSING

The Hon. G.M. GUNN (Stuart): Can the Minister for Housing give an assurance that government housing authorities, including the Aboriginal Housing Authority, are cautious and careful when they place in residential areas tenants who do not have the social skills or the ability to get on with their neighbours or respect their privacy and property? I have been approached by a number of constituents, and I have a copy of a letter signed by more than 30 of them which states:

> The residents in the area are now concerned for their safety after witnessing the violent riot, and are also terrified of the residents involved (in particular residents of 11 Bolitho Street). Some of the residents in the street would seriously like to complain to the property owner, namely the Aboriginal Housing Authority (AHA), as most residents would like to see them moved. However, as it states on the AHA complaint form, 'information could be revealed to the alleged offender', and as we have observed the tenants violent behaviour we now fear retribution if we complain about them.

The Hon. J.W. WEATHERILL (Minister for Housing): I thank the honourable member for his question. It is a good question and it is a dilemma that we are facing not only in country areas with the Aboriginal Housing Authority but also in some of our larger housing estates in the metropolitan area. Honourable members would recall some very good work of the select committee in another place. They looked at this question of difficult and disruptive tenants and suggested a range of changes for social housing agencies that this government has acted on. Indeed, I think the select committee is convening again later this week to check on progress in that regard.

The issues are not straightforward: they relate to a whole range of dilemmas, one of which involves the support services provided to tenants to ensure that they can sustain a tenancy. The member for Flinders would be aware that there has been a substantial improvement in the success of Aboriginal Housing Authority tenancies in Ceduna as a

consequence of the transitional accommodation which has been put in place in that town. It may well be that part of the solution in Port Augusta and Coober Pedy lies in some form of transitional accommodation which will allow people who, for a whole range of reasons, are unable to live effectively in normal housing tenancies within townships to make the transition from often very improvised housing arrangements into a more settled form of housing.

A big issue in a number of regional areas is overcrowding; often, it is the cause of the difficulties. One of the dilemmas is that often the person with the lease may not be misbehaving, but visitors may be causing disruption, so to take the orthodox route of evicting the leaseholder for this may be a grave injustice. We are working through these difficult issues. There may have to be a combination of making sure that we have appropriate housing options for people and services to support these tenancies where appropriate, and in some cases it might be about saying that some people's behaviour is of a type that we cannot tolerate. All of the matters raised by the honourable member are receiving our attention. We intend to ensure that we behave cautiously and carefully in the way in which we place tenants in our social housing agencies.

OPEN SPACE COASTAL RESERVE

The Hon. W.A. MATTHEW (Bright): Will the Premier intervene to save significant open space coastal reserve under threat at O'Sullivan Beach? Tingira Reserve at O'Sullivan Beach is an expanse of coastal reserve. It is adjacent to privately owned vacant land and, for the last 20 years, has been provided with trees by Trees for Life for seed stock. The elderly owner of the tree planted land wishes to sell her property to the City of Onkaparinga. However, as council does not have the funds, it is proposing a land swap for some of the Tingira Reserve land. Representatives of the City of Onkaparinga have acknowledged the importance of both pieces of land but advise that without state government assistance their council cannot afford to keep both parcels of land. I have written to the Premier and at this stage have not yet had a response.

The SPEAKER: Order! The member for Bright is clearly debating. The Minister for Environment and Conservation.

The Hon. J.D. HILL (Minister for Environment and Conservation): I am very much aware of this particular parcel of land, because it is in the coastal zone in the O'Sullivan Beach area which, until the last state election, was in my electorate. I think my colleague has some information about it as well. This particular parcel of land is important to the biodiversity of that part of the coast. I, too, have been working and talking with the local council about the best things we can do to try to protect this piece of land. I remember some years ago before I was in government raising this issue with either the council or the open spaces section of the urban planning department and suggesting that some of this land should be purchased. If we had bought it when I suggested, we probably could have afforded it, but I was told at the time that we should wait while the current owner, an elderly lady, was still alive.

In this period, the value of coastal land has increased dramatically, and I think this piece of land is worth $1 million or so. So, this is now a very valuable and highly prized piece of land. The capacity of government to find that kind of resource to buy just a few housing blocks is limited, but I am working with the City of Onkaparinga to look at the possibility of land swaps and to see whether my colleague the Minister for Urban Development and Planning may be able to support that to some extent. But it is a difficult thing; there are many parcels of land. I know that the member for Waite has invited the government to spend $4 million to buy a mansion in the Adelaide Hills and other parcels of land that might come on the market. There are parcels of land all over the state that it would be nice to purchase, but there is always a limit to the amount of money that the government can put into these priorities. We have to work out the priorities and determine whether there are clever ways, including land swaps, that will help us to achieve these goals.

HOME SERVICE DIRECT

Mr WILLIAMS (MacKillop): Will the Minister for Administrative Services table a copy of the contract between SA Water and Home Service Direct and also a copy of the crown law advice referred to in his ministerial statement today?

The Hon. M.J. WRIGHT (Minister for Administrative Services): I have previously said that I would seek some advice about these issues. I have already given a comprehensive statement to the house in regard to that advice.

An honourable member interjecting:

The Hon. M.J. WRIGHT: I beg your pardon? The matters on which I have reported basically revolve around the issues of whether SA Water had the appropriate statutory authority; whether or not it should go to tender; whether there was a conflict of interest; and whether it has breached privacy. I have reported comprehensively back to the house on each of those issues. The advice which I sought and which has been received from the Crown indicates no to all of those matters. I have acknowledged that this was a breach in respect of privacy, and it should not have occurred.

An honourable member interjecting:

The Hon. M.J. WRIGHT: That is a silly interjection. The member knows that to be the case. Obviously, I cannot be any more fulsome than I already have been.

Mr BRINDAL: Sir, I rise on a point of order. Early in your speakership you ruled that, if a minister quoted from a government document, in the interests of accuracy, you would order that government document to be tabled. In his ministerial statement, the minister clearly alluded to crown law advice. He has done it in answer to a question and I would ask that, in concurrence with your earlier ruling, you rule that that advice be tabled in full for the information of this parliament. It is, after all, your ruling, Mr Speaker.

The SPEAKER: During the course of the ministerial statement, because of the difficulties with the microphone, I did not hear what the minister was saying. I now have a copy of that statement. The minister has referred to crown law advice and quoted, but not stated that it is a quote, from that advice. Accordingly, it will need to be tendered.

The Hon. P.F. CONLON: Sir, I rise on a point of order. I ask if you can clarify this ruling, because we will be referring to government documents in here on a regular basis. I would ask you to come back and tell us on what basis we can refer to government documents without having to tender them, because that is a very serious issue for the government.

The SPEAKER: The minister raises an interesting point from the minister's position, but the convention is that, if the minister (whoever that maybe from time to time) relies upon a government document in the course of making a deliberate statement to the house, the document shall be tabled. That is a longstanding convention. Where the minister, of his or her

own knowledge, answers questions to the house without reference to any such document then, of course, there is no requirement, because no such document is referred to in the course of the answer being provided.

The Hon. P.F. CONLON: Sir, can I be absolutely clear? You have said two things: one is referring to a document and the other is quoting from it. In the interests of making sure that we do this properly, I would like to be absolutely clear about what you are referring to. Are you referring to a minister quoting directly from a government document—because that is a very different thing from making reference to one? We are going to have to make reference to one on a regular basis.

The SPEAKER: I take the minister's point. I will make a more deliberate examination of the matter. But my inclination is to say that, in the public interest, if the information is provided to the government, it ought to be provided to the public. I will come back to the chamber as soon as I have had that opportunity.

Mr HANNA: Sir, I have a point of order to add. In your deliberations on this question, might it be considered that, in this instance, there was reference to a legal opinion, and that might be in a different position to some of the other contracts or documents that ministers quote from or refer to in the course of their answers during question time? I make the point of order out of concern for public disclosure, because I am concerned that, if there is a rule that every document referred to, or even quoted from, must be tabled, it would be in the political interests of ministers not to refer to their sources at all and we may, as the public and members, receive less information than we are receiving now.

The SPEAKER: There is a difference between contracts, which may be commercial in confidence, and advice. I take the point made by the member for Mitchell.

MINISTER'S REMARKS

The Hon. DEAN BROWN (Deputy Leader of the Opposition): I seek leave to make a personal explanation.

Leave granted.

The Hon. DEAN BROWN: During question time today, in answering a question about Wudinna Hospital, the Minister for Health quoted what I said on Radio 5CK, which is a regional radio station of the ABC. I believe that the minister seriously misquoted me. During that interview, I raised concern about the independence of the review being carried out at Wudinna Hospital. I said that the doctor was independent, as the minister claimed. However, I also said that I was concerned that the second person at the review was not independent if that person came from the government department, or was an employee of the government department or an incorporated body. I am therefore concerned, because I understand that the second person is not independent.

The point I made on radio was that this review was not independent, whereas, one would assume from what the minister claimed in her quote from me that I said that the review was independent, which it clearly is not. I wish to clarify that point. The minister clearly misrepresented my position.

Mrs PENFOLD (Flinders): I seek leave to make a personal explanation.

Leave granted.

Mrs PENFOLD: When answering the question about the clinical review of the Mid West Hospital Board, the Minister for Health stated that the terms of reference, and those who could have input into the review, were not as limited as I had indicated in my press release. However, the email received (I believe from her office) in response to my question, 'What are the terms of reference for the review?', states:

> To provide the order of directors with advice in respect of the following:
> - whether the medical and nursing care currently provided at the Wudinna Hospital, and associated documentation meets contemporary standards;
> - identify areas of care which require improvements and/or change;
> - whether appropriate systems are in place for the management of patients incidents, staff incidents, complaints;
> - whether appropriate and timely actions have been taken in response to complaints received by Dr Du Toit; and
> - whether communications between Dr Du Toit and senior nursing management is conducive to the continuum of patient care.

The answer to the question, 'Who can have input into the review?', was as follows:

> GP, nursing staff, administration staff (contingent upon the review team agreeing to this). It is not a public review and is focused on clinical issues—medical and nursing, quality and safety, and communication between nursing staff, management and doctor.

In addition, in answer to my question about where and when the review will be advertised, it is not being advertised at all. In answer to the question, 'How long will the review be taking evidence, and can someone who is not available on the elected date still give evidence?', the answer is:

> 2 days. A report will be provided to the Mid West Board, Region and department.

I am concerned about that, because, presumably, this means the Eyre Regional Service CEO, who is the former CEO of the Mid West Region. It also states that this will take several days to complete. No answer was given to the second part of the question, namely, whether someone who is not available on the elected date can still give evidence.

GRIEVANCE DEBATE

HOSPITALS, WUDINNA

Mrs PENFOLD (Flinders): It is with considerable frustration and regret that I once again believe that I must rise to put on record my concerns regarding the Wudinna Hospital and the lack of action by the Minister for Health and her department in properly addressing the issues that have been brought to her attention. Despite repeated calls for a thorough investigation of all the issues affecting the Wudinna Hospital, all the minister has seen fit to do is support a clinical review of practices at the hospital by two people—a departmental employee and an independent doctor, who is also employed by the university. According to the many letters and telephone contacts I have received, this review is totally inadequate, and much that will be investigated may well have been caused by the pressure that doctors and staff have been under from other factors.

A petition circulating in the town for just one week had over 400 signatures, despite lobbying for people not to sign it and one sheet with a number of signatures on it being torn up. People in Wudinna just want what the rest of us take for

granted: a doctor and an adequate medical service. Once again, their doctor has resigned and once again their birthing unit has closed—not because they have not had good doctors and midwives but because of past management practices that did not provide the natural justice that the minister said she would ensure would be received when she inadequately responded to my question and speech in parliament on 27 October.

One midwife alleges that her resignation forms were submitted without her signature, knowledge, intention or approval while she was on leave; another has left nursing altogether; and another is nursing at a different hospital. Why?

The Hon. Dean Brown: That is appalling.

Mrs PENFOLD: Yes; I agree. Many people are afraid to speak out because of fears of reprisals and payback against family members and themselves. Some have left their jobs, and some have left the district because of the problems. I will read from a three-page, handwritten letter, sent to me anonymously which sums up the feeling that my staff and I have received in conversations. It states:

> To talk out against longstanding members of the community is a very hard thing to do when you live in the same community and work with these people. But when these so-called pillars of our community, or indeed any community, are not doing the right thing, then people like me need to talk, even if it is anonymously.
>
> As I see it, Dr Piet is the only doctor (that I know of) to have the guts to buck the system and ask questions and stand up for what he sees is right, what we are all entitled to and deserve—truth and honesty in our hospital and health system. Why isn't someone listening to what Dr Piet is saying? What will it take before someone does?

I have repeatedly asked the minister for an independent review. I have asked that the guidelines of the review be widened to include the now former chief executive officers of both the Mid West Health Service and the Eyre Regional Health Service and also their interaction with the volunteers on the regional and local boards.

It is ludicrous that the Mid West Health board can have a meaningful review while these CEOs, who are no longer in the positions held during the time that these problems started, are still influential. Concerns including intimidation and harassment, forgery and misuse of funds, not just accusations of unsafe patient care, have already been raised with the ombudsman and the Commissioner for Equal Opportunity.

As I told the manager for country regions, who rang me at the minister's request asking me to back off, the clinical review is too little and too late. If the minister had moved quicker, the doctor and midwife may not have resigned and CEOs may not have been promoted to new positions.

There are many questions that I believe need to be answered but will not be put under the current guidelines, particularly as the public, with personal stories to tell and who cannot be so easily intimidated, are being specifically excluded. As well as the issues already mentioned, some of the other concerns that need to be addressed include, first, whether the doctor was ever placed under a behavioural management agreement. On ABC Radio this was refuted by the Chairman of the Mid West Health board. However, the minutes of the Mid West Health board show that this is not correct.

Secondly, I would like an explanation of why, as reported in the hospital's annual general report, motor vehicle expenses rose from $22 000 in 2002 to $94 700 in 2003 and then were split into two in 2004, when the figure rose to $102 000? Thirdly, has the former CEO acquired the 4WD for personal use; and, if so, when did this happen and what process was used to acquire the vehicle? Communication is seriously lacking and I ask: why, if there is nothing to hide, is the Minister for Health conspiring to protect possible corruption, intimidation and unprofessional conduct?

STOBIE POLES

Mr RAU (Enfield): I rise to raise a matter which I think is of great importance to people in the urban areas of South Australia, that is, the situation on the streetscapes of every street in every suburb of the capital. The particular problem in the streetscape to which I wish to draw attention (as if it did not need drawing attention to) are those ugly Stobie poles which festoon all these streets.

Members interjecting:

Mr RAU: Everyone says, 'Oh yes, but they are very practical and they carry electricity up and down the streets and those awful, big fat wires that have been slung under them in the last few years.' That may be so, but, first, they are incredibly unsightly and, secondly, they are quite dangerous. If you drive around any of the streets now, you do not have to go very far before you see flowers and other memorials on Stobie poles all over the city. They indicate where people have been involved in serious accidents or fatalities at those Stobie poles. I quite frankly would like to see every one of them removed, but I realise that an expense is associated with this and that the PLEC program over a long period of time will effect only a minimal improvement in what is otherwise a great ugliness in our city.

To compare what the city of Adelaide looks like with, for example, the city of Canberra, which was planned never to have these poles, if you drive down any street in any suburb in Canberra, you will find not only that there are none of these poles but also that the streets are planted with uniform shades of trees. It really looks magnificent and it adds a certain quality to the streets. It also makes it easier for the streets to become a place which is more of a warm, comfortable urban environment rather than a gritty, unpleasant and barren industrial landscape.

The eastern suburbs of Adelaide, most of which still have Stobie poles, have tackled this problem by having large, very shady street trees. If we drive through Toorak Gardens or some of these other so-called leafy suburbs, we see jacarandas or other trees which produce a beautiful effect in the streets. They provide shade; they cool the environment; they are doing the job that trees are supposed to do, that is, fixing carbon and helping us in their own small way with our problems about carbon emissions; and at the same time they are hiding some of the gross ugliness of these Stobie poles.

I would like to see a plan for the whole of the metropolitan area of Adelaide for some sort of comprehensive, appropriate street tree program so that streets not only in the eastern suburbs but also in the northern and western suburbs can be improved by having shady trees. They make the environment better for pedestrians, and they make the environment better for road users. Instead of having streets which are basically large, barren runways festooned with Stobie poles, the shady trees will create a more gentle, comfortable environment for people who live in the area, who use the footpaths and who might wish to walk around the neighbourhood, which is something we should be encouraging.

For all those reasons, I would like the state government and local government authorities to put their heads together and try to come up with a way of progressively greening our

streets and in this process consider some of the crazy examples that we see, where what would otherwise have been excellent greening programs are ruined because some person has decided that they are going to leave a gap there as a shop does not want a tree or something else.

I invite members to go for a drive down Henley Beach Road, in the area between South Road and Marion Road, to see where on one side of the street there is a long rank of trees and on the other there is a dot of trees here and there because they have regarded shopping points or parking spots as being more important than creating the effect. If you compare that with Donald Bradman Drive between South Road and Brooker Terrace and then between Brooker Terrace and Marion Road—

An honourable member: Poles apart.

Mr RAU: You will see a completely different effect. Let us have uniformity; let us have cooperation; and let the state government and local government move forwards. It will not get rid of the Stobie poles but at least we will not have to look at them.

DISRUPTIVE TENANTS

The Hon. G.M. GUNN (Stuart): I want to continue in relation to a matter which I raised during question time with the Minister for Housing about the difficulties long-term residents are having with disruptive people who have no regard for other people's privacy, property or general wellbeing. I have always held the view that if you live in a locality you should respect other people's rights and their ability to get on with their life without being hindered or harassed by antisocial behaviour. There is a clear, urgent need to do something about these people. Elderly people and others should not be threatened or intimidated or caused great distress by this antisocial behaviour. In housing these people, authorities must be aware that if these people do not have the necessary social skills to live in a neighbourhood they should not be put there. Other law abiding people who are paying their taxes, paying for their properties or paying rent are entitled to have their privacy and property protected.

I received a letter dated 16 November which states:

> The neighbourhood also have concerns for their personal safety since the riot occurred, as the violence witnessed was very frightening and some [of] the residents in the area (addresses named in letter) were involved in the riot, the majority of the neighbourhood now do not feel safe knowing how violent these people can be that are living close by.

A letter that went to a government agency states that some of the residents in the street, including young children, were quite terrified since the riders were entering the neighbourhood, residents' yards, taking stones, rocks, pulling off some of the picket fencing on one house, and breaking tree branches, all to use as weapons. The riders were also in possession of bottles, shovels and sticks while fighting with and yelling against each other.

I have received a large number of complaints in my office about this behaviour. I concur with the concerns of these people, and I call upon the various agencies to get on the job to ensure that, if these people are to live in these localities, they behave themselves; otherwise, do not put them there. I am very much aware of the need to have a halfway camp, or some sort of other accommodation, for people who have not lived in housing and who want shelter and a different sort of accommodation. That needs to be put in place very quickly. However, in the meantime the rest of the community should not have to suffer this antisocial behaviour.

I want to raise another matter with the Minister for Transport. I have received a letter from a very concerned constituent from Burra which states:

> As you are my elected member in [the] state parliament, would you please lobby the Minister for Transport to try and get some upgrading of the Barrier Highway between Giles Corner and Cockburn. It is by Australian standards in a very dilapidated state of repair. It is a narrow, winding, rough surface and no passing lanes with no immediate sign of any in the future. The highway carries a large volume of heavy transport including road trains between Cockburn and Burra and B-doubles south of Burra. As residents of Burra we and many others prefer to take the longer route to Adelaide via Robertstown-Eudunda-Kapunda-Gawler. The Barrier Highway has had no major upgrade for many years and is in desperate need now.

I concur with those comments. There is a need to upgrade this road. One of the great successes of recent years has been the large number of passing lanes which have been installed between Port Wakefield and Port Augusta; and there are some now on the road up from Templers on the way to Clare, but there is a need for a lot more. I understand that the member for Chaffey wants more put on the Sturt Highway—and I endorse that. It is very important from a road safety angle that many more passing lanes are put on the major highways. It is one of the most important safety programs that we could put in place.

Since my comments the other day about kangaroo bars, I have received correspondence from people who obviously know nothing about driving in the Outback of Australia. Let me repeat: they are an essential part of driving equipment if you want to drive at night and you want to ensure that you are not stuck on the side of the road.

NORTH TERRACE

The Hon. R.B. SUCH (Fisher): Members would know I have taken an interest in what has been called the North Terrace upgrade—or what I call the North Terrace downgrade. Recently, I wrote to the Minister for Urban Development and Planning, and to her credit she made available to me the so-called surveys that were undertaken to determine what happened there. I commend her for her honesty and openness, and in no way attribute any of the outcome in that project to her.

Having had a long-standing involvement in research methodology, my suspicions were confirmed when I saw the material used. The public, so-called, was asked this question, among others: which type of tree do you prefer in the first stage plans—plane trees, spotted gums, other suggestions? That is not a choice at all. That is like saying, 'Do you want to be hung or shot?' In my view, neither the plane tree nor the spotted gum (Eucalyptus maculata) are appropriate species for North Terrace. The spotted gum is not native to South Australia. It is not the appropriate tree to plant for shade out of the hundreds of natives from which you could choose and other native shrubs and trees you could use.

Another research company asked questions, including one which was prefaced: some large healthy trees, e.g. jacarandas, are to be retained on the northern side. The rest of the present mixture of exotic trees will be replaced by mature spotted gums about 12 feet or four metres tall. The spotted gums are native and will reach 20 metres in 20 years. Do you approve or disapprove of this plan? Most people would not know a spotted gum if they tripped over one. It is a cousin of Eucalyptus citriodora (the lemon scented gum), which is

noted for dropping the odd, usually minor, limb. But they are not the sorts of trees you would plant on North Terrace.

The heads of the Museum and Botanic Gardens and consultants recommended a whole range of plantings which could have showcased some of our exciting native trees and shrubs and which could have sent a message about water conservation and how we are trying to save native birds by planting native trees. But one does not suggest that we will put a New South Wales gum, which is a massive gum, in a spot such as that; or the alternative being the plane tree. Naturally, people would have gone for the plane tree.

There is a place for exotic trees, and often they look best when there is a mixture of trees—exotic and native. However, the problem with the exotics, as I have highlighted before, is that they are cold climate trees and their leaves damage our waterways, which are used to warm weather leaves. Hopefully, over time people may come to understand that.

I make one other point and that is that, when surveys are done, they should be done in accordance with proper procedures. Recently, the Democrats did a youth survey by delivering a truckload of questionnaires to university campuses and then claimed that was the voice of youth when maybe the same person in the refectory filled in 100 of them. It is a nonsense. That is the same sort of dodgy research that we see underlying decision-making by government. If you are going to do research, do it properly, ethically and honourably.

Finally, in relation to plane trees, I will quote from the *Wentworth Courier* (the Sydney local paper) which interviewed Jerry Colby-Williams, the head gardener at Sydney Royal Botanic Gardens. The article states:

> 'My doctor thought I had scabies,' Mr Colby-Williams said. 'I wouldn't send human beings in to prune plane trees in spring without protective clothing. In the last ten years we've experienced an epidemic of people becoming allergic to a whole range of things—

and he goes on. There is a place for plane trees, but not as the only tree on every street in the City of Adelaide. Research is being done at Waite Institute to develop and showcase appropriate native trees. Some people plant a Tasmanian blue gum a metre from their house and wonder why it is an inappropriate tree. There are hundreds of appropriate species of trees, shrubs and grasses which can be planted to showcase North Terrace to tourists and locals in a way which would have aroused their interest instead of having more of the same boring tree which probably should be spelt p-l-a-i-n rather than p-l-a-n-e because, when you have seen one, you have seen them all.

To the credit of the minister, she was open and honest in giving me a copy of the surveys, which confirmed what I suspected—that is, that the so-called research upon which the decisions were made was pretty questionable in the first place, and it is no wonder we ended up with a project which is unfinished and, in my view, somewhat irresponsible.

Time expired.

TRAIN DERAILMENT

The Hon. I.F. EVANS (Davenport): I rise today to express my community's concern at the derailment of the freight train at the Glenalta Railway Station yesterday. We in the local area know that we were one day and about five metres away from a tragedy if that event had occurred on a week day when the Glenalta Railway Station had been packed with schoolchildren going to school and commuters going to work and if, indeed, the Adelaide to Blackwood road was full of cars with commuters going to Adelaide for a variety of purposes. We were very lucky, for a number of reasons, that it occurred on a Sunday. One is that passenger trains are not quite as frequent on a Sunday so the chances of a freight train derailing and hitting a passenger train are less than on a week day. Thank goodness the freight train did not hit a passenger train. If it had, it would have been a catastrophe that I do not wish to contemplate. We were very lucky that the freight train did not hit the Glenalta Railway Station when the station was full of people. One carriage missed it by, in my judgment, only a matter of 20 metres. That carriage went on and slid onto the road and stopped within five metres of vehicles that were parked waiting to cross the Glenalta railway crossing. So, the community, the authorities and the train operators were very lucky yesterday. I place on the record that I am not convinced that we will be so lucky in the future.

Members of the community raised a number of concerns with me yesterday. I spent about four hours at the scene yesterday walking around talking to locals, and there is no doubt that there is now major concern about what might happen if things go wrong on another day of the week. I think the gravity of yesterday's events was brought home because people could walk around the area at which the train derailed and visualise schoolchildren or their partner standing at the railway station and themselves sitting in vehicles waiting to cross the railway line. The pedestrian crossing that used to go across the railway line simply does not exist because the carriages went straight through it. People could see themselves sitting on the passenger train being cleaned up by the freight train, and there are now very serious concerns within the community about having the freight line running through that general area. We all know that the freight trains use one line and the passenger service uses the other line. Of course, we are talking about a 1.2 kilometre 4 500 tonne vehicle and, if that careers into a passenger train, I think we all realise that we will face a number of deaths and horrific injuries. So, I put on the record my community's concern about those matters.

People are, quite rightly, concerned about track maintenance. The track is owned by ARTC (Australian Rail and Track Corporation) which, of course, has outsourced the maintenance to Transfield. The community has concerns about track maintenance and will be interested to see what the investigation says about track maintenance. We also have concerns about the maintenance of the carriages. We understand that one of the carriages started to fall apart just west of the Belair Railway Station (the bogie came off the carriage). The train travelled another 4 kilometres before it derailed at the Glenalta Railway Station, and we are very lucky indeed that people were not injured in this incident.

The train jackknifed between houses and, had it jackknifed 20 metres closer to the Belair Railway Station, the Thompson family would have been lucky to be here to talk about the event. So, we were only 20 metres away from houses being damaged.

I have previously raised this issue in response to a derailment 12 to 18 months ago. Other issues have been raised, where residents have had the brake linings of trains land on their roofs. It is only a matter of time, in my view, before we have a very serious incident with the freight trains and the passenger trains using the same corridor in this area. If you were designing the freight service today you would not run it over the Mount Lofty Ranges into Adelaide from Melbourne because that is the second highest spot in the state. It is obviously through the water catchment area, the bushfire

area and one of the highest urbanised areas in the state. Clearly, you would take it through the north of Adelaide to Callington where the terrain is far friendlier to a freight service. I have already contacted my federal representative to seek a meeting with the federal authorities, and I will be seeking the state government's support to undertake meetings with the federal authorities about that matter.

ZHU-LIN BUDDHIST ASSOCIATION

Ms BEDFORD (Florey): On Sunday 14 November it was my very great honour and privilege to represent the Premier and the Minister for Multiculturalism at the cultural exhibition and food fair by the Zhu-Lin Friendship society of the Buddhist community here in South Australia. It is my pleasure to respond to their hospitality this afternoon by inviting a group here to Parliament House for a brief look around the building. On the occasion of the food fair and exhibition, the Premier asked me to pass on his message about multiculturalism being one of South Australia's greatest success stories and that through multiculturalism we have peace and cooperation among people of the many different cultures and faiths who have made South Australia their home. Multiculturalism is based on the principles of respect, understanding, justice and equity, and these could also be said to be the principles of the Buddhist community.

The Zhu-Lin Buddhist Association involves members of the Buddhist faith from many different parts of the world. Almost one third of South Australian Buddhists are Australian born. Others, were born in Vietnam, Cambodia, Malaysia, Thailand, China, Laos, Hong Kong, Singapore, and many other parts of the world. As such, the Buddhist community provides a model of multiculturalism for all South Australians. Buddhism is the fastest growing religion in South Australia and in Australia. In 2001, there were more than 350 000 Buddhists in Australia and this represented an 80 per cent increase over the five previous years. We can expect that the numbers will continue to grow.

Over recent years we have seen much unrest around the world and much of this has been between people from different cultures and different faiths. Multiculturalism provides an alternative to division and hostility and, similarly, the Mahayana Buddhist faith is characterised by compassion and a constant quest for peace. Followers of the Mahayana Buddhist faith have a pervading sense of duty to others, the attainment of goodness and the avoidance of violence. These are values that are consistent with the values of multiculturalism and values that are welcomed and supported by the government of South Australia.

The volunteers prepared a great amount of food for the cultural afternoon which was a fundraising activity to continue the work of the Buddhist community here in South Australia. Although the rain was very unfriendly for us very early, in the afternoon, the weather cleared and, although I had to leave early, I understand that it was a wonderful afternoon. There were many beautiful exhibits in the hall, which all of us were very lucky to see because they had been brought in from all over Australia and internationally as well. On that day we extended our best wishes for the inauguration of the Venerable Jie Wen Shi who was to become the Abbot of the temple, and I was lucky enough to be present at that ceremony yesterday, and happily welcome him as part of our party this afternoon.

It, too, was a wonderful afternoon with the Buddhist community, blessed by very fine weather and, again, another great banquet and many speeches. The Venerable Jie Wen Shi was supported in his elevation to the position by many venerables who had come to join him from overseas and all over South-East Asia. As usual, there were many beautiful flowers in the Great Hall and I was able to take part in a tree planting ceremony later on that afternoon on behalf of the Premier, planting tree number 18, which I know we will all watch grow with much pleasure.

The Buddhist community here in South Australia has gone to very great lengths to welcome people into it and to show them around the temple. They will also be having open days as far as I know. This is the first visit of many of the Buddhist community to Parliament House and I am hoping to make this a regular feature, showing them through the building and explaining to them how the house works. The temple at Ottoway is a beautiful building and there is much room on the property they have purchased where they hope to build a hall, and I know that they will be looking to the support of governments, both state and federal in their quest to continue fundraising for that.

The temple is a beautiful and tranquil place, a place where much work can be done in seeking the inner peace that is part of Buddhism, and I know that it has been a great honour for me to have visited with them and to share in their hospitality. I thank them very much for welcoming me to their community, I wish the Abbot and all venerables safe home, and I hope that I will have much more to do in future with the Buddhist community, and look forward to seeing them again in the house.

SELECT COMMITTEE ON THE JUVENILE JUSTICE SYSTEM

The Hon. R.B. SUCH (Fisher): I move:

That the time for bringing up the report of the select committee be extended until Thursday 9 December.

Motion carried.

SELECT COMMITTEE ON THE STATUTES AMENDMENT (PARLIAMENT FINANCE AND SERVICES) BILL

The Hon. K.A. MAYWALD (Minister for the River Murray): On behalf of the Attorney-General, I move:

That the time for bringing up the report of the select committee be extended until Thursday 9 December.

Motion carried.

INDUSTRIAL LAW REFORM (FAIR WORK) BILL

In committee.

(Continued from 11 November. Page 811.)

Clause 6.

The Hon. I.F. EVANS: I move:

Page 6, lines 22 to 24—Delete subclause (4).

Although clause 6(4) does not clearly define the reason for our amendment, it brings in the first mention of declaratory judgments. The opposition is opposed to the court having the power to make a declaratory judgment. If we lose this amendment, obviously we will not proceed with our other

amendments relating to declaratory judgments. The background to this matter goes back to the minister's draft bill, which was released for consultation. In that draft, the commission was given the power to deem contractors to be employees. It was based on a Queensland provision which had been used three times: first, in relation to the shearing industry. When the Queensland provision came in, the union movement immediately took the shearing industry to court, and they spent 18 months and about $350 000 trying to decide whether shearers in Queensland were contractors or employees. In that case, the shearers won the argument and they were deemed to be contractors.

There was then another case relating to security guards in the hotel industry. The security guards lost that particular case and were deemed to be employees, not contractors. Then there was a transport matter, which was taken before the commission in Queensland. The last brief I have had on that was that it had been parked to one side because there were too many unanswered questions in the legislation for the commission to reach a conclusion on the matter. The President of the Queensland Industrial Relations Commission, David Hall, made a number of speeches at Queensland conferences (and, indeed, at national conferences) calling on the Queensland government to change the legislation containing this deeming provision because it simply did not give the Industrial Relations Commission enough guidance.

For whatever reason, the minister chose to put a virtual mirror of the Queensland legislation into his draft bill and put it out for public consultation. That provision was absolutely belted by all the business organisations. Virtually every submission raised concern about this provision in the draft bill. The only ones in favour of it were, not surprisingly, the union movement. Consequently, the minister has now come back with a deeming provision mark II, which is essentially the power to make a declaratory judgment. Instead of allowing the commission to deem contractors to be employees, under this bill the court will have the ability to make a declaratory judgment as to whether someone is a contractor or an employee.

A common-law system is already in place in relation to this, and we believe it should be left to that system which already exists. A 20 checkpoint rough guide has been established through a series of court cases over a number of years in relation to this particular question. I think it is interesting that the federal government was re-elected on a policy of bringing in specific independent contractor legislation to give more certainty to this matter of defining who is a contractor and who is an employee. So, we oppose the declaratory judgment section of the bill. We very strongly support the independent contracting sector, whether that be in the IT industry, the building industry or the trucking industry. We think that the independent contractor system develops a very competitive market.

The housing industry's initial comment on the draft bill was that it would put up the price of a house by 20 per cent. They realised that a direct attack on the subcontracting industry proposed by the government would add a significant cost to the price of a house. I have been a builder and worked as a subcontractor for a number of years and I know how competitive the market is. It is an excellent market for the consumer because the market is so competitive that it does deliver a quality product at a very good price.

The independent contracting system applies across a number of other areas, IT in particular. The IT industry has written to the opposition saying that it strongly opposes this particular provision. The transport industry has also written to us opposing this provision. It is interesting that the opposition has been lobbied by all of the groups that are reliant on the independent contracting sector, and those industries, which thrive on the independent contracting sector, are totally opposed to this provision.

We oppose this provision, because all the industries, including the Farmers Federation, through its body (obviously, the farming sector uses independent contractors for a whole range of needs—shearing and the like), and every single group which has a heavy independent contracting membership and which has contacted the opposition has opposed this clause, because they recognise that it will only make life more complicated for them. It will also create less certainty and drive up costs for those involved in the industry, which costs will ultimately be passed on to the consumer. The amendment seeks to delete the measure in relation to declaratory judgments, and that is why the opposition opposes it.

The Hon. M.J. WRIGHT: The government opposes the amendment that has been moved by the opposition. We make the point that declaratory judgments are a sensible approach which allow uncertainties about the sorts of relationships that people have to be sorted out before they create a problem. The member for Davenport referred to this being 'deeming provision mark II'. The two are simply different, and I will come to that in more detail as I work through this.

Declaratory judgments will allow the court to be able to declare workers to be employees or, alternatively, independent contractors, by reference to the common law and the definition of 'contract of employment' under the act. It offers a mechanism to clarify the status of work arrangements under the existing law. It does not do any more than that.

The shadow minister referred to independent contractors. If one is correctly labelled as an independent contractor, that would not change with declaratory judgments. And, of course, there is a place for and a right to have independent contractors. We do not quibble with that. But if people are not labelled correctly, using existing common law, that is a different situation. The point I make (and which I made earlier) is that declaratory judgments are different from deeming provisions. Unfortunately, the member for Mitchell is not here at the moment, although he would not be far away, because he has an amendment coming up shortly and he may well be listening.

The simple question I ask is why, if deeming was the same as declaratory judgments, would the member for Mitchell have moved the amendment that he has moved. So, they are different. Deeming provisions allow the commission to expand the pool of who is considered to be an employee, whereas declaratory judgments simply declare that someone's status is according to the common law and contract of employment as defined by the act. I would have thought that that is a fair thing to do. All we want to do is use the existing common law and contract of employment as defined by the act—nothing more than that.

The Hon. I.F. EVANS: They are a tool to achieve the same end, and the minister in his response talked about expanding the pool of employees. That is exactly what the independent contracting sector does not want. It does not want them to be included in an expanded pool of employees. They may well be different instruments, but they are designed to achieve the same end. My reading of the bill is that the word 'persons' is used in the next clause but, because we are

debating this clause and it is consequential, I will just touch on the next clause, with the minister's permission.

Clause 7 in the declaratory judgments area talks about declaration as to employment status. It states that persons can be declared employees. In the bill there is no definition of 'person' and in the act there is no definition of 'person', so one goes to the Acts Interpretation Act for that definition, and that would include companies or bodies corporate. I am wondering how the minister envisages a body corporate being deemed to be an employee, because to me that is a nonsense. I am not sure how that will be achieved under this bill, but that is certainly my reading of how it works. I understand that submissions have been made to the government by industry groups raising that very point.

The second area where we have concerns is section 6(4), which we are seeking to amend. It talks about including a contract that falls within the ambit of a declaratory judgment. What does that mean? Who decides that it falls within the ambit? How do you know that it falls within the ambit of a declaratory judgment? It seems that it is ambiguous and vague in its timing as to the point at which it is declared to be falling within the ambit of a declaratory judgment. Indeed, what does it mean? Does it simply have to be a contract because one party thinks it to be so or after the Industrial Relations Court or commission deems it to be so? If this amendment fails and the minister's bill succeeds unamended, I am not quite sure how that will work.

The wine industry also opposed this measure, because that industry also uses a large amount of contracting. The two points that I want the minister to address are these. Am I right in saying—and are the industry groups right in saying—that it captures bodies corporate by the Acts Interpretation Act? If it does, will the minister seek to amend that, or is that the minister's intention?

The Hon. M.J. WRIGHT: The member asked a couple of questions, one relating to clause 7 and the body corporate and one relating to clause 6(4) regarding 'within the ambit'. I will deal with them in the order that the shadow minister has asked. The answer to the first question is no. Under the common law, under the definition of 'contract of employment' in the act, companies—that is, trusts and so on—cannot, as I understand it, be employees.

In regard to the second question, clause 6(4), the shadow minister asked about 'within the ambit', and that simply means within the scope.

The Hon. I.F. EVANS: Is it in the scope, though?

The Hon. M.J. WRIGHT: It is difficult to answer that question, because you are asking us to interpret decisions that have not even been made yet.

The Hon. I.F. EVANS: As I understand the answer given by the minister, his advice is that bodies corporate cannot be an employee because of some common law principle. The submission from Independent Contractors of Australia states:

> The Independent Contractors Association does not, however, support the bill's persistence with the attempt to change core legal concepts contained within the draft February bill. The clause allows for a court to make a declaration 'as to whether a person is an employee, or a class of persons are employees'.
>
> a) Person. At law, a person can be an individual, a corporation or a trust. The proposed clause would enable a corporation or trust to be declared an employee. This is legislative radicalism. It is not possible for a corporation or trust to be an employee—only individuals can be employees.

The submission continues:

> The bill repeats the same error as Queensland's s275 legislation which led to the Queensland IRC declaring a corporation in Queensland 'to be something which it is not' [an employee] '. . . but in the light of legislation that requires us to do so we cannot object.'

So, the minister's advice to the house is that it is not possible for that to happen. The Independent Contractors Association tells me that it has happened in Queensland. I raise the point that I believe, as does the Independent Contractors Association, that, because the definition of 'person' refers to the Acts Interpretation Act (which clearly provides that a person can be a corporation), the bill may be repeating the same error made in the Queensland legislation, which, according to the Independent Contractors Association, has led to a corporation or a trust being deemed an employee, but the minister tells us that cannot happen.

The Hon. M.J. WRIGHT: I think that in part we are talking about the same thing. The submission is correct in that only individuals can be treated as employees. I agree with the first part of the submission from the Independent Contractors Association to which the honourable member referred. However, he referred to the Queensland legislation and to deeming, which is not decided under the common law. I appreciate that the member believes that 'declaratory judgments' are the same as 'deeming', but I have a different view in that I think that they are clearly different. I can understand the point that the Independent Contractors Association makes in the first part of its submission; in fact, we make the same point. However, the member then talks about the Queensland legislation in relation to deeming, which is not decided under the common law.

The Hon. I.F. EVANS: Given that the Independent Contractors Association made that submission as part of the process, has the minister taken specific legal advice to check that, under his declaratory judgments, corporations and trusts cannot be declared employees?

The Hon. M.J. WRIGHT: The declaratory judgments do not change the common law or the definition of contract of employment.

Mrs REDMOND: Will the minister explain in what way he considers deeming different from a declaratory judgment, particularly in its outcome? I understand that there is a difference in the process by which one deems compared with the one by which one obtains a declaratory judgment. However, at the end of the day what will the difference be in practical terms?

The Hon. M.J. WRIGHT: I appreciate the member for Heysen's question. The point I made earlier (and I am not sure whether the member was in the chamber) was that declaratory judgments are different from deeming provisions, because deeming provisions allow the commission to expand the pool of who is to be considered to be an employee, whereas declaratory judgments simply declare someone's status according to the common law and contract of employment. There are a whole range of factors considered in deeming which are simply not relevant to the common law in declaratory judgments.

Mr HAMILTON-SMITH: Minister, I understand within the context of this part of the bill that anyone can apply under common law for a declaration to be made, and on that basis I just wonder how under common law that individual could bind everybody else. My understanding would be that, under common law alone, one would not expect to justify the transposing of the individual to the collective class on the basis that each member of the so-called class would not have been heard individually on the application. Could this not—if the member for Davenport's amendment is not agreed to and

this clause removed—unwittingly draw a whole group of people into a declaratory judgment situation which they do not want to be involved in and of which they feel they have taken no part?

The Hon. M.J. WRIGHT: I thank the member for his question. It is only if this was successful, declaratory judgments—it is to declare the law as it currently stands. The other point I would make, in part to your comment more than to your question, would be to draw your attention to government amendment No. 7.

The Hon. G.M. GUNN: We have a system which has worked very well in this state, with private contractors engaged in a wide range of occupations providing services to large companies and to individuals. From my experience in the rural sector, they are an important part of that sector and without them they could not survive—whether it was carriers, fencing contractors, electricians and some mechanics are private contractors. Why do you want to change something that has worked very well?

One of the things that concerns me is that we are continuing to make life as difficult as we possibly can for people by creating more red tape and more paperwork. You are loading up individual employers, many of them single operators or families, to the stage where they are in utter despair. Why complicate it any more?

I represent a pretty large cross-section of South Australia and I have received no complaints that the current arrangements are not working well, no complaints whatsoever. When you have a good system, why change it, minister? What is the overriding need? Where is the pressure coming from? Who wants this particular provision put in the act when, from my experience and that of many others, there have been no representations to change it?

The Hon. M.J. WRIGHT: I thank the member for Stuart for his question. I do not disagree with his comments about private contractors that they are an important part of business, nor do I dispute it working well—he referred to his area and that would be the case in other areas. The point, and I think it is an important one, is that this does not change the status of people who are properly contractors under the existing law. It is not the government trying to say that there is not a role for private contractors, as referred to by the member for Stuart, because that would be a silly thing to say. As I said, it does not change the status of people who are properly contractors under the law.

The committee divided on the amendment:

AYES (23)

Brindal, M. K. Brokenshire, R. L.
Brown, D. C. Buckby, M. R.
Chapman, V. A. Evans, I. F. (teller)
Goldsworthy, R. M. Gunn, G. M.
Hall, J. L. Hamilton-Smith, M. L. J.
Kerin, R. G. Kotz, D. C.
Lewis, I. P. Matthew, W. A.
Maywald, K. A. McEwen, R. J.
McFetridge, D. Meier, E. J.
Penfold, E. M. Redmond, I. M.
Scalzi, G. Venning, I. H.
Williams, M. R.

NOES (22)

Atkinson, M. J. Bedford, F. E.
Breuer, L. R. Caica, P.
Ciccarello, V. Conlon, P. F.
Foley, K. O. Geraghty, R. K.
Hanna, K. Hill, J. D.

NOES (cont.)

Key, S. W. Koutsantonis, T.
O'Brien, M. F. t.) Rankine, J. M.
Rann, M. D. Rau, J. R.
Snelling, J. J. Stevens, L.
Thompson, M. G. Weatherill, J. W.
White, P. L. Wright, M. J. (teller)

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. I.F. EVANS: I move:

Page 6, lines 25 to 27—
Delete subclause (5)

This amendment is in relation to multi-employer enterprise bargaining agreements. This is in the definition clause, and it is a test vote in relation to multi-member agreements. The government seeks to insert a definition that allows for agreements to be made with one or more employers. The opposition is opposed to that. The business community is generally opposed to that, seeing it as a form of patent bargaining. A typical comment came from the wine industry, which said that there is no support within the industry for enterprise agreements to be made other than with one employer. The concept of a multi-employer agreement is inconsistent with the concept of enterprise bargaining. The proposed definition is therefore not needed and not required as imposed by the industry employers. That sums it up.

The Hon. M.J. WRIGHT: I oppose the amendment. As the shadow minister said in moving this amendment, it would delete clause 6(5), which reads:

. . . definition of enterprise agreement—delete 'an employer' and substitute:
1 or more employers

Of course, as the shadow minister says, that will have the effect of doing away with multi-employer agreements. I think some points need to be made in regard to multi-employer agreements. Of course, they assist franchise businesses and allow businesses to spread the costs of developing negotiations and certifying agreements, and that is an important factor. We should not underestimate the ability of businesses to spread their costs. For the first time, it provides a cheap way for smaller businesses to participate in bargaining, which may well see them become more comfortable with the process and potentially enter their own enterprise agreement at a later time. It provides small businesses with another way of accessing flexibilities that larger businesses have accessed for many years.

I think this is an important feature that should not be underestimated. The point that we should not lose sight of is that small businesses presently rarely use enterprise bargaining, and this proposal is seen as an encouragement to increase the use of these agreements to help smaller businesses obtain the benefits that larger competitors have long enjoyed. So, this is an important feature. I do not support the shadow minister's amendment.

The committee divided on the amendment:

AYES (23)

Brindal, M. K. Brokenshire, R. L.
Brown, D. C. Buckby, M. R.
Chapman, V. A. Evans, I. F. (teller)
Goldsworthy, R. M. Gunn, G. M.
Hall, J. L. Hamilton-Smith, M. L. J.
Kerin, R. G. Kotz, D. C.
Lewis, I. P. Matthew, W. A.
Maywald, K. A. McEwen, R. J.

AYES (cont.)

McFetridge, D.	Meier, E. J.
Penfold, E. M. t.)	Redmond, I. M.
Scalzi, G.	Venning, I. H.
Williams, M. R.	

NOES (23)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	White, P. L.
Wright, M. J. (teller)	

The CHAIRMAN: Order! There being 23 ayes and 23 noes, the chair has the casting vote. I do not see this as a big issue in terms of the interpretation.

Mrs Hall interjecting:

The CHAIRMAN: Order! The chair is entitled to have a say. It will delete singular and allow plural in terms of employers, and it is designed, as I understand, to cover franchisees, and I think that that is quite reasonable. I cast my vote for the noes.

Amendment thus negatived.

The CHAIRMAN: Order! The committee is now dealing with amendment No. 12 standing in the name of the member for Davenport.

The Hon. I.F. EVANS: Before I get to my amendment, I would like to ask some questions on the definition of 'family'. I am interested as to how broadly this 'family' definition now applies, and, in relation to clause 6(6)(e) and 'any other person who is dependent on the person's care', how formal does the arrangement need to be about dependency? How does an employer know that someone is dependent on the person's care or, indeed, what does the employee have to do to show the employer how dependent they are on the person's care?

The Hon. M.J. WRIGHT: In terms of being dependent on the person's care, a commonsense approach would need to be taken here. For example—and this is just one example; I guess we could make a number of examples—you could say that just because someone does not live with their grandparent or other relation does not mean that they cannot play a major role in caring for them, such that the person is dependent on them, and it is appropriate that this is recognised.

The Hon. I.F. EVANS: Sorry, minister, can you repeat that? I was distracted when talking about a procedural issue.

The Hon. M.J. WRIGHT: In terms of being dependent on the person's care, a commonsense approach needs to be taken, and the example that I gave (and you could probably think of a range of examples) was that just because someone does not live with their grandparent or other relation does not mean that they cannot play a major role in caring for them, such that the person is dependent upon them. These provisions take their meaning from the context in which they are found. What we are talking about here is bereavement leave and carer's leave.

The Hon. I.F. EVANS: When you say that it is going to be a commonsense approach, that gives little guidance to any employer or, indeed, any employee, as to what a commonsense approach is, because what you think is commonsense and what I think is commonsense, and what an employer and employee think is commonsense, are going to be markedly different things. So, that definition, having 'any other person who is dependent on the person's care', is a provision that will be open to dispute, and will cause friction between employers and employees about whether there is a legitimate request for carer's leave because the person is dependent on the person's care.

It does not have to be, as the minister puts it, a relation or a grandparent. It can be any person at all who in someone's opinion is dependent on their care. There does not have to be any formal carer's arrangement. They may even mount the argument that, because the other person's family is away, they are dependent on their care for two days. They may be the only two days in the whole year they are dependent on the person's care but because the person's other support is interstate or not available for some reason all of a sudden a person could be giving care, or allegedly giving care, to a person. I want to confirm that it does not have to be a relative; it can be absolutely anyone at all. It is a very broad definition and that, to me, is simply a clause set up for disputation. You are going to pitch employer against employee with that clause because it is far too broad. It is not clear what is meant by 'a person's care'. I think this will raise a whole range of disputes.

Secondly, I am not sure what is meant by 'any other member of the person's household'. I think the minister means that they have to be residing in the person's house, but I am not sure what is defined by 'a member of a person's household'. That person could be a flatmate, an overseas student, a university student boarding with grandma, or anyone who is under the roof—and I assume it could be anyone who is under the roof on the day that the leave is taken. If you happen to have someone staying over and they are a member of the household on that day or during that week, a case could be argued for sick leave because they are member of your household for that period of time. This provision does not state that they are residing in the home or that they are a member of a person's family, as we would know it. The way I interpret the clause is that it means anyone who happens to be in the house. Whether that be on the day or during the week that they are sick seems to be open to disputation.

The third area I raise in relation to this definition is that I am not sure whether 'a spouse, a child or, a parent' should be changed to 'their spouse, their child or stepchild, or their parent or parent-in-law'. I do not think 'a spouse' defines it sufficiently. For instance, if my sister comes to my house, she is not 'my spouse' but she is 'a spouse'. It could be interpreted that because she is a spouse she is a member of the family.

I am sure that is not the intent, but I think 'the following are to be regarded as members of a person's family' should be followed by 'their spouse, their child or stepchild, their parent or parent-in-law'. There is a difference. My neighbour's husband is a spouse but not a member of my family, but under this definition, because he is a spouse, he would be caught. The minister may wish to comment.

The Hon. M.J. WRIGHT: I am happy to comment on each of those points. The first point is that the definition needs to be read in conjunction with the purpose for which it is found. I think this picks up the shadow minister's second point: if a person lives with their grandparent, uncle, or godparent, and they pass away or are clearly in need of care, that is quite appropriate.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: It has really got to be for the purpose for which it is found, and commonsense will apply. You could raise a thousand hypotheticals.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: But at the end of the day it is commonsense. If this was successful and the employee asked the employer for this, the employer might well refuse. If the employee says that this is not right and chooses not to accept that decision, ultimately the court or the commission, depending on which forum it finally went to, would make a judgment. The court or the commission would view this in the context of the purpose for which it is found and apply commonsense. In the same way, the employee and the employer would put forward a commonsense approach. If, hypothetically, the employee did not do that, the employer would be within their rights not to approve it, and that might well occur. I think it needs to be viewed in the context of the purpose for which it is found.

Mr HAMILTON-SMITH: If a family is defined in this way to include almost anybody in the community—under paragraph (d) it must be someone living in your household but under paragraph (e) it could be almost anyone in the family—are there any implications for other acts? I think this must be about the broadest definition of 'a family' that one could hope to have. I seek the minister's guidance as to whether this definition is consistent with other definitions of family in other acts or whether we are creating some sort of a precedent whereby, for legal purposes, the family is now extended to include just about anybody.

The Hon. M.J. WRIGHT: If the member is asking whether this has implications for any other act, I do not believe so.

The Hon. I.F. EVANS: I have some points to make in respect of subclause (7), which seeks to insert some changes to the definition of 'industrial matter'. The government seeks to delete the words 'the rights, privileges or duties of employers or employees (including prospective employers or employees)' and substitute 'or relating to the rights, privileges or duties of an employer or employers (including a prospective employer or prospective employers) or an employee or employees (including a prospective employee or prospective employees)'. In layman's terms, this broadens the definition of 'industrial matter', because it now has to relate only to the rights and privileges, whereas previously it had to affect the rights, privileges or duties. That is where this bill, in a number of areas, sets out to confuse and complicate matters more than they need to be. Again, this clause will be open to disputation more than it needs to be, because the government is broadening the definition of 'industrial matter', and this will lead to disputes between employers and employees.

The examples are that it now has to relate only to the rights, privileges and duties. What does that mean? What does 'relate to' mean? As an employer, I will argue that 'relate to privileges rights or duties' means a certain thing, and the employee will then argue 'No, "relating to" means something totally different,' and there you have your dispute—all around the words 'relating to'. The current act, from memory, reads to the effect that it must affect the rights, privileges or duties, which is a narrower and, indeed, a clearer, definition of 'industrial matter'. So, there are concerns in that respect.

Secondly, there are concerns that industrial matters will now be able to be notified by individuals and that individuals will now be able to notify an industrial dispute; there will be no need for what those in the industry call a collective element. The example given to us by the business groups would be that an employee could feel that they have been harassed by a co-worker, that they were given inappropriate duties or, indeed, that they disliked a car park or an office that had been provided to them by the employer and, therefore, the employee could then take a grievance to the commission on an individual basis, because it relates to their rights, privileges or duties. Does it affect them? Probably not. But it does relate to. Therefore, not only do we broaden it down to individual complaints being able to go to the commission but we also broaden it in respect of things that simply relate to. So, as long as it is close enough and it relates to something to do with a right, a privilege or a duty of an employee—as long as they can hang it on some hook—ultimately, it will be before the commission.

All the business groups opposed this broadening of the definition of 'industrial matter', for the reasons that we outlined. They are all concerned that the definition materially widens the scope of the application and, ultimately, that means that the type of issues that will be considered as industrial matters will potentially add to the level of disputes and, therefore, disruption in the workplace, and the Industrial Relations Commission will have a greater opportunity to intervene in a greater number of workplace issues. The government's agenda is to get the Industrial Relations Commission involved in far more issues at the workplace. That is what that definition sets out to do.

I will also make some comments about clause 6(8) and 6(9), as they all relate to industrial matters. Clause 6(8) also deals with the definition of 'industrial matter' and, again, broadens the definition. It contains the words 'and any matter relating to employment arising between an employer and an apprentice'. What does 'any matter relating to' mean? The minister will say, 'Well, commonsense will prevail.' Apparently, commonsense is going to interpret the whole bill. Again, it seeks to place into the bill more clauses that will be far more open to interpretation. There will be different views about what 'any matter relating to' means. This is really setting up the bill to have more disputes between employers and employees than we need to have. There will always be some differences in views, but what we are doing through the government's amendments is setting up more clauses within the bill that will cause industrial disputes, when we really do not need to go down that path.

Clause 6 again deals with industrial matters, and subclause (9)(ka)(ii) talks about the regulation of any person who gives out work. Clause 6(9)(ka)(v) talks about the protection (whatever that means—and that would be open to interpretation, whether you are seeking to protect someone or not) of outworkers in any other respect. Who would know what that means?

All through this definition of 'industrial matter', which is central to disputes (you have disputes about industrial matters), the government is seeking to broaden the definition in basically two general areas, so that it can cover as many issues as possible for as many people as possible, through making it possible for an individual to raise an industrial matter without a collective element to it. It is no surprise to us that all the industry groups are opposed to this reworking of the definition of 'industrial matter' and, for those reasons, the opposition opposes clauses 6(7), 6(8) and 6(9).

Mr HAMILTON-SMITH: I will not go over the ground covered by the member for Davenport on the issue of

'relating to the rights'. I am intrigued as to why the government has found it necessary to amend the parent act to provide:

> . . . an employer or employers (including a prospective employer or prospective employers) or an employee or employees. . .

In the parent act, it is incorporated as one statement, namely, employer or employees. This seems to have been fleshed out and extended a little—I assume to bring in the government's concept of multiple employers being involved in agreements.

The Hon. M.J. WRIGHT: I think I picked up the sense of what the member said, although I did not hear it all. It is a similar point to that made by the shadow minister, but it has been made in a different way. The clause is written in this way to accommodate individuals' being able to make claims. We think that individuals, and not just people with issues of a collective nature, deserve access to a dispute resolution process.

The Hon. I.F. EVANS: I have spoken to the minister, and I seek leave to move my amendment in an amended form to read:

> Page 7, lines 1 to 25—Delete subclauses (7), (8) and (9)

These subclauses relate to the industrial matters about which we have just spoken.

Leave granted; amendment amended.

The Hon. I.F. EVANS: I move the amended amendment accordingly.

The Hon. M.J. WRIGHT: I think I have made my point. I am happy to accept the amendment in an amended form, but obviously the government opposes it. I have spoken previously on clause 6(7), which relates largely to outworkers and ensures that 'industrial matter' covers the chain of contract matters dealt with for recovery purposes. We will talk about that more as we work our way through the bill. I have also spoken about the issues raised by the member for Waite in relation to an individual's deserving access to an independent dispute resolution in the commission.

The committee divided on the amendment:

AYES (22)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A.	Evans, I. F. (teller)
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kotz, D. C.	Lewis, I. P.
Matthew, W. A.	Maywald, K. A.
McEwen, R. J.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

NOES (22)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	Wright, M. J. (teller)

PAIR

Kerin, R. G.	White, P. L.

The CHAIRMAN: Order! There being 22 ayes and 22 noes, it comes down to the chair again. I will just make these points. In relation to subclause (7), the inclusion of an individual employee having an entitlement, I find the attempt to exclude that rather unusual, especially by a liberal party.

Regarding the second one relating to apprentices, I know apprentices have some safeguards under the training legislation, but I would have thought it is quite legitimate in an employment situation for the apprentice and the employer to have some avenue open to resolution.

Regarding the third one relating to outworkers, we know there have been a lot of accusations about exploitation, and I see no reason why there should be a second class applying to a category of workers. So I give my casting vote for the noes.

Amendment thus negatived.

The Hon. I.F. EVANS: I move:

> Insert:
>
> (d) any other body brought within the ambit of this definition by the regulations;

This amendment seeks to insert into the bill a provision under the definition of 'peak entity' so that the minister has the power to make 'any other body' a peak entity for the purposes of the act. In the bill, the peak entities are the minister, the United Trades and Labor Council and the South Australian Employers Chamber of Commerce and Industry Inc. (we know them as Business SA).

The opposition thinks there is an argument that there are other bodies which would consider themselves peak industry bodies, such as the Housing Industry Association, the Motor Traders Association, the Wine Industry Association and the Retail Traders Association. There is a whole range of associations that would consider themselves peak bodies, but under the bill the only group recognised as a peak body ultimately (other than the union movement and the minister) is the South Australian Employers Chamber of Commerce and Industry.

We do not dispute for a minute that that particular group plays the major and significant role in business lobbying in the process, and they represent business well. However, we do accept the argument put to us by other industry associations that the minister should have a regulation making power so that the minister can hear submissions from other industry groups and then make a determination as to whether they should be recognised as peak entities. The UTLC is slightly different. I am not that familiar with the UTLC's internal processes, but I understand that it is a membership-based organisation where unions would affiliate with the council.

Not all business associations affiliate with Business SA, and I dare say that not all unions affiliate with the UTLC. Therefore, there would be nothing to stop the minister also recognising other unions as peak industry bodies for particular purposes. We think it is important to broaden the definition of peak entity. We have not gone through the process of trying to list all the peak entities in the legislation. We think that is better done by a minister in consultation with those entities, and then coming to some conclusion and doing it by regulation making powers.

The reason we move a definition of peak entity is that, looking across the various industry and union groups, I think it is fair to say that, while the UTLC and Business SA do a significant job on behalf of their various constituencies, there are legitimate claims by other industry associations—and I dare say other union groups, but particularly other business associations—that they themselves in their own right are peak

associations for their membership. Therefore, the legislation should reflect that. This amendment gives the minister a regulation making power to achieve that end.

The Hon. M.J. WRIGHT: The government supports the amendment moved by the shadow minister. We think this is a worthwhile amendment. Whenever the opposition puts forward a worthwhile amendment, we are happy to accept it.

Amendment carried.

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

Page 7, lines 35 to 37—

Delete all words in these lines after 'not include' in line 35 and substitute:

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 relates to rights of entry, primarily for union officials. The effect of our proposal is to say that union officials cannot enter employers' homes other than any part of such premises where an outworker works. There is a distinction between the government's amendment and the amendment that will be moved subsequently by the shadow minister. We think it is important, needless to say, to allow for that right of entry to premises where an outworker works. That is why the government has moved this amendment.

The Hon. I.F. EVANS: I thank the government for at least adopting the opposition's amendment. Our amendment was to delete 'a part of the premises of an employer that is principally' and substitute 'any premises of an employer'. I note that the government has adopted the opposition's amendment in the first part of its amendment when it uses the words 'any premises of an employer used for'. The opposition recognises that the government has adopted its amendment to that point.

The government then goes on and adds the words 'used for habitation by the employer and his or her household other than any part of such premises where an outworker works'. When we talk about outworkers, most members of the public and a lot of the media probably think about women from non-English speaking backgrounds slaving over sewing machines. That is the picture of an outworker. However, the definition of outworker in the act is far broader than that. Section 5 of the Act provides:

(1) A person is an outworker if—
(a) the person is engaged, for the purposes of the trade or business of another (the employer) to—
(i) work on, process—

and the government has moved an amendment to add the word 'clean' there—

clean or pack articles or materials; or
(ii) carry out clerical work.

So, what does 'carry out clerical work' mean in the context of the definition of outworker?

[Sitting suspended from 6 to 7.30 p.m.]

The Hon. I.F. EVANS: I was encouraging the minister to consider the broad definition of 'outworker' in the current act, because the minister's amendment to his own bill seeks to restrict, primarily, access by union officials to premises except at such premises where an outworker worked. So the question is: where would an outworker work? To resolve that question you need to go to what an outworker is. An outworker is a person 'engaged for the purposes of the trade or business of another. . . to work on, process or pack articles or materials; or carry out clerical work'. That is a very broad definition and means that people doing bookwork for other entities at their home would be caught by the definition of 'outworker'. There would be an argument about whether engineers writing specifications would be caught under 'clerical work', and even whether the IT sector would come under 'clerical work'. There would be a whole range of arguments about what is 'clerical work'. I totally accept that that is the definition in the act, but the minister seeks to move an amendment that includes the word 'outworker', so one obviously needs to refer to the act.

We therefore prefer our own amendment, which seeks to restrict union access so that officials cannot enter any premises of an employer used for habitation. The minister seeks to change his own bill but allows the union access to where an outworker works.

Mr Hamilton-Smith: That's waffle.

The Hon. I.F. EVANS: I do not know whether it is waffle: the member for Waite says it is waffle. There will be some arguments about the definition of 'outworker' and, if you look at the government's provision in the bill regarding 'outworker' and you can understand it, you are doing all right. The opposition prefers its own amendment because it narrows it down essentially, in layman's terms, to what the current state of play is in the act.

We understand why the minister would want to have unions attend premises where an outworker works, particularly if you take the typical image of the outworker as being women of non-English speaking background doing clothing work; that is the general public perception of an outworker. But I think it is more than that. 'Outworker' goes to even people who simply negotiate or arrange for the performance of work by outworkers. Therefore, the person doing the negotiation becomes an outworker, so the union could attend all those premises. So, if it happened that the negotiator worked from home, the union could visit there. If you arrange for the performance of work by outworkers (and I am not sure what the definition of 'arrange' is), that obviously broadens the net. If you distribute the work to, or collect the work from, a place—and that would be the transport industry—you would be caught. Again, it talks about even bodies corporate being involved.

So, it seems to us that, while the minister's intention may be primarily to adopt the opposition's stance, adding the words about outworkers further complicates the issue. If there was a better definition of 'outworker', the opposition may be more attracted to the amendment, but the very broad definition of 'outworker' that currently exists means that, unfortunately, the opposition, while attracted to the first part of the minister's amendment, is not attracted to the second part of the minister's amendment, so we oppose the minister's amendment and will seek to move our own amendment if the minister's amendment is not successful.

Mr HAMILTON-SMITH: Can I ask the minister how this provision might apply? Taking the government's amendment, if I was to have, for instance, a cleaner in my home moving around the parts of the home which I inhabit or, for example, a gardener who has contracted an outworker who comes in regularly to do the garden, do I live in the garden and is that part of my premises? Would the government's amendment not open up the possibility that a union official or an inspector might seek to enter my living premises in order to check on the place of work of the cleaner or the gardener?

The Hon. M.J. WRIGHT: I thank the member for his question and refer him to regulation 6 under the act. It provides:

> Pursuant to section 6B of the act, employment which consists of part-time or casual employment performed in or about a private residence is excluded from the ambit of the act provided that the work is wholly or mainly performed for a domestic purpose.

So, I am confident that would satisfy the member's concerns.

Mr HAMILTON-SMITH: I thank the member for his answer. Not having the regulations before me, I take it that this provision does not apply if the nature of the work is of a domestic nature; that is to say, if it is cleaning or if it is lawn mowing—that sort of thing of a personal nature—it is not included. Let us say, for example, that I have a person come in to do clerical work for about two or three days a week, and they might do that in the living room, the drawing room, or in the kitchen perhaps—that part of the premises in which I might work. Let us say, too, that I am a small business and I have someone come in two days a week to do my accounts and my bookkeeping for me. Would that then fall within the ambit of the minister's amendment, or would that be protected by the domestic work clause in the regulation?

The Hon. M.J. WRIGHT: It would not fall within that regulation to which I just referred the member, but you have to qualify within all the relevant aspects of the outworker definition. I think the shadow minister may have touched on this both before and after dinner. To be an outworker under the act, you need to tick a number of boxes, and there is reference to clerical work in the act. The shadow minister referred to that, and you are doing so in a similar manner. But also, to be an outworker, there must be an award or an agreement or, in our case (provided that government amendment No. 6 is successful, and it will come up later), also by regulation that has to be extended to that work. So, the award must specifically deal with outworkers. Our advice is that the only award that has those provisions is the clothing trades award.

To recap, there is a number of boxes that need to be ticked, and one of those is that there must be an award or an agreement, or if our government amendment No. 6 is successful later, also by regulation that has to be extended to that work. So the award or the enterprise agreement (or the regulation if the government amendment is successful) must specifically deal with outworkers, and the advice that we have is that only the clothing trades award currently does that.

Mr HAMILTON-SMITH: If I can pursue that point for a moment, minister, I can think of another award that might fall into this ambit and that is, for example, the child care workers' award. Let us say, for example, that a citizen or a family choose to engage a baby sitting service from a registered labour hire company—a baby sitting service, a baby minding service, or a child minding service—and they seek the services of a childcare worker, and that person comes into their private premises, and moves around the living portions of the home, looking after the children. Would it not be, if the government's amendment comes into law, that an argument could be constructed that that baby sitter would fall under an award and, in fact, should be dealt with under the child care workers' award rather than under whatever private baby sitting arrangement or contracted arrangement was entered into with that outworking company and, therefore, an inspector or union official could have access to the home to inspect the working conditions and circumstances of that outworking employment?

The Hon. M.J. WRIGHT: Once again I suspect that the reference that the member is referring to would be coloured by the earlier regulation that I read to him. I am happy for him to have a look at this, although I would probably need it straight back. It says in that same regulation that I referred to, in addition to the earlier section:

> In this regulation, work is performed for a domestic purpose if it is not performed for the purpose of the employer's trade or business.

I suspect that the example that the member just gave would be covered by this regulation.

The Hon. I.F. EVANS: If a businessman or woman pays for a cleaner to clean his or her home out of the business account, is that person then an outworker—or not?

The Hon. M.J. WRIGHT: I think that would also fall into that category, in a general sense, to which I referred earlier. The advice that we have received is that the only award that covers outworkers specifically is the clothing trades award. Therefore, that person, and that example about which the member is talking, is not covered by an award or an enterprise agreement and therefore would not be covered.

The Hon. I.F. EVANS: I understand what the minister is telling us. So, the real danger then for employers is the expansion of any outworker provisions in any more awards. So, if the union wants to get coverage of more houses it would argue before the commission to put an outworker provision clause into more awards. That is the way I understand the minister's answer: that the outworker provision does not apply to a person's domestic activity, unless there is award or enterprise bargaining agreement coverage. I understand the minister's answer to mean that there must be a specific clause in the award that relates to outworkers, and the minister's answer is that the only award that currently does that is one of the awards in relation to the clothing industry. So then, I assume, if my understanding is correct, that the only way that the unions can gain access to someone's home is if the awards when they are reviewed are expanded to include a specific provision for outworkers, if an enterprise bargaining agreement provides specific reference to outworkers, or if the minister makes a regulation specifically in relation to outworkers.

The Hon. M.J. WRIGHT: The generality that the shadow minister describes is correct, but the definition of 'outworkers' does not deal with the cleaning of homes. I think I made specific reference to that in my second reading reply.

The Hon. I.F. EVANS: So, it does not deal with the cleaning of homes regardless of who pays the cleaner? For instance, if I, as one of the adults in the house, paid for it out of my own pocket, I can understand that that would be covered by the regulation, because I would be exempt, but if my business pays a cleaner to clean my home is that then a domestic activity? If my business pays someone to clean my home is that a domestic activity or a business activity, because it is paid for out of my business account? That is the question I am asking on the regulation: whether people who pay for cleaners to clean their own home out of their own business account are caught.

The Hon. M.J. WRIGHT: It does not matter either way, because the cleaning of homes is not covered by this provision. The cleaning that we refer to is in the articles to which we will come shortly. Whether it be by an individual or by a company is largely immaterial, because the clause does not cover the cleaning of homes, so you will not be an outworker either way.

Mr SCALZI: I understand why this bill provides for outworkers, but if you have, say, 10 outworkers in the clothing industry working from 10 different homes and a complaint is made about one of those outworkers, will access to that person's home be granted, and what right has that individual to say, 'I don't want my home inspected'?

The Hon. M.J. WRIGHT: There are rights to reasonable notice. There are limited purposes for the inspection to occur but, yes, there are rights for inspections to occur.

Mr SCALZI: So that person would be notified that there is going to be an inspection. Would they be given 24 hours' notice? If co-workers from other homes had some concerns about this particular outworker, and if that person was given 24 hours' notice, would an inspection be able to take place whether or not that person consented?

The Hon. M.J. WRIGHT: The way the honourable member describes it is correct.

Mr SCALZI: I know there can be exploitation in this area, but if an individual is happy with working from their home because it suits them, if someone else has concerns about their agreement they would be able to have an inspection in that person's home, provided that person is given 24 hours' notice?

The Hon. M.J. WRIGHT: Generally what the honourable member says is correct. The inspection could occur. As a result of that inspection it may well be that information is provided to the outworker. That advice does not necessarily change the nature of the work, but that is generally what would occur, and that is basically the way the system operates at the moment.

Amendment carried.

The Hon. I.F. EVANS: I do not intend to move my amendment No. 14 at this stage. We will consider it between the houses. We will look at what the minister has said in detail in his reply and, if we think we can improve on it, we will move an amendment in the other place. I do not need to proceed with amendment No. 14, because the government has basically adopted our amendment with an add-on. So, we have achieved half of our amendment if nothing else.

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

Page 7, line 38—
Delete subclause (13) and substitute:
(13) Section 4(2)—delete subsection (2)
(13a) Section 4(3)—delete 'However, a' and substitute:
A

I think the government and the opposition have a similar type of amendment. Our amendment deals with how the group of employees is defined for the purpose of enterprise bargaining. Our proposal is to delete section 4(2) of the act, which limits how a group of employees is defined for enterprise bargaining. This is part of a proposal, as we have already talked about, for multi-employer agreements. There are also consequential amendments to section 4(3) of the act.

The Hon. I.F. EVANS: Can the minister explain why he is moving the amendment?

The Hon. M.J. WRIGHT: In the bill it is stated 'delete subsection (3)', but we meant to delete subsection (2). I guess it was a drafting error as much as anything: it was an error in putting it together.

Mr HAMILTON-SMITH: The minister seeks to completely delete subsection (2), which defines a group of employees. Why does the minister seek to delete that subsection? The only amendment that he is making consequentially to subsection (3) is wordsmithing, that is, in effect, removing the word 'however' from that paragraph. It really changes no meaning in subsection (3). Can the minister explain why we are deleting subsection (2) and what are we hoping to achieve by that?

The Hon. M.J. WRIGHT: Subsection (2) limits the group of employees, and that is why we need to delete it.

Mr HAMILTON-SMITH: Why would we want to remove this qualification of the term 'a group of employees'? The act states that a group of employees comprises the employees employed, or a particular class of the employees employed, in a single business, or the employees employed, or a particular class of the employees employed, at a particular workplace or workplaces, and if there is only one employee, or one employee of a particular class, employed in a single business, the employee constitutes a group. It seems to be quite an appropriate qualification of a group of employees. I am wondering what we are gaining by completely removing it, other than to perhaps add a degree of openness and uncertainty that might cause us grief later.

The Hon. M.J. WRIGHT: We have already had a debate about multi-employer agreements and, as I said, subsection (2) limits the group of employees. So, we are seeking to remove it and remain with subsection (3). I appreciate that the opposition has a different view about multi-employer enterprise agreements, but that is what our position of supporting multi-employer enterprise agreements is about and, in doing so, we do not want to limit the group of employees.

The Hon. I.F. EVANS: To clarify it for the opposition members who are following the debate, we had another amendment coming up which sought to delete clause 13 of the bill. Clause 13 of the bill sought to delete section (4)(3), which provides:

> However, a group of employees cannot be defined by reference to membership of a particular association.

The government has already won the debate in regard to multi-employer enterprise bargaining agreements, which is the first part of the government's amendment. The second part of the government's amendment picks up the opposition's amendment and reinstates section 4(3) into the bill and, therefore, the act. So, the government has won the argument about multi-employer agreements but has reinstated a provision that was suggested by the opposition.

Amendment carried.

The Hon. I.F. EVANS: I have a comment in relation to clause 6(14). I understand that this provision requires the registrar to publish an index annually on the internet site. The index is used for things such as setting the remuneration level when unfair dismissals kick in, or do not kick in, which, from memory, is currently around $90 000, or a little less than that. From the provision, I understand that the index is not binding, and therefore the parties could argue for a different figure. Is my understanding accurate?

The Hon. M.J. WRIGHT: The shadow minister is correct: it is not binding. Even if it were stated to be binding, if it were wrong a party could make an administrative law challenge and overturn it. If it were wrong, it should be overturned.

The Hon. I.F. EVANS: I understand that if it were wrong it could be challenged, but that would be the rarity rather than the norm. Would there not be some benefit in either the act or the regulation clearly stating the relevant amount, rather than it just being published on a web site?

The Hon. M.J. WRIGHT: I make two points in regard to this issue. All we are doing that is different is stating that

it should be done each year and that it should be published so that the information is more accessible. We are asking the registrar to be a bit more diligent in their duties. If it were to be done by regulation (because the shadow minister has spoken about it being incorrect), it should not be incorrect. If it is incorrect, with a regulation it would be perhaps more difficult to fix than it would be if the registrar were to make a mistake. The only change we make here is to get the information published on a more regular basis so that it will be accessible to all parties.

Amendment carried; clause as amended passed.

Clause 7.

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

> Page 8, line 14—Delete 'and any relevant provision of' and substitute:
>
> and the terms of the definition of **contract of employment** under

I do not need to speak for too long on this, because we have already debated declaratory judgments.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: No. Unfortunately, we have to revisit this—through no fault of the minister or the shadow minister. This amendment is to clarify what the court must apply in considering an application for a declaratory judgment. The reference to 'any relevant provision of' this bill always was intended to refer to the definition of 'contract of employment', and the amendment makes that clear.

The Hon. I.F. EVANS: So that we understand what is happening here, the minister is talking about declaratory judgments. This is where the court has the capacity to declare whether a person is an employee or, indeed, a class of persons are employees.

I want to clarify a procedural issue, Mr Chairman. At what point do we ask questions on the whole clause or on parts of the clause that are not being amended? Do we do that before the minister moves his amendment or after?

The CHAIRMAN: You can do it whenever you like while we are on the clause.

The Hon. I.F. EVANS: I might do it now, to some degree. The minister seeks to make some amendments to this clause. The first one he has moved seeks to delete 'and any relevant provision of' and to substitute the following words:

> and the terms of the definition of **contract of employment** under

The minister suggests this has always been the intention of the government. It is a pity the government's bill did not say that, because certainly all the consultation was based on a bill that did not say that.

The opposition is opposed to the declaratory judgment concept as proposed by the government, but we acknowledge that at least the minister's own amendment narrows the declaratory judgment. Previously the words in the clause were 'and any relevant provision of' the bill. What does that mean? It broadens very much the matters which can be determined on application under this clause. I made the point earlier about persons and whether companies can become employees.

Another area is that I notice proposed new section 4A(3) provides:

> The Court cannot, on the basis of an application under this section, make an order that would require a person as an employer, or a group of persons as employers, to pay, on a retrospective basis, any monetary amount with respect to work performed. . .

Does that cover all the various employment obligations? Is the minister saying to us that if the court makes a declaratory judgment that a contractor becomes an employee, the employer cannot be charged long service leave, holiday pay, sick pay or any WorkCover premium as examples for work done or time served as a contractor prior to the declaratory judgment? Is that the interpretation of that clause?

The Hon. M.J. WRIGHT: I refer in particular to proposed new section 4A(3), which provides:

> The Court cannot, on the basis of an application under this section, make an order that would require a person. . .

That is pretty straightforward. If the applicant chose to go down the path that the shadow minister refers to, they would need to make a separate application.

The Hon. I.F. EVANS: And I assume that application is under proposed new section 4A(4), where it says:

> Subsection (3) does not affect an application made under another provision of this Act for a remedy other than a declaratory judgment.

So one would assume that, once they are declared an employee, they then go back to the commission under some other section of the act and say, 'Now I am an employee, I haven't been paid long service leave; I haven't been paid holiday pay; I haven't been paid sick leave'—all those other entitlements—'and by the way I have a WorkCover claim.' Minister, would you please deal with the leave entitlements first?

Once one goes from being a contractor to being an employee, under the bill as proposed is one then able to take an employer to the commission seeking long service leave or holiday pay? Or they may have a dispute about underpayment, having a different rate of pay as a contractor than as an employee; all those issues could be involved. I will come to WorkCover in a minute. Can they now seek a remedy for all those issues as an employee?

The Hon. M.J. WRIGHT: I think the simple answer is yes. If they were declared, they always were in that position unless the facts were different. If someone is declared an employee and they chose to go down the path that the shadow minister refers to, they would also need to prove that, at the time of the declaration, whatever they might be claiming at some earlier time, they were in that same position that had been declared as a result of the initial process that they had just been through. So their status has not changed; it is just that the label applied to the person has changed. If they were declared, they were always in that position unless, as I said, the facts were different from the point at which that declaration was made.

The Hon. I.F. EVANS: I thought you might give that answer. If that answer is the case, that does concern the opposition. I ask the minister in his next response to deal with the WorkCover issue. If you are a contractor, you have your own sickness and accident policy or you may be running your own WorkCover issue, depending on how it is structured. You are then subject to a declaratory judgment. I am not sure where WorkCover and all the obligations under the Workers Rehabilitation and Compensation Act then trigger in.

While the minister thinks about that, I will make some other points in relation to this general provision. Essentially, the proposal is open ended in terms of standing to apply. Anyone with a proper interest can apply—whatever this means. Of greater concern is that anyone can apply for a declaration which will affect a class of persons. What notification is there to the class of persons? What right does the class of persons have to be notified and make submissions and be heard in these—

The Hon. G.M. Gunn: Or object!

The Hon. I.F. EVANS: What right does the class of persons have to be heard and object, if they so wish, in relation to these matters? Some of the business associations put to us that it is difficult to see how common law indices alone could justify the transposing of an individual to a collective class. In reality, the proposal potentially allows any legal personality, including a corporation or a trust, to be declared an employee. That is the advice given to us by a number of business associations and some legal advisers.

We foresee that this jurisdiction will create significant problems. It will certainly create a whole range of new procedural steps and procedural uncertainty, which will add cost and complexity to the employee-employer relationship. While the bill indicates some factors to be considered, the proposal is not dissimilar to that outlined in the Queensland legislation. I have already given evidence during the committee stage of the bill about what happened with the Queensland bill and the shearers, and about the huge cost to everyone involved in that matter.

We see this as an another example of trying to put constraints on those people who seek to work by contract rather than what would be perceived as the more traditional forms of employment. This whole section quite significantly concerns the opposition. All the business associations oppose this provision and we do not think the government has made a case for this amendment. Who is calling for this in South Australia? Certainly no-one has come to the opposition, other than the union movement, suggesting that this is needed in South Australia.

The other area that concerns us is new section 4A(6)(c), 'any other person with a proper interest in the matter'. The way in which the bill is written does not even deal with being a party to the contract. The minister says that the government will deal with that by way of amendment, so in a key provision—which the minister has already lost—we now have two amendments.

The Hon. M.J. Wright interjecting:

The Hon. I.F. EVANS: The minister has two amendments trying to narrow the effect of his own bill. That indicates that the consultation process could have been better and longer. If the minister took the opportunity to listen more closely to the business community, the introduced bill would have reflected what the amendments probably now show. Could the minister address the WorkCover issue for me? What rights are there for a class of employees to be notified and heard? Also, what are the employer rights? Is the employer actually notified? I cannot see a provision in the bill that requires either the employer or the class of employees to be notified. There is nothing at all here. I guess we are relying on the commission or the court's good grace to notify those parties. I am not sure where that is in the provision at all.

The Hon. M.J. WRIGHT: The shadow minister has raised a few points, and he is right in regard to changes the government has made. We have taken account of some of the views put to us by the stakeholders and, in part, that reflects government amendment No. 3; and also government amendments Nos. 4 and 5 where we are seeking to delete clause 7(6)(c). Two or three points have been made: anyone with a proper interest or class of persons—well, peak entities—would be notified. Inevitably, if they were concerned, they would publicise it and ensure that people who were concerned also would have their views put forward. You would not be able to run a case of this significance without the peak entities being notified; nor should you.

The shadow minister still refers to the Queensland legislation and how similar this bill is to that legislation. I guess we differ in regard to that. There is simply no comparison with what we are bringing forward and the Queensland legislation, which is all about deeming.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: Well, I am sorry about the legal advice you are getting because it is simply not correct; it is simply not the case. There are significant differences between this bill and the Queensland legislation. The shadow minister has identified what he has put forward about the Queensland legislation, which is about deeming. This is about declaratory judgments using existing common law. The WorkCover legislation certainly has, as its main focus, the common law definition of 'contract of employment'.

But the other point is that, if a declaratory judgment is made using the existing common law, you are never legally a contractor. The label is simply falsely being applied: so, as such, the various areas (whether it be workers' compensation or the other areas to which the shadow minister refers) obviously should reflect that.

Mr HAMILTON-SMITH: I understand the situation applicable under this section essentially to be as follows: if I am a company or formed a company in my own right as a proprietary limited and I am employed by a parent company, or if I have one or two people working for me in the name of that company and they go out and do work, any one of those two or three people whom I employ could be, although they are working as part of a company, essentially declared an employee rather than a company working on contract. Do I understand the object of this section correctly?

The Hon. M.J. WRIGHT: I am not sure that I necessarily understand what the member is saying, so I invite him to clarify it if my answer is not along the lines of the question. As I interpret it, my response is that a person is never a company. A company is a legal construct. I am not certain of the member for Waite's point, so if I have missed anything perhaps he can clarify what he was asking.

Mr HAMILTON-SMITH: Actually, one person can be a company—you can be a single person company. But the main point is that, if four or five people have formed a company and they are in the business of going out and doing IT-related work, for example, one of them could decide to seek a declaration under the terms of this clause to become an employee and, in effect, have an impact on the class of employees—that is, the other four or five people who work for that company—and draw them into the arrangement that that person seeks to remedy by being declared an employee. Is that right?

The Hon. M.J. WRIGHT: If they are an employee under the law, they are an employee under the law. All this does is make that clear. All we seek to do with declaratory judgments is not change the existing common law and not to stop contractors being contractors if they are legally contractors. However, if someone has been labelled incorrectly—and it could work both ways—

The Hon. I.F. Evans: No, it can't.

The Hon. M.J. WRIGHT: Why can't it?

The Hon. I.F. Evans: You show me where in this provision an employee can be made a contractor.

The Hon. M.J. WRIGHT: It is not being made a contractor. It is being declared.

The Hon. I.F. Evans: An employee—

The Hon. M.J. WRIGHT: You will have your chance in a second. At this stage—

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: You will have your chance in a second.

The Hon. I.F. Evans: I will, now.

The Hon. M.J. WRIGHT: Thank you; I look forward to it. But in respect of the member for Waite's question, that is the point I would make.

The Hon. I.F. EVANS: The minister just said it works both ways. The only interpretation you can put on that is that an employee can go to the same jurisdiction and ask whether his or her employment status is indeed that of a contractor. I am not sure that is right because, as an employee, they are a party to a contract and, under the minister's own amendment, he is making that the issue. So I am not sure whether the minister is right. I think the way his provision is written means that contractors can apply to be made employees. I am not sure whether it means employees can make an application to become a contractor. That is the first point.

The second point is that we sought the submission on this bill of the WorkCover Corporation under FOI legislation and they did not make one, so I wonder on what basis the minister is giving a view on the workers' compensation implications of declaratory judgments when the WorkCover Corporation has not put a submission to the government on the impact of the bill.

The Hon. M.J. WRIGHT: In regard to the first point, we are talking about declaring the status of the relationship correctly, so of course it can work both ways and of course they are party to a contract—employment is a variety of contract. I do not know whether it necessarily takes advice from WorkCover about what the potential implications may be in regard to a workers' compensation claim, if one should arise. The shadow minister asked me a range of questions—whether or not it is related to WorkCover, if a declaratory judgment was made and what potential applications might arise as a result of that. I think that it is pretty plain and clear in the bill what those potentials may be.

The Hon. I.F. EVANS: If it is plain and in the bill, minister, explain this to me: if I am a business that contracts with a contractor and the contractor injures himself, and then some months later goes to the court and seeks a declaratory judgement as to whether they are an employee or a contractor, and the court decides in its wisdom they are going to be an employee—does WorkCover then cover the rehabilitation costs for the injured contractor given that the injury occurred prior to becoming an employee? If WorkCover does, does the employer get charged backdated WorkCover premiums for the extent of the contract or not, given that within the clause it talks about no retrospective charges? That matter is not clear in the bill.

While I am on those matters that are not clear in the bill I will ask a question in relation to what happens to the capital assets of the contractor. Take the trucking industry as an example: if you are a trucking contractor, like a parcel delivery contractor, by way of example, and you are taken to the court and declared an employee, who owns the truck? It used to be the contractor's truck, and the contractor becomes an employee—does the court have the power to say that the now employer has to take over the financing and payment of the truck, or does that stay with the employee even though the employee loses their status as an independent contractor? Those matters are not clear under the bill. Is it possible under the bill that you will end up with a declaratory judgement as an employee for purposes of the South Australian Industrial Relations legislation and, indeed, the South Australian workers' compensation legislation, but you could still remain a contractor for the purposes of the federal Income Tax Act? Has any advice been sought on that matter in relation to this clause?

The Hon. M.J. WRIGHT: The shadow minister has probably raised three issues. He used the words, 'not prior to becoming', and that is where the point is missing, because they were all the time; it is simply that the declaratory judgement has been made.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: As I have said, in that situation if a declaratory judgement has been made, it may well, depending on circumstances, depend on whether they are covered by WorkCover, or if the employer has got exempt status and so forth that a claim can be made.

The Hon. I.F. EVANS: But under section 3 WorkCover cannot claim the premiums back from the employer. Are you saying to us that WorkCover is going to inherit the liability but none of the premium? Is that the advice to the committee?

The Hon. M.J. WRIGHT: No, I am not saying that, because if they were an employee they ought to have been paying the WorkCover levy and it can be recovered.

Mr HAMILTON-SMITH: Minister, if I engage a contractor, let us say plumbing services or electrical services or IT services in my business, and I enter into an arrangement with a proprietary limited, who may be an individual plumber or an individual IT specialist or an individual electrician, and that person performs services for me for a couple of years on a contractor basis and then after a couple of years that person decides that he or she wants long service leave or wants sick leave or wants some other benefit, and they suddenly decided to apply for a declaration to the effect that they are now an employee, and that they have not actually been a contractor, they have been an employee, would I not have available to me as a defence that I had entered into a contract or an arrangement with a proprietary limited under federal corporations law, and that that is an arrangement between me, a proprietary limited, my company and another company, and that this state law that provides for declarations to deem that contractor to be an employee is overridden by the federal law in regard to contracts and companies?

Would I not be able to argue that my arrangement has been under federal law with another proprietary limited; that being a contractor, and the invoices and payments that I have made to that contractor will reflect payments to a propriety limited not to an individual? Suddenly we have that person coming along under a state law and claiming that they want long service leave or annual leave or some other financial benefit that I had not contracted to. How will this provision meet such a defence?

The Hon. M.J. WRIGHT: I suppose that the range of questions have been quite extensive but we are really skating around the same issues. As I have said before, under the common law, companies cannot be employees.

Mr HAMILTON-SMITH: Does that mean then that any contractor who is working as a proprietary limited, that is, as a company, escapes the application of this clause in its entirety and cannot become an employee in any case?

The Hon. M.J. WRIGHT: A company cannot be an employee.

Mr HAMILTON-SMITH: So, an escape for any contractor, or for any employer or engager of contractors, would be to insist that all contractors be a proprietary limited? So, for example, would this legislation not have the affect of causing those who would engage outworkers or contractors

to say to them, 'Right, I am not continuing with our arrangement unless you are a proprietary limited and I engage you as such, so that you cannot come at me later on under this part of this particular bill, should it become an act, and claim benefits which I was not anticipating.' Will that not be a consequence of this legislation?

The Hon. M.J. WRIGHT: I have said at least three or four times that a company cannot be an employee. I am not sure what more the member wants me to say.

Amendment carried.

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

Page 8, line 29—Delete paragraph (c) and substitute:
(c) a person who is seeking to establish whether a particular arrangement (or class of arrangement) under which he or she may be determined to be an employee or an employer under this act is in fact a contract of employment, or a person or association acting on behalf of such a person.

This amends subsection (6)(c) of the declaratory judgment section which, in unamended form, provides that any person with a proper interest in the matter can apply. The amendment is to clarify the provision so that people who could be determined to be an employer or an employee by declaratory judgment can apply as well as persons in associations acting on their behalf.

The Hon. I.F. EVANS: Will the minister explain to the committee how that is different from 'any other person with a proper interest in the matter'? The government's amendment simply states 'a person who is seeking to establish whether a particular arrangement (or class of arrangement) under which he or she may be determined. . . ' It does not mean they are party to that contract or arrangement at that point in time, does it? I am not sure whether this narrows it or whether it is the same as the wording in the bill.

The Hon. M.J. WRIGHT: The key words are that 'he or she may be determined to be an employee or an employer'. If they are not a party to it, they cannot be determined to be an employee or an employer.

The Hon. I.F. EVANS: Given that the word 'may' is used, this provision cannot be used by persons who are not parties to the agreement but who might be thinking of becoming parties to the agreement to get a ruling from the commission that if they entered the agreement they would become an employee or an employer. It is a bit like someone who goes to the tax office to get a product ruling on a tax, because this amendment provides: 'a person who is seeking to establish whether a particular arrangement. . . under which he or she may be determined. . . ' It does not say they have to be a party to the arrangement; it just says that they can go to the commission and say, 'If I undertake this arrangement would I be an employee or an employer?' I think the minister is trying to say that if you are a party to an arrangement then you can go to the commission. I am not sure whether the amendment actually does that.

The Hon. M.J. WRIGHT: The advice I have received is that, if there is a particular arrangement, as the words in the amendment suggest, it may be able to apply before being a party to it, as has been suggested by the shadow minister. I think he used a similar example with respect to a tax ruling.

Mr HAMILTON-SMITH: In regard to the minister's amendment No. 4, the final words state, 'or a person or association acting on behalf of such a person'. From an employer's viewpoint, I gather this opens the door, under this part of the act, for an association other than a peak body to present to the commission on behalf of a group of employers. For example, the Housing Industry Association, the small boats association or the Confederation of Child Care might be able to represent their group of employers under this provision without the need for regulation, as the minister has previously agreed.

The Hon. M.J. WRIGHT: That is correct.

Amendment carried.

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

Page 8, after line 29—
Insert:
(6a) 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.

This provision is to the effect that, when a person or association applies for a declaratory judgment on behalf of a person, they are not obliged to disclose the identity of that person to the other parties to the action but can be required to disclose the person's identity to the court. This is similar to the amendment, I think, that the member for Fisher has moved in relation to the Employee Ombudsman. It is about making sure that people are not dissuaded from pursuing issues of concern for fear of retribution.

Mr HAMILTON-SMITH: I have a concern about this amendment, because it appears to provide for a level of secrecy that seems uncalled for. It is saying that an association acting on behalf of a person—presumably, an employee or an outworker who is perhaps deemed to be declared an employee—somehow will be able to disclose to the other party—presumably the employer—the identity of the relevant person. It must, if called upon, reveal it to the court. However, as an employer, does that not leave you in the position of being accused, if you like, or being called to account by a person or persons unknown, the identity of whom is concealed from you, and put you in the unfortunate position of not knowing who the accuser is, given that, as an employer, the consequence of these undertakings might result in the need to pay a substantial amount of money or suffer considerable inconvenience? It seems to be a little out of place in our legal code, in particular, for people to be behind closed doors making accusations or raising points with an employer, the employer being held to account by a person or persons unknown and unseen.

The Hon. M.J. WRIGHT: As the member would be aware, the person will have to succeed in their application and, to do so, they will need to convince the court of the relevant facts. Of course, in the process of any determination being made, those facts would be brought to the attention of the employer. As the member has correctly said, in the insertion we have stated, 'at the discretion of the court, disclose the identity of the relevant person to the court, on a confidential basis, in accordance with the rules'. The court's rules would also set out the documents that would need to be supplied with respect to the workings of the court.

Mr HAMILTON-SMITH: Has this provision been the subject of legal advice from the Crown Solicitor? It strikes me as incongruous that a provision in a bill allows a contractor to make an application for declaration as an employee and claim substantial benefits. It could be a mischievous or devious proposition. The employer could have to go to the trouble of arranging for representation, presenting before the commission and going through a process. Even if the application were ultimately unsuccessful, it could have caused the employer enormous grief, and the employer might

never know who brought the application. It seems to me that there is something wrong with that in principle.

I take the minister's point that one has to have some confidence that the court will establish the bona fides of the claim, but it seems an outrageous proposition that employers could be called before the commission to answer to person or persons unseen and unknown behind the cover of a union, or whomever happens to represent them.

The Hon. M.J. WRIGHT: The counterview could be that, if it were a valid claim, retribution could be brought. I think either your example or mine would be rare indeed, because I hope that the mischievous claims to which member refers would not be something that the court would deal with on a regular basis. They may occasionally happen. The member may also have used the term 'devious representation', or words to that effect (and I apologise if that is not right). The court may handle those claims and deal with them pretty swiftly indeed. That would be my expectation and experience. Claims in those circumstances would quickly be thrown out of the court.

Mr HAMILTON-SMITH: I will give an example. Having seen somebody successfully make application and receive payment, a contractor (who might have been a contractor for five, six or seven years) might suddenly decide that they want to be an employee and that they want long service leave, accrued annual leave and certain benefits of having been an employee backdated five to 10 years, having originally been a contractor and entered into an arrangement on that basis. The financial incentive of making an application might really be compelling, and they might be encouraged to do so—perhaps even more so if they thought that, under the concealment of this provision of the act, they could do it without the employer ever knowing who they were, with their union or their association representing them but concealing their identity and, if you like, see what they could get from this arrangement. If it were unsuccessful, the employer would possibly never know who had made the application. It seems to me that it is open to abuse.

The Hon. M.J. WRIGHT: I refer to our earlier discussion. If you are employed legitimately as a contractor, you will continue to be a contractor. It will not be that you will wake up tomorrow and all of a sudden you are an employee. It is about having been an employee all that time and being falsely labelled. If you have been incorrectly labelled a contractor, when using existing common law that is not the case, surely it would be a good thing for that to be remedied. If you were legitimately a contractor, you will continue legitimately to be so.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: You have to be able to prove your case.

The Hon. I.F. EVANS: I am not sure why we need this provision that the minister has moved as an amendment to his own bill. Section 223 of the current act provides a $20 000 penalty if there is any discrimination against an employee for taking part in an industrial proceeding. The provision states:

(1) The employer must not discriminate against an employee by dismissing or threatening to dismiss the employee from, or prejudicing or threatening to prejudice the employee in, the employment for any of the following reasons—

(a) because of the employee's participation in the proceedings before the Court or the Commission; or

(b) because of anything said or done, or omitted to be said or done, by the employee in the proceedings before the Court or the Commission; or

(c) because of the employee's participation in an industrial dispute; or

(d) because the employee is entitled to the benefit of an award or enterprise agreement, or has participated, or declined to participate, in negotiations or proceedings intended to lead to the formation of an award or enterprise bargaining agreement; or

(e) because the employee asks the Employee Ombudsman to take action on the employee's behalf.

The minister's argument is that the employee needs to remain anonymous because the employer may take some form of action against the employee. An employee would be a fool to do that, because he or she will be landed with a $20 000 fine. The first point is that I am not sure why we need this provision, given that the act already protects the employee going before the court or commission.

The second point is that I am not sure how section 223 applies to contractors. If, prior to a declaratory judgment, a party to the contract (later deemed or judged to be the employer) becomes the employer and has discriminated against the contractor, or threatened to stop the contract, or showed some prejudice, or threatened some prejudice, in regard to the matter going before the commission or the court, once the contractor is declared an employee or employer, can the commission to go back and apply a fine in relation to actions that occurred before the declaratory judgment? Could an employer find themselves subject to a $20 000 fine for actions that occurred prior to the declaratory judgment and the employer formally knowing that they were an employer and therefore subject to this proposed section of the act? The way I read this proposed section of the act it only applies to employers and employees, not contractors.

The Hon. M.J. WRIGHT: I think we are going around in circles. Members opposite keep talking about 'becomes the employee, becomes the employer', and that is simply wrong. It is declaring what the situation is; it is not changing the situation.

Regarding the earlier point that was made, surely prevention is better than cure. Proving such things, which usually involves proving intent, is notoriously difficult; so prevention is far better. All we want to do here is make sure that people are not dissuaded from pursuing issues of concern for potential fear of retribution—nothing more, nothing less.

The Hon. I.F. EVANS: The minister has not explained why one needs the clause, given that there is a $20 000 fine if someone does seek—

The Hon. J.W. Weatherill interjecting:

The Hon. I.F. EVANS: If the minister wants to join the debate, he can go to his seat and do so. The reality is that one does not need the provision, because the employer faces a $20 000 fine if he seeks to do what the minister alleges. I take it from the minister's answer that my understanding is correct that the contracting party that is declared an employer is subject to a $20 000 fine if the commission finds that, prior to that declaratory judgment of his or her becoming an employer, they breach section 223 of the act.

The Hon. M.J. WRIGHT: Under section 223 of the act to which the shadow minister refers, irrespective of declaratory judgments or not, a prosecution could be launched if a discrimination occurred. The declaratory judgment does not change that.

The Hon. I.F. EVANS: Will the minister clarify that? My understanding of section 223 is that it applies to employees only, not to contractors. At what point does that provision apply to the contracting parties if a declaratory judgment is made? My understanding from the minister's answer is that

if a declaratory judgment is made the contracting party becomes the employer/employee relationship. Then, if a breach has occurred during any term of that contract, it applies.

The Hon. M.J. WRIGHT: I can only say what I have said in answer to about 25 different questions from the two members that have been asking the questions. If they were an employee, they were an employee.

Amendment carried.

The Hon. I.F. EVANS: We are now up to the clause, as amended; is that right?

The CHAIRMAN: That is correct.

The Hon. I.F. EVANS: Can the minister please answer a question on what happens in the transport industry in regard to the ownership of a truck? I ask this question because the minister's adviser stood up at a function (on which I have asked questions in this house) and indicated that the legislation was after the transport industry.

First, if there is a contract for, say, parcel delivery, the contractor provides the truck; if the contractor then goes to the court and seeks a declaratory judgment and the court decides that the relationship is not between contract and subcontracting parties but, indeed, that it is an employer/employee relationship, who then owns the truck and takes over the cost of maintaining the truck and paying the loan, etc., on it?

Secondly, if the minister's answer is that the employer then takes on that responsibility, does the commission have to look at capacity to pay; and does the now employee have the capacity to seek reimbursement from the employer for moneys spent by the employee maintaining and purchasing what then becomes the employer's vehicle?

The Hon. M.J. WRIGHT: The shadow minister has raised a couple of points, one being a longstanding point which I will answer shortly. In relation to his second point—who owns the asset—it is not determined by an employment relationship. There is no reason to get into a long debate about this, but the shadow minister previously made an accusation that departmental people at a briefing made some sort of reference to targeting the trucking industry. The shadow minister has raised that matter with me before and I felt duty bound to follow it up. The advice that I received is that that is not the case. If for some reason there is a grey area here, I would hope that the shadow minister would take account of this: whether it be the draft bill, the consolidated bill, or whatever particular bill it was, I as the minister and the government are not attempting to target any one sector. I hope we can put that to rest. I am not sure exactly what was said or what was not said; I was not there at the time—

The Hon. I.F. Evans: I was.

The Hon. M.J. WRIGHT: Sure; and I was there earlier, if it was the same meeting. All I could do was check the bona fides of the accusation that was made. That is the advice I received from the departmental people. As I said, there should not be a grey area here, because I can assure the shadow minister that the trucking industry or any other industry has not been singled out. Why should it be singled out by the government? That would be silly and it just would not make sense.

Mr HAMILTON-SMITH: As I understand it, this clause as amended means that if I run an IT business and I have, say, 10 IT programmers who come in and work for me as contractors, and one of those contractors makes application that he or she is an employee—and they can do so secretly, in effect, so I will not know which of the 10 contractors is making such an application through a union or whatever association is representing them—if ultimately that is agreed to, then all the other nine or 10 contractors in that class of contractors or employees are picked up by the employee status, so approved. Is that correct?

The Hon. M.J. WRIGHT: Only if their circumstances are the same. They may or may not be. I would not be able to comment on that. Those circumstances may vary. They may be the same. They may vary to an extent, whatever the case might be.

Mr HAMILTON-SMITH: That particular IT business, or perhaps a hospital engaging nurses on a contract basis, or a child-care centre or an aged-care home hiring people, would be under an obligation, once that one person has made such an application to be declared an employee, to notify and advise the remaining contract staff that their status has changed from contractor to employee and take the relevant action. Is that how it would unfold once that single contractor on behalf of the class has been deemed an employee?

The Hon. M.J. WRIGHT: Potentially that may be the case, but if these people were always employees they were always employees; and they should have been classified as employees. In some of the industries you cite, or whatever industry or area it may be, where contractors are employed as contractors correctly that will continue. It will only be where they have been incorrectly labelled.

The committee divided on the clause as amended:

AYES (22)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	Wright, M. J. (teller)

NOES (22)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A.	Evans, I. F. (teller)
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kotz, D. C.	Lewis, I. P.
Matthew, W. A.	Maywald, K. A.
McEwen, R. J.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

PAIR

White, P. L.	Kerin, R. G.

The CHAIRMAN: There being 22 ayes and 22 noes, the chair has the casting vote. The first part of this clause relates to the definition of 'contract of employment' and the second part likewise. I think the duck rule applies that if you waddle like a duck, you quack like a duck and act like a duck, you are a duck; and if you are an employee you are designated as such by the court, and if you are a contractor you are designated accordingly.

The third part relates to whether there should be a confidential provision for someone who wishes to take up the issue of whether or not they are an employee or a contractor, and I think there has to be that provision. I cannot be

inconsistent, given that I have an amendment coming up in relation to the Employee Ombudsman having similar power to investigate without disclosing the name of the complainant. So I give my casting vote for the ayes.

Clause as amended thus passed.

Clause 8.

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

Page 9, lines 6 and 7—

Delete subsection (3) and substitute:

(3) Apart from this Chapter, the other provisions of this Act apply to outworkers if (and only if)—

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

(b) a regulation made for the purposes of this subsection extends the application of this Act to, or in relation to, outworkers,

and then, in such a case, the Act will apply in all respects to the relevant outworkers.

This amendment removes potential unintended consequences. Concerns had been expressed that the proposed amendments to section 5(3) of the act had the potential to cover people who might not be considered to be outworkers in terms of the disadvantaged workers to whom the term 'outworkers' is commonly used to refer. The amendment deals with that concern by making clear that the act will apply only to people who otherwise fall under the definition if there is an award or agreement provision that relates to them or a regulation is made that brings them within the scope of the act. The final line of the amendment resolves the potential mischief of the existing provisions of the act.

The Hon. I.F. EVANS: I want to clarify exactly what the minister is doing. The way I read it, the minister is basically reversing the provision that was in his bill and reinstating the principle that was in the act in relation to the point at which the provisions of the act apply to outworkers. You are now reinstating it so that the provisions of the act will apply to outworkers only if a provision of an award or enterprise agreement relates to outworkers. That is the existing provision as I understand it. Then you are adding words to the effect that it also applies if a regulation made for the purposes of the subsection extends the application of the act to, or in relation to, outworkers. The opposition originally opposed this whole clause on the basis that it reversed the provision in the act. We still have problems with the later clauses in the bill that relate to outworkers. Before we vote on this, will the minister explain to the committee what is envisaged under his regulation making power? Where do you envisage making regulations that might make the provisions apply to outworkers?

The Hon. M.J. WRIGHT: There are no current plans afoot but I suppose that, if someone was to come to me and make a persuasive case, I would look at it. I would also consult with the appropriate stakeholders and potentially I may look to do it. As I said, there are no current plans afoot but that is not to say that sometime in the future a persuasive case could be made and, in those circumstances, I would have a look at it, and consult with the stakeholders before I made any decisions about it.

The Hon. I.F. EVANS: The minister is always expressing the view that things should be left to the independent umpire. On what basis would you want the political process of regulation making power to take over from the commission process of listening to award and enterprise bargaining agreement cases? Currently under proposed new subsection (3)(a) in the amendment there is a process that goes through to change awards and change agreements, whether or not they relate to outworkers, and there are submissions heard in relation to that matter. You are saying now that this is going to become a political process because it will be done in the confines of the minister's office. I am wondering why you would want to do that and why you would not leave the matter to the commission to establish whether it thinks an award or an enterprise bargaining agreement needs to be changed to incorporate an outworker provision?

The Hon. M.J. WRIGHT: Usually the most disadvantaged are not union members so they are unlikely to have an award made for them, and that is why a regulation making power is appropriate in this instance. There are times when it is appropriate to make a regulation. In fact, I think that the shadow minister made an argument earlier before the dinner break about a regulation.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: I know that it was in relation to a different matter but the commission would deal with something as a result of an application and it quite probably would be the case that the most disadvantaged people would not have that representation and would not have an application made on their behalf. Disadvantaged non-union people are often not represented and are less likely to have anyone take an application to the commission on their behalf.

The Hon. I.F. EVANS: In relation to the clause of the bill which you are seeking to amend, who has made representation to include the word 'clean' into the definition of outworker? We are not aware of any case having to be made for these provisions to cover the cleaning industry. Indeed, has the cleaning industry been consulted and, if so, what was its response, because some business organisations have put to us that they are very concerned that, by including the provisions of 'clean' into the definition of outworker, we are putting at risk significant jobs within the cleaning industry.

The Hon. M.J. WRIGHT: As I have already said, this is not about the cleaning of houses or the cleaning of buildings but the cleaning of articles or materials that can be considered to be done by outworkers. Also, as I have made the point, a person has to be covered in the extent of the work by an award or an enterprise bargaining agreement. So, it really picks up that point in regard to 'clean'. It ensures that, where outworkers are cleaning articles or materials, they can be considered to be outworkers.

The Hon. I.F. EVANS: So, cleaning articles in someone's house is not covered by the definition of 'clean'? Or, cleaning articles at someone's business premises is not covered by the definitions of 'clean' or 'outworker'? How do you interpret the words 'article or material'?

The Hon. M.J. WRIGHT: We are talking about someone being given a box of items to clean. The shadow minister is talking about someone being employed to clean a house, and as part of that obviously they would clean things inside the house. We are talking about different things.

Amendment carried.

The Hon. I.F. EVANS: The opposition was originally going to oppose this particular provision because it changed the way the provision was applied. Now that the minister has amended it back more towards what is currently in the act (with a regulation-making power), because we have some other concerns with the bill, we will have a look at this provision between the houses and make some judgment about it then after we have further consulted with some industry groups.

I have a question on some other sections of the bill that remain unamended. How are the words 'other premises that

would not conventionally be regarded as being a place where business or commercial activities are carried out' interpreted? What does that statement actually mean? The concern is that this clause is so vague and open to interpretation that all you are doing is writing into the act clauses that are going to be subject to disputation: about what is 'a premises', what is meant by 'conventionally', who 'regards' it. I note that 'place' is defined to include a car, but what about the words 'where business or commercial activities are carried out'? There are about five words in that one sentence that could be subject to dispute regarding what they actually mean. It seems to be a very vague description of, I think the minister means, houses.

The Hon. M.J. WRIGHT: We are not talking about a conventional factory. The language that we have used is similar to that used in the Victorian, Queensland and New South Wales legislation in regard to outworkers. We are not aware of any difficulties in respect of those provisions in those measures which use very similar phrasing.

Clause as amended passed.

Clauses 9 and 10 passed.

Clause 11.

The Hon. I.F. EVANS: What is the benefit of this amendment? Why are you seeking to restructure the commission by seeking to move this amendment? I wonder what you think will be of benefit to the system by the removal of the industrial relations and enterprise agreement divisions.

The Hon. M.J. WRIGHT: It is simply redundant, because all the commissioners wear both hats.

Clause passed.

Clause 12 passed.

Clause 13.

The Hon. I.F. EVANS: Clause 13 seeks to give tenure to the age of 65 for, in this case, the President or the Deputy President of the commission, and commissioners generally throughout the bill get this tenure. Why have you taken the policy position that future appointments under your government will get tenure but current commissioners do not. That is the effect of the bill as it has been presented to the parliament. Why is it that commissioners to be appointed in the future, even though we do not know who they are, would be so talented that they would get tenure, but the good people who work in the commission at the moment, whom we know, do not get tenure? What is the basis for that policy position?

The Hon. M.J. WRIGHT: The existing President and Deputy Presidents were engaged under the current legislation. It is well known that the previous government made a decision to remove tenure. Those commissioners were engaged under that legislation. One of the things that came through very strongly as a result of the consultation was the support for tenure. On that basis, for any new appointments (whether they be commissioners, DPs or the President) we have taken note of the strong consultation which, by and large, seemed to reflect the views of employer and employee representatives. So, we have supported it for those new appointments. The current commissioners, DPs and the President were engaged under the existing legislation. I do not see much point in making their appointments retrospective in regard to tenure.

Mr HAMILTON-SMITH: The minister has explained, as we all know, that the existing commissioners were appointed under a different regime but that it is the general will of the government to go to tenure. That being so, what is wrong with the performance of the existing commissioners, assuming that the government agrees with the principle and the fact that they are doing a good job? Why ought not they inherit the tenure arrangement proposed in the bill and gain tenure? I take the point that the minister is making, that there is no obligation; they were appointed under the previous act. But it leaves the government open to criticism to propose that the current crop of commissioners will, if you like, be got rid of when their term expires—and I take the point that they were the provisions under which they were engaged and that a new crop of commissioners will come in under this new act and they will be permanent. Would it not be more open and transparent for the government to say, 'We will extend that tenure to the current crop of commissioners, since they are doing a good job, because it is the principle that we are trying to enshrine in law, not individual people who are yet to be appointed.'?

The Hon. M.J. WRIGHT: I think the member has answered his own question. The points that I made to the shadow minister are the points that I would make to the member. There are a couple of principles to balance here. We support tenure, but we do not support retrospectivity. I do not know how serious the opposition is in regard to this matter, because it was the former government that took away tenure in, I think, 1993 or 1994. I would have thought that a purer position for members of the opposition to take would be to oppose this, full stop. It would appear that they do not support tenure for new commissioners and new DPs. But if, in fact, that is successful, they will later provide the opportunity for the existing commissioners, DPs and the President, whom they appointed without tenure, to allow them to elect to go for tenure. So, how you work that one out is beyond me.

The Hon. I.F. EVANS: I can explain it to the minister so that it is clear. The simple reality is that—

The Hon. M.J. Wright: Yes, you can explain it all right. I think it starts with 'h'; it's called hypocrisy.

The Hon. I.F. EVANS: The minister says that we are being hypocrites, Madam Chair.

The Hon. J.W. Weatherill: No, he can't say that; that's unparliamentary. But he can tell you about hypocrisy.

The Hon. I.F. EVANS: No, he would not say that, which I will accept. It started with 'h'; I think he said 'hypocrisy'. It goes something like this, minister. We oppose tenure. We have received no complaints about the current commission. If the minister has received any complaints about the commission, now is his chance to tell the parliament why the current commissioners should not get tenure. No-one has made a submission to us that the current commission is so outrageously bad that they should not get tenure if all future appointments are to get tenure. As a principle, we are still opposed to tenure. But if we lose the argument against tenure on this clause, we would adopt the position that, if the government believes in tenure, when the current incumbents' terms are coming to an end they should be given an option to continue under the new provisions, as with any other new appointment.

If the minister does not accept the amendment as moved, some people would interpret what the minister is really saying as, 'While we are in power we will appoint all our Labor mates to the commission and get rid of all those people appointed under the Liberal regime purely because they were appointed under the Liberal regime.' Some people would make that argument.

The minister will no doubt receive advice from his learned adviser that a consultation process takes place with respect to these matters, and I have been involved in the consultation process. But I was not at the coffee before the meetings:

maybe I will be next time. Those who have faith in the consultation process can take the minister at his word. But we come from the position that, if we lose the debate about tenure, the people who currently hold those positions should have an option to accept or reject a tenured appointment; that will be their individual choice. We think that is a fair policy position—that is with an 'f'. If the minister thinks it starts with an 'h'—hypocrisy—so be it.

The Hon. M.J. WRIGHT: I can only repeat what has previously been said, which has even been acknowledged by the member for Waite, although he may not have spoken in support of it. The current commissioners, DPs and President have been engaged under the current legislation. They knew, and know, full well the extent of that engagement, and we make the case that, although we support tenure, we do not support retrospectivity.

The other thing to which the shadow minister made reference is polluting the process of the appointment of the commissioners. That simply should not be said, because the shadow minister knows full well that, whether it be a Liberal or a Labor government, there has to be a balance of appointments of commissioners with both employer and employee representation.

Our commission certainly has served us very well—both the existing batch of commissioners and the previous commissioners—and I am sure that in the future we will also have a quality commission. So, that is not a relevant point that has been made by the shadow minister. This is a simple matter of whether one supports also giving tenure to the existing commissioners, who have been engaged under the current legislation, and making it retrospective.

Mr HAMILTON-SMITH: Is it the government's intention to offer any of the existing commissioners an opportunity for permanency under its prescribed regime, or is it the government's intention to clear out all the commissioners (presently on limited tenure) under this new regime?

The Hon. M.J. WRIGHT: As is always the case, as and when commissioner vacancies occur obviously we will consider our position at the time. We would consult with the stakeholders, with the shadow minister and with the opposition. As I said, there always needs to be a balance of commissioners appointed from both employer and employee representatives, and that system has served us well.

The committee divided on the clause:

AYES (22)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Thompson, M. G.
Weatherill, J. W.	Wright, M. J. (teller)

NOES (22)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A.	Evans, I. F. (teller)
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kotz, D. C.	Lewis, I.P.
Matthew, W. A.	Maywald, K. A.
McEwen, R. J.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

PAIR

White, P. L.	Kerin, R. G.

The CHAIRMAN: There are 22 ayes and 22 noes. This provision relates to the tenure of the commission. It has been a long-established principle that new people are appointed under the new conditions and that existing people remain under the existing conditions (a little like our superannuation). I cast my vote for the ayes.

Clause thus passed.

The Hon. M.J. WRIGHT (Minister for Administrative Services): I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

Clause 14 passed.

Clause 15.

The Hon. I.F. EVANS: Can the minister explain the meaning of the new wording and how it is different from what is in the current act?

The Hon. M.J. WRIGHT: I ask the shadow minister to repeat the question please.

The Hon. I.F. EVANS: I wanted the minister to explain how the new wording differs from what is in the current act—what the import of the difference is.

The Hon. M.J. WRIGHT: Clause 15 consolidates section 34(3), (4) and (5) in the act (section 34 under division 5—relating to the commissioners) and deletes the distinction between the divisions of the commission.

The Hon. I.F. EVANS: Given that proposed section 34(3) reflects what is in the current act under section 34(5), with the part-time commissioners being counted for the purposes of this subsection by reference to the proportion of full-time work undertaken, can the minister explain how the division of the commission into those appointed representing employees and those appointed representing employers actually works; and how do the part-time commissioners then get added into that calculation?

The Hon. M.J. WRIGHT: The facility is there, but we are not aware of there ever being a part-time commissioner. However, if there were to be, it cannot differ from the balance by more than one. So if part-time commissioners were employed, we would still need to take account of that balance.

If one had an odd number of commissioners, that is, either the employer or the employee would have one more than the other, then the appointment of a part-time commissioner would need to reflect that to ensure that one had that balance. Hypothetically, if one had five commissioners, three were from the employer side and two were from the employee, the part-time commissioner would then have to come from the employee side to get the balance back into sync. One could not go the other way and have the balance greater than one.

Mr HAMILTON-SMITH: Under section 34 of the existing act, subsections (3), (4) and (5) talk about a commissioner being an industrial relations commissioner or an enterprise agreement commissioner or both. I know we have dealt with this earlier, but the wording of new subsection (3) implies that you want to apply a new rationale to the way in which the commission operates. Is that the case? Could the

minister confirm why he has gone away from the reasoning in the present bill with this new wording?

The Hon. M.J. WRIGHT: All the commissioners wear both hats, so you do not have some commissioners simply doing enterprise bargaining and other commissioners doing other work—not enterprise bargaining work. All commissioners do work in all areas. Therefore, that area in the act, as it is currently worded, has become redundant.

Mr HAMILTON-SMITH: I take it from that that there is no longer a concern that particular expertise in either the industrial area or the enterprise agreement area might be a prerequisite for selection as a commissioner but, rather, that the situation has become such that everyone has a mastery of both sides of the equation and there is no longer a need to distinguish one from the other.

The Hon. M.J. WRIGHT: Yes, that is a fair way of putting it. In order to operate in industrial relations these days, you have to be able to operate with skills in both areas.

The Hon. I.F. EVANS: I want to understand proposed new section 34(3). It is not possible to appoint five full-time commissioners representing one sector and five part-time commissioners representing another sector, and therefore load up the commission on a full-time basis with commissioners representing one sector. The way in which I interpret the proposed new subsection is that the number of hours worked is taken into consideration in order to try to get as close a balance as possible and to get even hours represented on the commission. Is my understanding correct?

The Hon. M.J. WRIGHT: That is correct.

Clause passed.

Clauses 16 to 20 passed.

New clause 20A.

The Hon. R.B. SUCH: I move:

Page 11, after line 9—

Insert:

20A—Amendment of section 62—General functions of the Employee Ombudsman

Section 62—after subsection (3) insert:

(4) The Employee Ombudsman may in the performance of his or her functions, if the Employee Ombudsman thinks fit, determine not to disclose to an employer, or any other particular person, information that would enable an employee to be identified in a particular case.

The purpose of this amendment is to allow the Employee Ombudsman to investigate a matter without identifying the particular person who is involved. It is based on cases that have been brought to my attention in my electorate where, if the name is disclosed, that person has little chance of continuing their employment. This provision is one that I understand the Employee Ombudsman has been keen to have for some time—not that he has directly lobbied me, of course, but I believe this provision is necessary so that he or she, as the case may be, can do their job. As I said in my second reading contribution, the overwhelming majority of employers do the right thing, and this particular provision would enable the Employee Ombudsman to deal with the small minority of employers who do not do the right thing. Accordingly, I move this amendment.

The Hon. M.J. WRIGHT: The government supports this proposal. I think this is a sensible amendment. It will be a positive step in endeavouring to ensure that South Australians are able to raise any concern that they have without fear of retribution. The amendment moved by the member for Fisher specifies that 'the Employee Ombudsman may in the performance of his or her functions, if the Employee Ombudsman thinks fit'. So, I think it is where the Employee Ombudsman believes it to be appropriate that this non-disclosure may well take place.

New clause inserted.

Clause 21.

Mr HAMILTON-SMITH: This clause adds considerably to the parent act. I note in the parent act that there are only two listed functions of inspectors under clause 65. This increases that to three and adds quite a bit of detail. It seems to me that clause 21(1)(b), 'to conduct audits and systematic inspections to monitor compliance with this act and enterprise agreements and awards', etc. repeats section 104 of the parent bill which talks about the powers of inspectors and virtually says the same thing. It says that they have the power to conduct audits and inspections and monitor compliance. So, I wonder if this amendment is already covered under section 104.

The Hon. M.J. WRIGHT: Section 104 of the act provides the powers for inspectors to carry out the functions in section 65. I am not sure I heard all of the question.

Mr HAMILTON-SMITH: The bill proposes to describe as functions of inspectors the conduct of audits and the systematic inspection and monitoring compliance; and it goes on in paragraph (c) to talk about promotional campaigns, improving awareness of employers and people within the work force of their rights and obligations. Then it goes on in paragraph (d) to do anything else that may be appropriate to encourage compliance. It seems to me that the act, as it stands, although it is a bit general—to investigate complaints and to encourage compliance—really covers it.

The government has put a lot more detail into the bill but, when I look at the powers under section 104, I see that they are actually already quite alarming. For example, the bill wants to add 'to conduct audits', but under section 104 it says that inspectors 'may require the production of a time book, pay sheet, notice, record list, indenture of apprenticeship or other document required to be kept by this act or any other act and may inspect, examine and copy it'. It goes on under section 104(4) to provide that 'a document produced under subsection (3) may be taken away by the inspector for examination and copying, and the inspector may retain possession of it for more than seven days.'

So, those powers—which I would already argue are exhaustive—in fact already deal with the requirement for audit and systematic inspection. So, it seems to me that there is no need to add this detail to the bill at this point because the existing bill already provides for these functions—and, not only that, section 104 also provides powers which I argue go far beyond what is required to perform the audit function.

The Hon. M.J. WRIGHT: I do not think that it is as the member has said, and I refer him to section 65 of the act, General Functions of the Inspector, which provides:

> The functions of the inspectors are to investigate complaints of non-compliance with the act, enterprise agreements and awards, and to encourage compliance and, if appropriate, take action to enforce compliance.

So, to do anything other than to encourage compliance you must have a complaint.

The Hon. I.F. EVANS: I want to confirm what I think I heard the minister say: that there needs to be a complaint before the inspectors can act. Is that what I heard the minister say, because that is certainly not my reading of the bill, and certainly not any business association's reading of the bill.

The Hon. M.J. WRIGHT: Just to ensure that we are both talking about the same thing, I was talking about the current act in terms of their exercising their powers.

The Hon. I.F. EVANS: Yes, that was my understanding of the current act—there needs to be a complaint. Under your bill there does not need to be a complaint.

Mr HAMILTON-SMITH: The act under section 104, as I mentioned a moment ago, provides some alarming and quite startling powers to inspectors. The way I read part 104 of the existing act is that an inspector—and I am being realistic here, I have been an employer and I know how this works on the ground. Quite often inspectors have come from a union background, and good for them, they need that experience, but as an employer sometimes you could be excused for being a little confused about where the union begins and the inspectors end, and one lives in trepidation that the communication between inspectors and the unions is a little more convivial than one might otherwise hope for. I may be wrong in that concern, but according to section 104(3):

> An inspector may require the production of any document required to be kept by this act or any other act and may inspect and copy it.

To me that means that any other act would imply that there is a power there to seize almost any document in the business and copy it, if one looks at that literally, including: possibly financial records; possibly documents of a very sensitive and possibly commercial in-confidence nature; documents that might be very important to the day to day function of that business, for example, the daily sign-in, sign-out sheet that runs with the roster that one might need; and a small business might not be in a position to copy and give it to the inspector. Given those extensive powers in the bill—which I underpin are quite alarming and warrant review in their own right—under the present act can only be activated if there is a complaint. That is to say, the function of the inspectors is to investigate a complaint and to encourage compliance. Arguably, they could use some of those powers to encourage compliance. It is a bit of an open point.

The bill takes away all that requirement for there to have been a complaint. Section 21 says that inspectors can go in and conduct audit and systematic inspections to monitor compliance whenever they feel like it. They can go in whenever and wherever they like. They can do certain other things about promotional campaigns and awareness and so on, and they can do anything else that may be appropriate to encourage compliance. The powers need to be looked at under section 104 within the context of the general functions of inspectors under the existing act, section 65. You are leaving the powers as they are but you are changing the function. You are making the function far more open. Now it is almost carte blanche should they wish to conduct systematic inspections to monitor compliance. This seems to me to invite a level of bureaucratic intervention in the running of a business without a complaint even being made that would, as a small business person, cause me alarm.

I know that the minister's reaction to my point might be, 'One must have faith in the bureaucrats and the department and the inspectors to act in good faith.' I could sit here and recite a number of examples where that good faith has been tested well and truly, and where there seems to be a need for some sort of caution or some restraint to stop an official from getting a little bit carried away with how they apply this particular new general function that section 12 seeks to enact. So, why have we taken away the fact that inspectors should respond to a complaint and investigate it, or at the very least encourage compliance and, if appropriate, take action to enforce compliance? Also, why have we gone to this much more open regime of virtually saying their role is to conduct systematic inspections and audits to monitor compliance, which seems a far more regressive regime and a far more regressive role?

The Hon. M.J. WRIGHT: The member for Waite raises a number of points, none of which I agree with. He talks about section 104 and the existing powers and he made some reference to them being quite alarming. If the current act was so bad, there would simply be a deluge of complaints about it, but there have not been.

The Hon. I.F. Evans: Then why are you changing it?

The Hon. M.J. WRIGHT: I will come to that. I knew the member would say that, so I was not surprised by the interjection. The other point that I would like to make relates to industrial inspectors. We also do not have, to the best of my knowledge, complaints about industrial inspectors. That is not to say that every one of those inspectors is perfect, just like we cannot say that every member of parliament is perfect, but I think that, by and large, they do a good job. I think we can all be proud of our industrial inspectorate. They are closely supervised, and they do some good work working closely with all the stakeholders—as they should.

The member for Waite talks about this additional power which the shadow minister interjects about as well. Would it be such a bad thing to have these additional powers to encourage compliance? Surely we would expect all employers and employees to ensure that compliance is adhered to. A number of people have said that people will not raise these issues because they are worried about having to identify themselves. I should not have thought it would be such a bad thing for the inspectorate to be able to go in, without a complaint, to encourage compliance. I would say that by far the vast majority of employers would also work towards compliance, and it would be the responsibility of the inspectors to ensure that they are working with employers and employees to ensure that we are undertaking promotional activities, audits and systematic inspection programs to ensure that we have best compliance.

It would help the majority of businesses that do the right thing, and the majority of businesses do the right thing—that needs to be put on the record. It helps the majority of businesses that do the right thing by stopping unscrupulous competitors who do not do the right thing undercutting them. I do not share the concerns that have been raised by the member for Waite. Our inspectors play an important role. They will undertake these activities obviously to ensure that we encourage compliance, and that we do undertake promotional activities and audits and systematic inspection programs. As I said, the majority of businesses do the right thing, and I would think they would have little to concern themselves with in regard to this provision being introduced because they are already in a position of strength.

Mr HAMILTON-SMITH: I put an alternative scenario to the minister. The object of the union movement, it would appear, is quite often to build their membership. In order to build membership, one must make oneself relevant. If you go into an otherwise harmonious workplace and look for things that might be wrong or that might be improved on, and if you can establish in the minds of the workers that perhaps there is something there that they should be upset about—maybe there is some non-compliance going on—you could make yourself relevant. I take the point that the people going in are inspectors, not union officials. However, I am concerned that, as inspectors have the power to seize documents and take them away and have quite substantial powers under, I think, section 104, which I mentioned earlier, and now without a

complaint they will be able to stroll into any workplace and gather things up and say, 'We're here to do an audit,' this raises the question about whether an otherwise harmonious workplace should be disrupted by this process.

It raises a whole lot of questions about whether or not—and this is not spelt out in the bill—the business would be given advance notice of this or whether it would be a disruptive activity that would require a business to drop everything because it was a snap audit. Paragraph (d) provides: 'do anything appropriate to encourage compliance'. It talks about enforcing compliance, and that is through a regime of compliance notices or on-the-spot fines of one form or another and all those sorts of measures that I think we are going to get to later in the bill.

The minister takes the view that if everything is sweet in the business they should have nothing to fear. I accept that logic to a point, but can the minister see it from another point of view that this could be very disruptive to a workplace and a business and create problems where there are none?

The Hon. M.J. WRIGHT: I simply do not share that same concern. I guess we come from a different philosophical position. The member is almost trying to attribute this to the trade union movement. This is about policing our industrial laws and encouraging people to be compliant. Surely we want inspectors to police our laws. We expect our police force to go out and police our laws, so why would we not require the inspectors to have the same responsibility? This is not a mischief of the trade union movement, and it is not an attempt to disrupt the process. Inspectors will work with industry, with employers and with employees. The member is right: they are about encouraging compliance. Surely that is not such a bad thing.

The Hon. G.M. GUNN: I move:

Page 11, after line 23—
Insert:
(3) An inspector, or a person assisting an inspector, who—
(a) addresses offensive language to another 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.
Maximum penalty: $5 000.

This is the same provision as has been inserted in many acts of parliament. The last act it was inserted in was the Natural Resources Management Bill. It is an essential provision to protect people against over aggressive inspectors. It is my experience that the average citizen is at a grave disadvantage when dealing with inspectors or other officials, because the government has great authority, and I believe that citizens should be protected against these people who become over enthusiastic.

The Hon. M.J. WRIGHT: As I said, I have great faith in our inspectorate. If inspectors are doing the wrong thing, that can be addressed under the Public Sector Management Act.

An honourable member interjecting:

The Hon. M.J. WRIGHT: No, I am not joking. I would not have said it if I was joking. Normally, I would not support an amendment of this kind but, because it has been moved by the member for Stuart (he knows that I have a soft spot for him), we are prepared to accept it. However, having said that, if there are problems with the inspectorate, I would encourage people to communicate their complaints to the department, and to me as minister. I can assure the house that, to the best of my knowledge, we have a good industrial inspectorate. I cannot recall any complaints that have been made about it. As I said, that is not to say that they are all perfect. But I think that we do have a pretty good industrial inspectorate and, certainly, it is strongly supervised by the Executive Director of Workplace Services.

The Hon. G.M. GUNN: I thank the minister for his concurrence in this matter. My experience of recent time with certain people in his department in the Riverland has not been quite as he thinks. I was told the other day that one fellow, in particular, is less than what one would expect in a decent society, and I am told that they are going to go up and get on to the fruit growers again. If that is the case, they will get it right in here, because they have to pick the fruit when it is ready. I thank the minister.

Amendment carried.

The Hon. G.M. GUNN: I have a question with respect to this clause, under which auditors and inspectors have wide powers. Is the minister aware that it is an offence under commonwealth legislation for any employer, or any person, to make available a person's income tax number? A person's tax file number would be contained in these employment documents, and many people who have bank account numbers, where money is paid directly into their bank accounts, would not want that information made available.

Are inspectors going to comply with commonwealth law? I will give the minister an example. Some time ago it was brought to my attention that WorkCover wanted to audit people's affairs, and it wanted copies of group certificates. I contacted the taxation department and sought advice, and that was the last WorkCover ever heard of that matter, because it is an offence for that material to be made available. I ask the minister to give an assurance that these people will not be seeking that sort of information.

The Hon. M.J. WRIGHT: I would be happy to check that for the member. But usually provisions such as that state 'other than in accordance with law', which can include references to state law.

Mr HAMILTON-SMITH: I want to take a little further the point raised by the member for Stuart. Given that section 104(3) of the existing act talks of an inspector requiring the production of 'any record required by this act or any other act', am I correct in understanding that an inspector could then require the production of the financial records of the business, including possibly taxation records or other financial books of account, such as cheque books, bank accounts or financial statements, since many of those financial records are required under other acts to be kept for various purposes, and copy them and take them away, given that amendment No. 21 now broadens the role of inspectors to virtually on-the-spot checks without notifying a business? Secondly, can the minister assure me that there will be some regime under the regulations, or in some way in the act, where some notice needs to be provided, or will these visits by inspectors simply be without notice—a knock on the door and, 'Here we are. We want to come through your business today, right now,' no questions answered?

The Hon. M.J. WRIGHT: The Acts Interpretation Act refers to the act of parliament of South Australia. So, it would not require the commonwealth act.

Mr HAMILTON-SMITH: By way of clarification, I seek an assurance that financial records and books of account could not be required to be presented and copied. I am not quite sure I understood the minister's answer. The act provides 'in accordance with this act or any other act', so presumably—

The Hon. M.J. Wright: It is the South Australian act.

Mr HAMILTON-SMITH: Well, any document required by any South Australian act might well include state tax office records, or a range of any other financial documents or books of account that might be personal to the business that need to be kept.

The Hon. M.J. WRIGHT: The simple answer is that if they need to look at them to enforce the law, they will do so. That is their responsibility.

The Hon. I.F. EVANS: I want to check that one of the functions of the inspectors is to promote the objects of the act.

The Hon. M.J. WRIGHT: Their functions are set out specifically, and I refer the member in particular to clause 21(1)(c), which refers to rights and obligations under the act.

The Hon. I.F. EVANS: Continuing on my first question, does that mean conducting promotional campaigns about the objects of the act? In your view, is that included?

The Hon. M.J. WRIGHT: Continuing on my first answer, it refers to the rights and obligations under this act, which are more specific to the objects. The objects are general in nature.

The Hon. I.F. EVANS: Continuing on my first question (so the minister can continue on his first answer), is the minister saying that inspectors do not have a role in promoting the objects of the act?

The Hon. M.J. WRIGHT: I am saying that their role is in regard to clause 21(1)(c), that is, to promote the rights and obligations, which is far more specific than the objects, which are much more general in nature.

The Hon. I.F. EVANS: To make a contribution in regard to this clause, no case has been made by the government of any representation to the government as to why the inspectorate needs these extra powers. No case has been put to the committee as to who asked for the extra powers for the inspectorate. Not one business association that has contacted the opposition has supported the increase in the inspectorate powers. All the government is doing is arming the inspectorate (which has doubled in size under this government) with increased powers so that it can go to business and inspect it without notification. I notice that the minister did not answer the member for Waite's question about how much notice an inspector needs to enter a premises. I do not know whether he wishes to address that in another response.

The reality is that, under this provision, the powers of the inspectors are expanded beyond the investigation of just complaints. The business community do not support that principle. The audits and systematic inspections by Workplace Services inspectors to monitor compliance with the act, awards and agreements will require employers to deal with another layer of audits and inspections. Ultimately, it does not matter how the inspector goes about it, it will be another cost to the employer. The inspector could be there an hour, a month, or sit there a whole year.

The Hon. M.J. Wright: I doubt whether he would be allowed to do that.

The Hon. I.F. EVANS: The minister says that probably will not happen, and I agree that it probably will not. However, the reality is that under the act it can. The way this relationship between the inspectorate and the employers will work comes down to the personalities involved. On some occasions, that relationship will work well; on others, it will work badly. The whole success of this provision will depend on the approach and the style of the inspectors involved. The current act has been in place since 1994. It requires inspectors to act on a complaint, and we are of the view that should be the practice going forward. We know of industries that have to respond on a number of occasions to incorrect advice being given by the persons involved in Workplace Services. Ultimately, the business has to deal with that incorrect advice, and of course that is a cost to the business. So, we do not support the increased functions of the inspectors.

We also have concerns about the broadening of the types of people covered by the inspectors. The words 'people within the workforce' must be broader than employees, otherwise the word 'employees' would have been used. The minister might want to explain the difference between 'people in the workforce' and 'employees'. Clause 21(1)(c) has the words 'people within the workforce'. The government used the word 'employers' and then it says 'people within the workforce'. So one assumes that is broader than employees; otherwise it would have used the words 'employers and employees'. There are concerns about how broad this section now goes.

The second issue is that I am not sure how an inspector extends the power to those people 'who are no longer engaged in the performance of work'. I am not sure whether that means they are no longer employees or they happen to have knocked off for the day or on holidays. What does 'engaged in the performance of work' mean; is it at the time of the inspection; is it to deal with a complaint lodged by a past employee? It is very unclear to me what proposed section 65(2) actually means.

The third concern I have with clause 21, and I raised this during my second reading contribution, is that I think it is obvious to everyone that the inspectors have a role in promoting the objects of the bill. Object (ka) talks about encouraging membership of representative associations, both employer and employee. This means we will have government funded inspectors running around promoting the membership of unions and business associations.

I have just as strong a view that it is not the role of the government funded inspector to run around and promote the membership of a business association as I do the view that it is not the role of the government inspector to run around and promote the concept of union membership. It is clear to me that the industrial inspector would quite rightly argue as a public servant that they have a duty to promote the objects of the bill, which include encouraging union and business association membership.

I put to the committee that it is not the role of a government funded inspectorate to fund those particular memberships. Those organisations should fund their own promotions of their memberships at that point. We think the government has failed to make a case at all for an increase in the inspectorate, other than to say they want it, they have doubled the size of it and they want to unleash the inspectors on the community with these increased powers.

The minister says he has no complaints about the industrial inspectors. Once this bill is through the upper house in its current form, I can guarantee that the minister will get complaints about the industrial inspectors, given the new regime the government is giving them. The Housing Industry Association has written a submission—no doubt the minister has read it—which says that while it supports the role of the general role of the inspectors:

> . . . the proposal expanding powers of compliance are so widely drawn as to grant industrial inspectors far greater powers of investigation than any police officer currently possesses—without any adequate safeguard for the rights of individuals.

I am wondering whether the minister has read the submission and I ask: on what basis does the minister want to give industrial inspectors more power than the police to investigate our 80 000 small businesses around the state; and what justification does the minister have for the industrial inspectors, in HIA's view, having more powers than the police do to investigate?

The Hon. M.J. WRIGHT: The opposition clearly has a different position from us on this issue. We believe this is an important issue, and I would have thought that all people would have expected the inspectorate to police our laws. Simply allowing the inspectorate to go in without a formal complaint is not something unique to this legislation; it exists in other acts. What we are proposing here, as I understand it, exists in other industrial acts in most other states.

I do not share the same concerns that have been expressed by the opposition. The inspectorate will undertake its role in a responsible fashion, working with both employer and employee representatives. The act applies to employment. I believe that what has been proposed here by the government has merit. We are seeking to ensure that the inspectorate undertakes its functions and responsibilities in policing our laws—nothing more, nothing less than that. I for the life of me cannot understand why it is such a bad thing to encourage compliance. Surely we would want and we would expect compliance to be adhered to. Is that not why we make the laws in this place?

The Hon. I.F. Evans: It is already in the act.

The Hon. M.J. WRIGHT: Is it such a bad thing to put something into the parliament that will enable inspectors to go in and undertake activities such as promotional activities, audits and systematic inspection programs to ensure compliance? The opposition argues that that is such a bad thing. I just do not see or share the tenor of the types of things that the opposition has brought forward in this argument. As I have already acknowledged, and I would like to ensure that it is put on the public record again: the vast majority of employers already do the right thing. The opposition can speculate about the way inspectors are going to go about their business—they may go in for a day; they may go in for a month; or they may go in for a year—but a little bit of commonsense will obviously be applied by the executive director and by the inspectorate. The inspectorate goes about its duty not only in a responsible way but also in a way that best services the stakeholders and the community. It helps the majority of businesses that do the right thing by stopping those that are not doing the right thing.

The Hon. I.F. EVANS: The minister talks about compliance. I think we need to understand that section 65 of the current act provides:

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

That is already in the act. The opposition is not arguing about whether the inspectorate has the power to enforce compliance. So the minister's argument about wanting inspectors to go in to enforce compliance is a furphy because it is already in the act. In fact, it is in the act that was produced by the previous government—and the minister is aware of that. There is no argument in relation to that.

We have concerns about the increased powers of the inspectors to conduct audits and systematic inspections. We can close off this debate quickly, minister, but I need you to confirm two things; first, that notification is not required for the inspectors to enter and, secondly, that they can stay as long as they want.

The Hon. M.J. WRIGHT: Yes, to the first question, they do not have to provide notice. In relation to the second question, they would stay only while performing functions under the act. There would be no reason for them to stay indefinitely. They would want to work—

Members interjecting:

The Hon. M.J. WRIGHT: But if they were doing an audit—

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: No, we are not—they would work with the employer and the employees to undertake that audit in a sensible fashion.

The Hon. G.M. GUNN: Will the minister take us through it again briefly so that we can be sure it is clear: that is, that these inspectors conducting audits will not be copying people's, a company's, a partnership's or an individual's bank statements, financial records or cheque books; and they will not be passing this information onto anyone else? It is well for the minister to say that they will act reasonably. Only today we had another example of the Department of Transport inspectors acting absolutely unreasonably on Yorke Peninsula and calling into question the very important export industry.

No employer will hand over their financial statements. If the inspector asks for them, they will not do it. Will they be put in gaol because they will not hand them over? I would not do it; the member for Waite would not do it; indeed, no-one would do it. No-one knows their background. Unfortunately, some of these people have a set on business because they have a chip on their shoulder. It is absolutely unreasonable even to suggest that people should have to do that in a democracy and in a decent society. It is an unreasonable request.

The Hon. M.J. WRIGHT: I can only say what I said previously. I appreciate that it was about transport inspectors, not industrial inspectors, but they all are required to undertake their responsibilities correctly. If they need to see and use records to enforce the law, that is what they will do.

The committee divided on the clause as amended:

AYES (23)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lewis, I. P.	Lomax-Smith, J. D.
O'Brien, M. F.	Rankine, J. M.
Rann, M. D.	Rau, J. R.
Snelling, J. J.	Stevens, L.
Thompson, M. G.	Weatherill, J. W.
Wright, M. J. (teller)	

NOES (21)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A.	Evans, I. F. (teller)
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kotz, D. C.	Matthew, W. A.
Maywald, K. A.	McEwen, R. J.
McFetridge, D.	Meier, E. J.
Penfold, E. M.	Redmond, I. M.
Scalzi, G.	Venning, I. H.

NOES (cont.)

Williams, M. R.

PAIR

White, P. L. Kerin, R. G.

Majority of 2 for the ayes.

Clause as amended thus passed.

Clause 22.

The Hon. I.F. EVANS: In regard to the heading 'Basic contractual features', we note that currently Chapter 3 is entitled 'Employment' and Part 1 is entitled 'General conditions of employment'. In the explanation of clauses the minister described the next two amendments as consequential. It is not clear to me what they are consequential upon. The amendments envisage the regulation of contracts but, either by omission or intent, not necessarily contracts of employment. Exactly what is the intention, because the business community has raised with the opposition that it is inappropriate, given that one of the consequences of the Industrial Relations Court declaring a person an employee under the now agreed to section 4A would be to allow the declared contract of employment to be construed subject to relevant minimum standards set out in Division 2, Chapter 3? What is the intention in relation to that heading? Is it meant to be dealing with contracts of employment?

The Hon. M.J. WRIGHT: Yes, it is about contracts of employment and, in relation to the heading in the bill to which the shadow minister refers, if we go back to the act in Chapter 3, the first heading is 'Employment', and Part 1 is 'General conditions of employment'. Underneath that is Division 1, and 'Basic contractual features' would come under that second heading to be the third heading. And, yes, it is about contracts of employment.

Clause passed.

Clause 23.

The Hon. I.F. EVANS: Clause 23 deals with payments to employees and the former payments to employees. Essentially, it introduces another penalty for employers to suffer—a maximum penalty of $3 250 or an expiation fee of $325. This is a penalty on the employer who fails to comply with the requirement under subsection (2) or (5), and is guilty of an offence. Subsections (2) or (5) deal with payments: a form of payment to the employee, and the payment must be in cash, or if authorised in writing by the employee in an award or enterprise bargaining agreement by an employee association whose membership includes the employee or employees who do the same kind of work. Then it can be by cheque, by postal order, and by payment into a specified account with a financial institution. Then part 5 talks about payments by the crown. The amendment seeks to introduce a penalty if the employer fails to comply with a requirement under subsection (2) or (5). In effect, this means that an employer will not be able to unilaterally offset amounts owed by an employee, and that has always been the technical position in the workplace.

However, until now a breach of this section has carried no monetary teeth, so there has really been no penalty. An employer could, at present at least, take the stance that if it was owed money it would offset what was owed. When I had the paint shops if an employee had a staff account you might have come to some arrangement where the staff account was paid and offset. That is now not allowed and if that occurs the employer is going to get a penalty of up to $3 250 or an expiation notice of $325. So, if an employee then sued, there would be no consequence if in truth the employer's calculation were even right. So, even if the employer could prove that the employee owed them money then bad luck, you cannot take it out of the employee's account.

That means that ultimately the employer will be at a significant disadvantage and it is really a revenue raiser for the government. It simply makes it an offence for an employer to fail to comply with the requirements of section 68. It means that you will not be able to offset the amounts owed by the employee to the employer in regards to some payment. It seems a nonsense that an employer would get penalised for that and, again, the government has not made a case for it—it is one of these little provisions that pop up in the bill—the employer is going to get belted with a fine of over $3 000, or at least $325.

On what basis are we putting this into the legislation? Who has asked for this? Who has made the case? Absolutely no-one, but the government has swallowed the line, hook, line and sinker as to why this particular provision should come into the act. Why should an employer not be able to offset an amount owed to the employer by an employee? It seems a nonsense. If they are parting ways, the employee could have a significant amount owed to the employer. They part ways and the employer is left with no option but to go through the Small Claims Court. Anyone who has been to the Small Claims Court, good luck. You will be there forever trying to get a resolution through that process. So, the employee is put at a distinct disadvantage and we need the government to justify to us why they need this provision in the bill at all.

The Hon. M.J. WRIGHT: I thank the shadow minister for his question. You cannot unilaterally take money away now, nor could you as a result of this bill. We are saying that if that occurs there will be a penalty, as has been suggested. If an employer is owed money, either an agreement can be reached for the authorised deduction of payments, or if no agreement can be reached the employer can sue. To suggest that an employer can unilaterally make deductions from remuneration to enforce an alleged debt means that if the debt is in dispute, it then falls to the employee to attempt to recover the consequent underpayment by litigation. So, you simply cannot go off and unilaterally take money out of an employee's remuneration, just like you would not expect that employees could unilaterally settle alleged underpayments by taking cash from the till. So, the argument that has been presented is simply not correct.

The Hon. I.F. EVANS: What about holidays, long service leave or sick leave taken in advance, with the agreement of the employer—which happens? They agree to take the holiday or the leave in advance and at the end of the leave they come in and say, 'I am leaving your employment now. Thanks for that.' How does the employer recover that?

The Hon. M.J. WRIGHT: You would either get a written authorisation—

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: No, hold on. I think what you are trying to suggest is that the employee would not agree to that written authorisation: the employer would then sue the person.

Mr HAMILTON-SMITH: What happens, minister, if the majority of workers at a particular workplace decide that they want to contribute, for example, to a social fund—say $5 a week for Christmas—and they ask the employer to deduct that $5 out of their wage and the employer duly does that. I note that is covered generally under subsection (3), so there is provision to do that. After six months or so, an employee may decide to leave and want their money back. Having

contributed to the social fund or having already enjoyed the benefit of that fund by attending the Christmas party, a month later the employee decides to leave. They say, 'I contributed to the social fund, I enjoyed all the benefits of it, I had the big party, etc. with everybody else, it was terrific; thank you for that, but that money was deducted out of my wage and I should have been paid that money.' What happens in that sort of a circumstance? How does an employer protect themselves from an instance such as that?

The Hon. M.J. WRIGHT: From the way that the honourable member describes it to me, the employee has authorised the deductions, so the employer would be protected.

The Hon. I.F. EVANS: That is not quite true, because the current provision in the act actually states that it has to be authorised by an award or an enterprise bargaining agreement. So, if the award or enterprise bargaining agreement does not authorise payment into a Christmas fund, football pools or a holiday fund or whatever the employees want to run, the employer has no authorisation to take it.

The Hon. M.J. WRIGHT: I refer the honourable member to subsection (3)(a) which provides for 'an amount the employer is authorised, in writing, by the employee to deduct and pay on behalf of the employee'.

The Hon. I.F. EVANS: And I refer you to the next subsection down that says 'and' not 'or' 'an amount the employer is authorised to deduct and pay on behalf. . . '

The Hon. M.J. WRIGHT: As the member says, it is 'an' not 'and'.

The Hon. I.F. EVANS: It says 'and'. They are linked together. It needs to have both. It joins the sections together. It is not 'or'. It provides: 'an amount the employer is authorised, in writing, by the employee to deduct and pay on behalf of the employee' and 'an amount the employer is authorised to deduct and pay on behalf of the employee under an award or enterprise agreement.'

The Hon. M.J. WRIGHT: We do not agree with the shadow minister's interpretation; neither does parliamentary counsel.

The Hon. I.F. EVANS: I want to confirm that for the record. Your advice to this committee is that, if the social fund or any other payment by an employee into an account is not part of an award or an enterprise bargaining agreement, as long as the employer gets it in writing they cannot suffer the penalty in your bill if it passes in its current form?

The Hon. M.J. WRIGHT: That is the advice I have received.

Clause passed.

Clause 24.

The Hon. I.F. EVANS: This amendment is simply to insert the heading in relation to minimum standards. Then there is a whole range of provisions that follow this particular clause relating to minimum standards. So, this is the start of the debate about minimum standards and their incorporation within a contract of employment where they are less favourable. I will quote from the wine industry submission for the purposes of the debate. The wine industry says:

> This will mean wine industry employers will need to provide award employees and all non-award employees access to the minimum standards of the Bill. This will mean access to additional benefits for a whole range of employees. Providing these additional benefits to non-award staff will add to the costs of employment but it is hard to quantify the costs given that someone non-award employees may have access to some form of the standard and some may currently not have access to any of the minimum provisions. The prospect of creating minimum standards (in the Act) prevents the proper analysis of dealing with these matters at the award level. It is also a cheaper and easier mechanism for unions to gain benefits for all workers and expands the matters that are currently considered as minimum entitlements.

The bill will extend minimum standards to anyone covered by a contract of employment, whether or not also covered by an award or enterprise bargaining agreement. This will include persons the subject of declared employment under proposed section 4A, the declaratory judgment provision. So, irrespective of whether an award applies, minimum rates will be enforced. This has the potential to impact not only on ordinary employment but also on informal arrangements (for example, babysitting, or work carried out for clubs or associations) where the commercial rates for proper reason may actually not be in place. Those last two comments were from Business SA.

What we have here is the part of the debate in regard to minimum standards. I suspect that the minister will say that the point raised by Business SA about minimum standards applying to what they call more informal employment relationships such as casual babysitting or work carried out for clubs and associations is not quite a correct interpretation of the bill. So, I ask the minister to clarify whether the interpretation I have given on behalf of Business SA is accurate. Can the minister guarantee that the minimum standards proposed in the bill will not apply to those informal arrangements such as babysitting or work carried out for clubs or associations?

The Hon. M.J. WRIGHT: I would like to draw to the attention of the shadow minister to regulation 5 under section 6 of the act, which makes reference to employment excluded from the act. I would also like to acknowledge that it was previously raised by the member and, at the time, my staff were not able to advise him of this but have since checked. I apologise for that.

The Hon. I.F. Evans: Can you read it to us?

The Hon. M.J. WRIGHT: Yes. I read this earlier. I think the shadow minister may have been talking to someone in the chamber at the time. It states:

> Employment excluded from act.
>
> (1) Pursuant to section 6(b) of the act, employment which consists of part-time or casual employment performed in or about a private residence is excluded from the ambit of the act provided that the work is wholly or mainly performed for a domestic purpose.
>
> (2) In this regulation, work is performed for a domestic purpose if it is not performed for the purpose of the employer's trade or business.

Mr HAMILTON-SMITH: Is not this minimum standards measure really a recipe for more red tape, in a sense, given that we already have the protection of an award system; we already have contracts of employment—enterprise bargains. We already have devices there. By insisting on these minimum standards, are we not just adding the potential for more arbitration, more regulation, more complexity, less choice, more disputes and higher labour business costs? In principle, for example (and I know we are about to get on to the issue of remuneration), in a free economy, given that no-one forces people in this country at bayonet point to work—

The Hon. J.W. Weatherill: You've got to be kidding!

Mr HAMILTON-SMITH: No. Is the minister suggesting—

The Hon. J.W. Weatherill: Are you seriously suggesting we have a system where it's based on freedom of contract? You are an absolute—

The CHAIRMAN: Order! If the minister wishes to contribute, he should do so in the proper way.

The Hon. J.W. Weatherill: What age do you come from; which century do you come from?

Mr HAMILTON-SMITH: The minister might benefit from being an employer for once in his life. He might learn to see things from another point—

The Hon. J.W. Weatherill: I was an employer—and a much better one than you, I hear.

The CHAIRMAN: Order! The member for Waite has the call.

Mr HAMILTON-SMITH: You were an employer, minister, were you?

The Hon. J.W. Weatherill: I was.

Mr HAMILTON-SMITH: Mr Chairman, the Minister for Families and Communities has just made certain accusations about me, and I would like him to either elaborate upon them or withdraw them.

The CHAIRMAN: The chair cannot compel—

Mr HAMILTON-SMITH: The minister just claimed that he was an employer and that I was an employer, and he was a better one than I was, so he hears. He has implied—made an accusation, in fact—that I was not a very good employer, and I ask him to withdraw his remarks. It is deeply offensive and, I suspect, based on no fact whatsoever.

The CHAIRMAN: I do not think that the term is unparliamentary, but if the member takes offence—

Mr HAMILTON-SMITH: I do take offence to that.

The CHAIRMAN: —the minister might want to withdraw. The chair cannot make him.

Mr HAMILTON-SMITH: Mr chair, we can spend an hour on this, if you like. The minister has made a deeply offensive remark, based on absolutely nothing but his imagination, I expect. I take deep offence to it, and I ask him to withdraw, in accordance with the standing order dealing with rude and offensive language. I ask you to deal with it, sir. If the minister wants to be objectionable—

The CHAIRMAN: The chair repeats the point that it is not, in the chair's view, unparliamentary. But if the member takes offence, the minister who made the interjection should consider withdrawing.

Mr HAMILTON-SMITH: I am happy to ask that the house be recalled, that the Speaker resume the chair and that this matter be dealt with before the full house, if necessary. I refer to standing order 139, I think it is. The minister has made a deeply offensive remark, to which I take objection, based on nothing at all. I simply ask him to substantiate it, or else we can sit here and waste time having a debate, recall the Speaker and reassemble the house. If the minister wants to make rude and offensive remarks across the chamber and not substantiate them, I think the chair should take some action on it.

The CHAIRMAN: I again make the point that the chair cannot make the minister withdraw.

The Hon. J.W. WEATHERILL: Mr Chairman, the unfortunate problem with the member for Waite is that he has a glass jaw. He wanted to throw across the table the accusation that I have never been an employer. What I said was that I was an employer, and a better one than he. If he takes offence to a remark like that, he ought to really grow up. He throws some abuse across the chamber, he gets as good back, and now he wants to call the police. Honestly! He needs to just take a Bex and have a lie down.

Mr HAMILTON-SMITH: I am happy to take that further. That is not exactly what the minister said. He has left a little bit out. The minister said, 'and I was a better employer than you, so I'm informed,' or words to that effect. In fact, the minister implied that he had information that he wanted to present to the house that was deeply insulting. He has not explained himself at all. It is that part of the comment that the minister made that I would like you to rule on, sir.

The CHAIRMAN: The chair has ruled that it was it was not unparliamentary. It might be an unwise comment to make, but it is not unparliamentary. I am not aware of any precedent where that sort of comment could be called unparliamentary.

Mr HAMILTON-SMITH: I think it was an unwise remark, sir, from a very foolish minister.

The CHAIRMAN: It might be in bad taste and inappropriate, but it is not unparliamentary.

Mrs REDMOND: I rise on a point of order. In relation to the Chairman's ruling, I accept that it does not come under standing order 124, which is in relation to the use of unparliamentary language. However, standing order 125 relates to offensive words against a member, and standing order 127 relates to personal reflections on members. It seems to me that it comes clearly within standing order 127, in particular, which provides:

A Member may not
1. digress from the subject matter of any question under discussion,
2. or impute improper motives to any other Member,
3. or make personal reflections on any other Member.

Members interjecting:

The CHAIRMAN: Order! The chair has ruled. If the member for Waite disagrees with that ruling, he must move accordingly. I am not aware of any precedent that suggests that saying that the member is a better or worse employer than oneself is unparliamentary.

Mr HAMILTON-SMITH: Very well, sir. I will not waste the committee's time with the nonsense put forward by the minister. I will push on with my point. In relation to the issue of minimum wages, given that there are protections in regard to awards and enterprise agreements, I ask why the government believes it necessary to require this new imposition of a minimum standard for remuneration under this act in this form on top of the minimum provisions that already exist in awards and in an array of enterprise bargains, given that this will run over a range of those agreements? As the minister is aware, there is an exhaustive body of work on the impact of minimum wages on inflation, on the economy and, frankly, on employment. A body of literature makes the point that, as you lift minimum wages, you get rid of jobs and take them away from people. I ask why it is necessary to add to this imposition.

The Hon. M.J. WRIGHT: The member refers to people covered by awards and enterprise bargaining agreements. Of course, he is correct, but he needs to appreciate (if he does not already) that not everybody is covered by an award or an enterprise bargaining agreement. A whole range of people do not have the protection of an award or an enterprise bargaining agreement. They are award free and as such do not have the protections to which the member refers. In the fair and just community in which we live, I would have thought that we would support that a minimum wage would be a fair outcome, whether or not you are covered by an award or an enterprise agreement. That simply does not exist at the moment for those who are not covered by an award or an enterprise bargaining agreement.

We can all think of different occupations where people are free of an award or an enterprise agreement and may receive a wage that we suspect to be below what the community

generally believes to be a minimum wage. Minimum standards are fundamentally about helping the most disadvantaged. We make a case that there should be a safety net not just for those who are covered by an award and an enterprise agreement but for all employees. Why should it not be that those who do not have the protection of an award or an enterprise bargaining agreement have the protection of a minimum wage and of bereavement leave, just as those do who are covered by an award or an enterprise agreement? We think that this is an important feature of the bill.

In all probability, most of these people would not be represented by a union, and we think that they deserve some protection as well. That is why we have come forward unashamedly with protections for minimum standards that take account of those people. We think this is fundamental to providing protections in our system for all employees, whether or not they are covered by an award or an enterprise agreement.

Mr HAMILTON-SMITH: If the government's logic (and I can see the logic) is that our industrial relations system should be built upon a series of minimum standards and that that is really all we need, why does it not articulate these minimum standards more thoroughly and reconsider the current nature of the award system in this state and go for a minimum standards based industrial relations system which provides the optimum of flexibility for both employees and employers? I take the minister's point about those not covered by awards, but what we are getting here is a duplication. In an ideal world, would we not have a set of minimum standards, possibly including even a minimum wage, and allow anything on top of the minimum standards to be resolved between employers and employees?

The Hon. M.J. WRIGHT: The member knows full well that I did not say that is all we need. I support the award system; it has served us well. However, we also should have the award system underpinned by a safety net for those who are not covered by an award or an enterprise agreement. Those people deserve some protection and the application of minimum standards—basic things such as a minimum wage, bereavement leave and a couple of other things—so that we do not have a two-tiered system that simply protects those fortunate enough to be covered by an award or an enterprise agreement. But we also have a system that underpins that—a system that provides a basic safety net for all of those people in the work force.

Clause passed.

Clause 25.

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

Page 12, line 22—After 'such other' insert:
incidental or related

This is a clarifying machinery-type amendment. The power provided to the commission in proposed subsection (3)(c)(iv) relating to the minimum wage provision is about making sure that there is the capacity for adequate machinery-type provisions to make the overall proposal work as smoothly as possible.

The CHAIRMAN: I was going to deal with the minister's amendment, and then before we put clause 25 as amended we can canvass the whole issue. Are you happy with that, member for Davenport?

The Hon. I.F. EVANS: I want to ask some questions on the amendment.

The CHAIRMAN: Certainly.

The Hon. I.F. EVANS: The way I understand the amendment is that it inserts into proposed section 69(3)(c)(iv) the words 'incidental or related' so that the subparagraph will read:

(iv) cover such other incidental or related matters as should, in the opinion of the Full Commission, be dealt with in the minimum standard.

What is the difference between 'covering such other matters' and the new words, 'covering such other incidental or related matters'?

The Hon. M.J. WRIGHT: It is about making clear that paragraph (c)(iv) is making machinery provisions for the rest of the clause. Transitional provisions would be one example.

The Hon. I.F. EVANS: Surely, transitional provisions are already covered by the words 'such other matters.'

The Hon. M.J. WRIGHT: That is correct, but people did express concerns that it could be taken more broadly, and we have taken account of those concerns.

The Hon. I.F. EVANS: I think the minister is saying to the committee that he is trying to narrow the types of matters that the full commission can deal with, because now at least they would have to be 'incidental or related matters' rather than just any old matter. How does that provision differ in principle from proposed clause 30 of the bill, which inserts section 72A into the act, which deals with 'Minimum standards-additional matters'?

The Hon. M.J. WRIGHT: Section 72A is about additional substantive matters, whereas the amendment in clause 25(3)(c)(iv) relates to machinery matters.

The Hon. I.F. EVANS: Can the minister then give us an example of a related matter? You must have something envisaged that the commission might want to deal with. You already have things such as fixing a minimum weekly wage for an adult working ordinary hours; fixing a minimum hourly rate for an adult working on a casual basis; and fixing age-based gradations for juniors, etc. Then it is 'any related matter'. I am not sure how an employer, or indeed an employee, can envisage what that might mean.

Is it a related matter or incidental matter to subclause (3)(c)(i) (ii) or (iii)? Is it simply that, in setting a minimum standard for remuneration, the incidental or related matter deals with only those provisions of paragraph (c), or is it all of the new section 69 to which the related matter or incidental matter can refer?

The Hon. M.J. WRIGHT: I think there were three parts to the question. The first question was in relation to the incidental or related matter. Transitional could be viewed as individual or related. 'Phasing in' could be another machinery type provision. In relation to whether subclause (4) applied to paragraph (c) or beyond paragraph (c), it applies to paragraph (c) only.

The Hon. I.F. EVANS: I may be totally off the mark, but the way in which I read subclause (3)(c) is that it gives the commission a power to fix a minimum standard and, in so doing, fixed aged-based graduation for juniors. The government's definition of 'junior' is 21. The definition has been inserted into the act. It does not give the commission the ability to fix minimum standards for anyone below the age of 18.

Minister, why would you not want the commission to do that? Lots of people would want an age graduation for under 18. My understanding is that the government inserted a definition for 'junior'. I took the definition of 'junior' to mean between 18 and 21, because the act has a definition of 'child' being under 18. I took it that up until 18 you are a

child, then from 18 to 21 you are a junior and from 21 onwards you are an adult. That is the way in which I interpreted it.

Secondly, why do we need the commission to set this every year? Why would it not be on application by a peak entity on the merits? It might be at the two year mark or the three year mark where the peak association—no doubt a union—would apply on the basis of the CPI increase or changing market conditions. The government is putting the commission through a process every year, even if it is not needed. I note that it gives the commission the power to start the process but not to refuse to do it. What happens if the commission takes the view on application that it does not want to set the standard—if, say, there is no need and conditions have not changed? As a result of the way in which this works, they still have to go through the process and set the standard. The way in which it will work seems to be very prescriptive.

The third issue is that I do not see any minimum standard in relation to piece work. They do hourly rates; they do adult working ordinary hours; they do adult working on a casual basis. But there is no provision here for people doing piece work. Industries, such as the wine industry and fruit picking, are involved. In the building industry, for example, brickies will do so much a brick, but I do not see them covered in any of the provisions. Piece work seems to have fallen through the net in relation to the setting of minimum standards. It may be that those industries are quite happy with that, because they might escape some of the provisions, but I raise that matter with the minister.

The Hon. M.J. WRIGHT: At least three questions have been asked. In answer to the first one, the definition in the act for junior means an employee under the age of 21. The second question was in regard to the full commission looking at this annually. Yes; it is asked to look at it. Of course, it does not have to increase it. State wage cases are held annually, and it would seem appropriate that this is also done on an annual basis, at least for the commission to look at it. As I said, they do not have to increase it; they may make a judgment not to change it. The shadow minister also refers to piecework. Matters could be dealt with in an award or an agreement. If it is not in an award or an agreement, the minimum would apply and any piecework would operate as an incentive or bonus.

The Hon. I.F. EVANS: That is interesting. Take a fruit picker, picking by the box or the bag, or a grape picker, picking by weight. You are saying that that is going to be taken as an incentive or a bonus. The way I understand the provision to work is that they will get the minimum rate on an hourly basis, then they will be topped up on a piece basis. So, the employer will have to run two systems—one based on the minimum standard, which will be for a 37.5 hours or whatever the standard is, and then make some adjustment made on the amount of work done in the way of piecework, then netted off against the minimum standard. How is that going to work for overtime and time and a half, etc? I assume that the way it will work is that you will have to calculate the total wage based on the minimum standards including penalties, assuming the penalties apply to minimum standards. That is something that I have not asked. I assume that is right. Ultimately, you would do a calculation of the amount of piecework and net it back. Is that the way that employers are now going to have to calculate piecework?

The Hon. M.J. WRIGHT: What could occur is that you would get X dollars per hour as the minimum standard. Let us take a number. It might be 20 buckets; it might be 100 buckets. For every one over that, you would get whatever the extra payment is.

The Hon. I.F. EVANS: But does that not mean—

The Hon. M.J. Wright interjecting:

The Hon. I.F. EVANS: Well, I was a pieceworker once and I made enough money.

The Hon. P.F. Conlon interjecting:

The Hon. I.F. EVANS: I am trying to understand what you are doing, Patrick. Does that not mean, minister, that some employees would be worse off because, under piecework, they may be getting paid more than the minimum rate. So, for a set number of hours, you are going to make them pay the minimum rate, but they may have actually been better off under piecework for the amount of time covered by the minimum standard. Is there potential for some employees to be worse off?

The Hon. M.J. WRIGHT: There is nothing to stop them continuing to earn more. They would get the minimum and, effectively, if they picked more, they would get a bonus for doing so.

Mr HAMILTON-SMITH: In regard to the applicability of this, I know my colleague the member for Davenport touched on this earlier. In regard to people who might not be covered by awards (such as the cook, the cleaner and the gardener), I know the minister mentioned earlier that certain provisions in this bill will be excluded because they are domestic duties. How does the minister envisage this particular minimum wage applying to private arrangements that people may have to get someone in to work for them perhaps at home or in some capacity on a personal basis (such as a baby-sitter and that sort of thing)? Does he envisage that the implementation of this remuneration minimum standard will mean that it will impact on those personal arrangements? I know he touched on this earlier, but can the minister explain how it will work? What does it mean to families who might have a baby-sitter, a cleaner or a cook on a private basis at the moment?

The Hon. M.J. WRIGHT: I think the member is asking a similar question to what has been asked already, and I referred him in relation to an earlier part of the bill to regulation 5, 'Employment excluded from the act' which says that, pursuant to section 6(b) of the act, employment which consists of part-time or casual employment performed in or about a private residence is excluded from the ambit of the act.

Mr HAMILTON-SMITH: I thank the minister for that clarification.

Progress reported; committee to sit again.

ADJOURNMENT

At 11.59 p.m. the house adjourned until Tuesday 23 November at 2 p.m.